

United States Court of Federal Claims

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WASHINGTON, DC 20439

CHAMBERS OF
CHIEF JUDGE
PATRICIA E. CAMPBELL-SMITH

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July 14, 2016

Matthew Lee Wiener, Executive Director
Administrative Conference of the United States
1120 20th St., NW
Suite 706 South
Washington, DC 20036

Via Email: mwiener@acus.gov

Dear Mr. Wiener:

Thank you once again for your reply to my earlier correspondence on this topic. While the court appreciates that Adam Zimmerman and Michael Sant'Ambrogio made a small revision to their April 29, 2016 report titled "Aggregate Agency Adjudication" in response to my earlier letters, I do hope that our entire correspondence will be a part of the record on the matter retained by the Administrative Conference of the United States. The court remains concerned by the characterization of the work performed by the Office of Special Masters.

If there was e-mail correspondence between staff of the Office of Special Masters and the authors after May 2, 2016, I am not aware of it, and I again apologize for any misunderstanding. However, no one other than me may speak on behalf of the United States Court of Federal Claims. And on this matter, I have been in close consultation with Chief Special Master Nora Beth Dorsey, who is also unaware of any additional correspondence.

Following the court's close review of the revised report, we found only that language on page 38 of the report has been modified. The first new sentence reads: "The NVICP is run out of the U.S. Court of Federal Claims and administered by the Department of Health and Human Services (HHS)" This sentence does not go far enough to address our earlier voiced concern that the report conflates the roles and responsibilities of an administrative agency in the executive branch, HHS, with an adjudicative court in the judiciary branch, the OSM.

As is made clear by the statutory language of the National Childhood Vaccine Injury Act of 1986, the Secretary of HHS has very specific responsibilities in administering the National Vaccine Program, including overseeing vaccine research, safety and efficacy testing, licensing vaccine manufacturers, procurement and distribution of vaccines, etc. *See* 42 U.S.C. § 300aa-2. In contrast, the only role of the court and the OSM is to “have jurisdiction over proceedings to determine if a petitioner . . . is entitled to compensation under the Program and the amount of such compensation.” 42 U.S.C. § 300aa-12(a). The report’s implication that the court somehow “runs” the NVICP and that its adjudication of claims under the Program are an “administrative” function are not accurate.

The second revision made by the authors does make the report more accurate, amending the previous statement that claims for compensation are filed with HHS with the following: “Under the program, claimants file a claim for compensation with OSM, established in the U.S. Court of Federal Claims.” The court therefore concurs with that change.

If you or the authors of the report have any additional questions, please do not hesitate to get in touch with me or Chief Special Master Nora Beth Dorsey. We can both be reached by calling the United States Court of Federal Claims Clerk’s Office at (202) 357-6406.

Sincerely,

A handwritten signature in cursive script that reads "Patricia E. Campbell-Smith".

Patricia E. Campbell-Smith, Chief Judge

cc: Nora Beth Dorsey, Chief Special Master, Office of Special Masters
George Hastings, Special Master
Lisa L. Reyes, Acting Clerk of Court
Meredith G. Miller, Senior Staff Attorney
John Vittone, Chair, Committee on Adjudication, ACUS
Reeve Bull, Research Chief, ACUS
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Michael Sant’Ambrogio, Michigan State University College of Law
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