

# Spotlight on Vaccine Litigation

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While presenting many complex medical and scientific issues and employing evidentiary and discovery standards different from those of general civil litigation, another unique procedural aspect of vaccine litigation is that the parties may avail themselves of two levels of appellate review. While this additional appellate recourse may be appreciated by litigants, it can provoke questions as to the relief available at each level of the appellate process. Recently, the Federal Circuit has considered the appropriate scope of review at the intermediate level.

In vaccine injury cases, the petitioner seeks compensation from the Vaccine Injury Compensation Trust Fund which is funded by a tax charged on vaccines. The Fund is administered by the Secretary of Health & Human Services. Special Masters, appointed by the Court of Federal Claims, act as the triers of fact, issuing decisions on entitlement to compensation and the amount of compensation to be awarded. If either party objects to the decision of a special master, he may seek review via a Motion for Review filed with the Court of Federal Claims.

While acting as trial judges in other matters, the judges of the Court of Federal Claims take on an appellate role in vaccine litigation. Unlike the typical relationship between trial judges and magistrates, in vaccine cases, the decisions of the special masters are afforded deference. Should the Court determine the special master's decision to be arbitrary and capricious, an abuse of discretion or not in accordance with law, the Vaccine Act authorizes the Court to set aside the special master's findings, put on its trial judge hat and issue its own findings.

But the Court of Federal Claims provides only an intermediate level of review. The parties may appeal the decision of the Court to the Federal Circuit. Where the Court of Federal Claims has vacated the special master's decision and issued its own findings, the Circuit panel receives a case with two deciders of fact who have adopted differing views of the evidence presented. Recently, the issues presented by this unique, double layer review have come before the Circuit on the question of the scope of the Court's authority to reweigh the evidence adduced before the special master.

In *Dobrydnev v. Sec'y of Health & Human Servs.*, 566 Fed. Appx. 976 (Fed. Cir. 2014) (a non-precedential decision), a

panel of the Federal Circuit concluded that while the Court of Federal Claims judge may have weighed the evidence differently from the special master had she tried the case, she improperly reweighed the evidence and substituted her own findings where the panel determined the special master had "considered the relevant evidence of record, drawn plausible inferences and articulated a rational basis for [his] decision." See *Dobrydnev*, 566 Fed. Appx. at 984.

More recently, in *Paluck v. Sec'y of Health & Human Servs.*, 786 F. 3d 1373 (Fed. Cir. 2015), the issue arose again. The Secretary argued that the special master had a rational basis for his findings of fact and the Court of Federal Claims had exceeded its authority in reweighing the evidence and "second guessing" the special master. See *Paluck*, 786 F. 3d at 1380. Noting the Vaccine Act authorizes the Court of Federal Claims to set aside a special master's findings, the Federal Circuit panel affirmed the Court's judgment, explaining that where the special master had erred, "the Court of Federal Claims is not only authorized, but obliged, to set aside the special master's findings of fact and conclusions of law." *Id.*

These recent cases illustrate the delicate balancing act assumed by the Court of Federal Claims in providing an intermediate level of review in vaccine litigation and the Federal Circuit's ongoing effort to provide guidance to the special masters, Court of Federal Claims, and parties as to the scope of review at each of the two levels of review available.

*The views expressed in this article are the author's alone and should not be attributed to the Federal Circuit Bar Association.*

## Meet the Association

Thomas Dawson joined the Federal Circuit Bar Association as a Coordinator in November 2015. Thomas previously held various positions in the public sector. He is currently pursuing a PhD in Public Administration and Affairs at Virginia Tech.