Court of Federal Claims

Bar Association Newsletter

Spring 2004 Edition

George Miller Joins the Court

On February 20, 2004, the Court of Federal Claims formally welcomed George Miller as its newest Judge in an Investiture ceremony held at the court. With the addition of Judge Miller the court now has its full complement of sixteen full-time judges, as well as thirteen senior status judges. Judge Miller has been an active member of the Court of Federal Claims Bar Association, and was a member of its Board of Directors at the time of his confirmation by the Senate. The following is Judge Miller's judicial biography. The Bar Association welcomes Judge Miller to the court.

Judge Miller was sworn in as a Judge of the United States Court of Federal Claims on January 7, 2004. He was previously a trial attorney with the law firm of Hogan & Hartson with which he had been associated for 33 years, the last 26 as a partner. In addition to handling a broad range of civil litigation and commercial arbitration matters, he developed an active practice representing both property owners and governmental entities in "takings" cases. His clients included Whitney Benefits, Inc. and Peter Kiewit Sons' Co., for whom he secured a $200 million settlement in 1995.

Judge Miller assisted in planning, and was one of several moderators at, an April 1999 symposium sponsored by the U. S. Court of Federal Claims entitled, "When Does Retroactivity Cross the Line? Winstar,

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Just Announced Brown Bag Program!
Meet the New Judges
Featuring Court of Federal Claims Judges
Susan Braden, Charles Lettow, George Miller, Mary Ellen Coster-Williams & Victor Wolski
March 23, 2004 at 12:00 PM (Free Admission)
Tayloe House, Lower Level (in the court complex)

Bar Association on the Internet

Find out about upcoming Bar Association programs and other important information from the CFC's Web site.

www.uscfc.uscourts.gov

George Miller. . .cont'd from p.1

Eastern Enterprises and Beyond," held in Washington, D. C. The proceedings were published in 51 ALA. L. REV. 933-1379 (2000).

In 1994, then Chief Judge Loren A. Smith appointed Judge Miller to the Court of Federal Claims Advisory Council, which consists of Court of Federal Claims bar members whose practices are representative of the court's docket. The Council advises the court on matters pertaining to court administration and the court's relationship with the bar and the public. Judge Miller was re-appointed to the Advisory Council in 1999 by then Chief Judge Lawrence M. Baskir and was a member of the Advisory Council at the time of his appointment to the court. He also served on a court-appointed Litigation Practice Task Force, which was established following the 1995 Judicial Conference of the Court of Federal Claims to consider ways to expedite proceedings and improve the litigation process in the court. Judge Miller was also a member of the U.S. Court of Federal Claims Bar Association's Board of Governors and served on the Board at the time of his appointment.

In July 1991, Judge Miller completed a two-year term as Chairman of the D.C. Court of Appeals' Board on Professional Responsibility, the court-appointed body that administers the lawyer disciplinary system in the District of Columbia. Judge Miller was appointed by the Court of Appeals to the nine-member Board on Professional Responsibility in 1985 and served as its Vice-Chairman from February 1988 to July 1989. He also served as co-chair of Hogan & Hartson's Legal Ethics Committee.

In 1990 the Chief Judge of the D. C. Court of Appeals appointed Judge Miller to serve on a Task Force on Racial and Ethnic Bias in the D. C. Courts. Following the Task Force's submission of its Report and Recommendations in May 1992, the Chief Judges of the D. C. Court of Appeals and the Superior Court of the District of Columbia appointed Judge Miller to serve on an Advisory Committee to assist the D.C. courts in implementing the Task Force's recommendations.

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SAVE THESE DATES:

MAY 4, 2004

CFC LAW DAY
AT THE ST. REGIS HOTEL
FEATURING SPECIAL GUEST SPEAKER
THE HONORABLE ALBERTO GONZALES
WHITE HOUSE COUNSEL

NOVEMBER 9-10, 2004

COURT OF FEDERAL CLAIMS
17th JUDICIAL CONFERENCE
WASHINGTON, DC

MORE INFORMATION ON BOTH EVENTS COMING SOON!!

George Miller. . .cont'd from p.1

Chief Judge Douglas H. Ginsburg appointed Judge Miller in 2002 to serve as a member of the U. S. Court of Appeals for the District of Columbia Circuit's Advisory Committee on Admissions and Grievances. Judge Miller served in that capacity until his appointment to the court.

Judge Miller was born and raised in Schenectady, N. Y. He received his A.B. degree from Princeton, magna cum laude, in 1963, his law degree from Harvard Law School in 1966, and a Master of Laws in taxation from George Washington University Law School in 1968. Before joining Hogan & Hartson in 1970, he was a law clerk to the late Judge Bruce M. Forrester of the United States Tax Court and served on active duty for three years with the U.S. Navy Judge Advocate General's Corps.

Judge Miller is a member of the Virginia, District of Columbia and New York bars. He has been married to Mary Katherine ("Kay") Miller since 1971, and they have three children.

Letter from the Chief Judge

2004: A Full Complement at the Court

With the Senate's December confirmation of the nomination of George W. Miller to the court, we began this new year with a full statutory complement of 16 active judges. It has been a wonderful start to the new year. Judge Miller brings to our ranks an outstanding record as a private practitioner and as a close observer and friend of the court through his extensive involvement with the court's Bar Association. We are delighted to have him on board. In that same vein, it is my pleasure to report that, in January, the judges of the court confirmed Brian Bishop as the Clerk of the Court and Lisa DeFade as Chief Deputy Clerk for Operations. The steady, capable leadership that they provide the court, along with that of Chief Deputy Clerk for Administration, Henry Nolan, is much appreciated.

The judges of the court are busy on a number of committees that I have appointed. Judge Mary Ellen Coster Williams is chairing the committee for the court's 2004 Judicial Conference, to be held on November 9 at the St. Regis Hotel here in Washington, D.C., and on November 10 at the court itself (save the dates!). Judge Williams has been ably assisted in the planning of the conference by CFC Bar Association President David Churchill, Judges Larry Baskir, Eric Bruggink, Nancy Firestone, and Emily Hewitt, as well as CFC staff attorney Carole Bailey.

Judge Hewitt also chairs the court's Rules Committee – comprising Judges Charles Lettow, Thomas Lydon, James Merow, John Wiese, and Mary Ellen Coster Williams – which has been steadily reviewing proposed changes to the Rules of the Court of Federal Claims (RCFC) and internal operating procedures governing various aspects of the court's and the judges' behind-the-scenes operations.

On an issue related to rules and operations, I recently appointed an ad-hoc committee

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of judges to review procedures and policy implications for "Managing Related Cases." This committee, chaired by Judge Robert Yock, includes myself and Judges Francis Allegra, Nancy Firestone, Emily Hewitt, and Loren Smith. Most of you are aware of the Winstar cases and the cases dealing with Spent Nuclear Fuel (SNF). From the unscientific sampling that I have done among leaders and members of the Bar Association, the Court has a mixed record in efficient handling of these cases. Because these cases are high profile, there have even been articles in the media, primarily the trade press. Some of these articles have been critical of the Court. It seems to me that some of the criticisms may be well-taken, while others are definitely not. One of the primary purposes of the Committee will be to sound out the members of the Bar on this subject.

Managing related cases is a more difficult project than it may seem. Depending on the case, sometimes the plaintiff is in favor of central management, sometime the government is. Often the concern is not consolidation with one judge, but is merely that the cases be expedited. Consolidation of discovery may be urged, while consolidation regarding legal issues and fact-finding may be opposed. Some feel that cases destined for the Federal Circuit should have the benefit of many different opinions in order for the Circuit to properly evaluate the arguments on both sides. Are district court judges under similar pressure to manage cases en bloc? The current Rules of the Court basically make the judge of the earliest-filed case the one responsible for dealing with the issue of central management or coordination. Formerly, the Chief Judge had the primary role. Was this a wise change? These and other issues will be before the Committee. It has just begun its review and welcomes input from the bar, especially the Bar Association and the Advisory Council. I do not intend for this Committee to function exclusively "in house." The Committee should make a concerted effort to reach out to the Bar, and the members of the Bar need to be unabashed in expressing their views.

As a final note regarding the work of the various judges' committees, several more of which I intend to highlight on a future occasion in this newsletter, I would like to express my appreciation to the members of the Management Committee. This "uber"-committee, which I chair, provides vital guidance to the court as a whole and to the remaining judges in particular in weighing and addressing a gamut of issues that come before us. The additional members of the Management Committee are Judges Francis Allegra, Nancy Firestone, Lawrence Block, Bohdan Futey, and Diane Sypolt. I am never fully comfortable with initiating a project or attempting an improvement without using this sounding board.

There is good news about the Office of Special Masters (OSM). At risk of jinxing the timetable for their move, I am pleased to advise of the forthcoming relocation this spring of the OSM to facilities closer to the court itself. I am informed by Gary Golkiewicz, Chief Special Master, that the General Service Administration has engaged office space for the OSM at 1440 New York Avenue, N.W., for occupancy this spring. While we look forward to the day when all

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Letter from Chief Judge. . .cont'd from p.3

the necessary office requirements of the court can be accommodated in one facility, it is at least a step forward (and several blocks closer) that the court's esteemed complement of special masters will be practically just around the corner. Further, pending Congressional passage of the appropriate excise taxes to fund the expansion of its vaccine jurisdiction, the Special Masters are preparing for prospective Vaccine Injury Compensation Act coverage over influenza and Hepatitis A vaccine injury claims.

It has been the consistent policy of all chief judges of this court to foster familial relations among all persons concerned with the good of the court. Thus, the court has set Wednesday, July 14, 2004, for a special session of the court to admit the judges' law clerks to the bar of the court (again, save the date!). We are delighted that the Bar Association has agreed to cosponsor the occasion and we cordially invite the officers and members of the Bar Association to join us for the ceremony and reception that follows. Additional notice will follow in early summer.

Final words of appreciation go to the operations staff of the Clerk's Office who were faced with processing a significant influx of new cases filed at the end of January, most noticeably several dozen new Spent Nuclear Fuel complaints and related attachments. Despite the time and paper savings afforded by our new regime of electronic case filing, new cases of course are initiated by the manual filing of paper complaints. The volume of such filings in the last few days of January was a challenge. Although not without some temporary slowdown in the pace at which appropriate papers are filed, docketed, entered electronically, and communicated to the judges' chambers, the court is once again up to date in its processing of case filings.

Message from the President

It is an honor to write this first "President's column" of the 2004 Bar year. The Association is off to a flying start for the year. First, we have just completed our largest ever membership mailing, and our Association is enjoying a significant increase in its membership.

Second, we have begun, under the leadership of Judge Mary Ellen Coster Williams, to plan for the Court's 17th Judicial Conference on November 9-10, 2004. The conference is to be held at the St. Regis hotel (day one) and at the Court (day two). The conference

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will include very substantive sessions with the judges, and with public and private practitioners from every part of the Court's jurisdiction. There will also be ample opportunities to socialize with the judges of the Court and with your fellow practitioners at various receptions and meals during the conference. Please save the dates, and stand by for further details.

Third, the Bar Association is again hosting "Brown Bag" lunch meetings at the Court this year, focusing on timely subjects for practitioners. The first of these, scheduled for March 23, will be a "Meet the New Judges" forum with all of the newly-appointed judges of the Court, including Judges Susan Braden, Charles Lettow, George Miller, Mary Ellen Coster-Williams, and Victor Wolski. The program will be held in the lower level of the Tayloe House beginning at 12:00 PM. We also plan "Brown Bag" sessions, scheduled throughout the year, on other topics such as the Court's ADR program, discovery and electronic discovery issues, and issues involving appeals to the Federal Circuit.

If you are a new member, welcome to the CFC Bar Association! And if you are a returning veteran, welcome back! We look forward to an active and productive year.

Best Regards,
David A. Churchill
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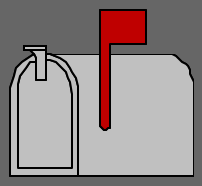

Change of Address?

RCFC 83.1(c)(3) requires the attorneys of record for all parties in a Court of Federal Claims case to "promptly file with the clerk and serve on all other parties a notice of any change in address." And please remember, when you are notifying the Court of any change of address, also notify the Bar Association. This will help to ensure that you continue to receive notification of Court and Bar Association announcements. The Association's web site includes a change of address form to make this notification quick and painless.

Legislative Proposal Worth Watching

Fairness in Asbestos Injury Resolution Act of 2003

On May 22, 2003, Senator Orin Hatch introduced the Fairness in Asbestos Injury Resolution Act of 2003 (Fair Act of 2003), S.1125. If enacted, this Bill would create a privately funded (by defendant companies and insurers), publicly administered, pool of money to pay outstanding asbestos claims. The Bill is designed to provide adequate compensation to victims, while relieving "federal and state courts from the burden of the asbestos litigation." The Bill further seeks to increase "economic stability by resolving the asbestos litigation crisis that has bankrupted companies with asbestos liability, diverted resources from the truly sick, and endangered jobs and pensions." Remedies provided under the Fair Act of 2003 would become the exclusive remedy for any asbestos claim under any federal or state law, preempting all state and federal asbestos claims.

At one time, the Bill envisioned the creation of an Office of Special Asbestos Masters with in the United States Court of Federal Claims. Up to twenty Special Asbestos Masters would be appointed by the chief judge of the Court of Federal Claims, with concurrence of a majority of the active judges of the Court. The Special Asbestos Masters would serve a four-year term with the possibility of an additional two-year reappointment. All claimants would be required to file claims for asbestos personal injuries through a resolution process within the Office of Special Asbestos Masters. The Special Asbestos Master would assess the claim, and make a decision within 60 days whether the claims should be compensated and how much the claimant should receive. Thereafter, claimants could choose to accept the award recommended, or appeal the decision to a panel of Special Asbestos Masters. After the claimants' appeals are exhausted, or the claimant has accepted the award, the fund's administrator would pay the award from the Fund.

To date, there has been no movement on this proposed legislation.

Amendments to the National Vaccine Injury Compensation Program

On March 19, 2003, Representative Dan Burton introduced the National Vaccine Injury Compensation Program Improvement Act of 2003, H.R. 1349. The Bill would amend the current National Vaccine Compensatory Program by:

- Extending the statute of limitations for seeking compensation to six years from the date of injury. Under current law, families must file within two years of a child's death or three years of a child's injury.
- Providing a one-time, two-year period for families with post-1988 injuries to file a petition if they were previously excluded from doing so because they missed the statute of limitations.

- Nancie G. Marzulla

Postcard from Iraq

On January 28, 2004, immediately following the conclusion of this term as President of the Court of Federal Claims Bar Association, John Euler began a new challenge. On that day he began a six-month detail from his position as Deputy Director of the Torts Branch of the Civil Division at the U.S. Department of Justice. His new location and assignment: Baghdad, Iraq, with the Office of General Counsel of the Coalition Provisional Authority. John joins about 15 other lawyers, both civilian and military. His particular portfolio deals with litigation from all over the world that has been filed against Iraq and its state owned enterprises, ranging from commercial disputes and banking matters to personal and property tort cases, with significant money at stake. The goal is to preserve Iraqi assets to as great an extent as possible for use in developing the country and to give the future government of Iraq some breathing space in dealing with world-wide litigation. John has been keeping his colleagues, friends and family informed of his experience by email, the first two of which are reprinted below.

Saturday, 31 January 2004

Hello to all! Arrived in Baghdad Wednesday after a couple of days in Kuwait. Email account just opened today. Some snippets from the trip. At the military terminal at BWI, lines of quiet, chatty, friendly troops and civilians heading for Iraq. All hues and ethnic backgrounds. Both genders. Ages mostly in the 20s but ranging on up to a few in their 50s (with obvious command presence). Felt a rush of pride in the younger ones in particular who go off with good will and uncomplaining to serve. Long haul to Frankfort and then down to Cyprus. Neat to see a choppy, gray/green Mediterranean and this obviously Greek looking island. Thought of Ulysses bouncing about in his little ships. Then on into Kuwait at night. On the approach, all that was visible was the oil well burn-off fires; orange flames reflecting off low, thin clouds and brown dust. Looked either like Dante's inferno or Mordor: take your choice. Got very quiet on the plane. Into a military reception center straight out of Stalag 17 (sp?). Big dusty compound in the middle of the night with fences and glaring spotlights. Of course no one to pick me up as promised. Found a desk for civilians and raised the miscreant office on a cell phone. Myself and others assigned to the CPA (Coalition Provisional Authority) finally picked up in 2 hours after digging our luggage out of a mound of such, unceremoniously dumped in the dust. Two days at a very nice hotel on the Gulf to get briefed and "recover"; great gym and food. My room on the Gulf; greenish water and small, quiet waves. Neat, very Middle Eastern moon and stars at night. On into Baghdad in a C130 cargo plane. One sits in netting facing the center or side. Landed very quickly, combat style, without incident. And so to the Green Zone. Living and working in The Palace. In the CPA General Counsel shop handling their international litigation. Lots of cases all over the world with crazy, often

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hopeless issues. Example for the lawyers: how do you get service of process on a country that is in between governments? Lots of $$ at stake. Amazing stuff for a lawyer. The Palace is packed with troops, civilian officials, such as moi, and contractors all trying to be comfortable in over crowded conditions. Temporarily sleeping in the former chapel of the Man himself in bunks along with 200 others. It is a big, ornate marble room with unfortunately excellent acoustics. Thus you can hear well the rustlings, snoors and sighs of 200 souls. Hopefully will be assigned a trailer soon. Showers are also hard to come by, at least those with hot water. Once again, moved by the professionalism, dedication, and cheerfulness of the younger Marines, soldiers, sailors, and airmen of both genders (most of whom are armed). The relative but fairly civilized squalor in the once luxurious Palace is interesting and ironic as is the aroma. Great gym! And had a great run yesterday: partly along the Tigris, then to the Assassins' Gate, then to that statue of the crossed swords which you have undoubtedly seen on the news (all within the Green Zone). Work long hours: 12 to 15. But nothing else to do really. I should also say that where we are is very safe. More security than you can shake a stick at. Heard a few "out going" mortar rounds last night I think. That means we fired at the bad guys; the sound of freedom. Broke out my guitar for the first time late last night it having somehow survived the trip. Was well received and am very glad I brought it. At least one other player in the Palace. He does blue grass and is even better than Mike Moran of the BUMC band. That's all for now. Those of you forwarding this know who you are and whom to forward it to. Thanks. I'll be in touch. Semper Fi! John

Sunday, 8 February 2004

Hello Gang! Thought I would try to get another note off to you since I have been here a week. This place is kind of like being in a space station. Most of what we do is done right here in the Palace; working, eating, sleeping, working, working out (big time) working some more. Imagine a large, formerly ornate palace that was once the height of imperial luxury in Iraq; full of frescoes, fancy accoutrements, high ceiling offices and all the splendor of a totally self absorbed dictatorship. Now it is awash with more or less grubby Americans, British, Spanish, Polish, Romanian, Dutch troops and civilians (with assorted accompanying aromas) all scurrying about on some mission or other. They cram the offices, chow halls, the sleeping areas, showers, laundry etc. with an overall air of resigned, but affable, purposeful hustle and bustle. And most of them are toting guns of one sort or another! Not hard to get used to but that may be my bias. I find particularly striking those military women who appear to be little more than teenagers lugging M-16s around; big change from Vietnam. There are Gurkha troops here! They guard the doors. Gurkha soldiers historically have served the British Empire as mercenaries. They come from the Himalayas and are much feared for their courage, ferocity, and tenacity. You would never know it. They are small, quiet, friendly and exceedingly polite; really seem to appreciate a friendly exchange. I love the Gurkhas but would not want to tangle with any of them.

We work long hours; (about 8 AM to 10 PM seven days a week) partly because that's the way things are done in a combat zone, partly because of the urgency of the mission (we are turning the country back over to the Iraqi's in 5 months), partly because there is little else to do, and partly because everything (even

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the most simple of tasks that we take for granted at home) is so hard to do. For one thing, the offices, other than having computers, are austere and lacking in the usual supplies, filing capacity, clerical support, and even writing implements. But more to the point as an example, I spent much of the day trying to work the issue of obtaining witness statements. The phones barely and rarely work into the city. The electronic communication takes time. There are significant language issues in understanding one another, particularly when trying to do it by email. The best way to work with the Iraqis is to meet with them and that too is a major challenge both to arrange and then achieve. So far, I can't even get the witnesses located or clearly explain to my Iraqi counterpart what we need to do. Sooo, little things that are not a big deal to get done at home add major friction to getting things done here. One hopes that the courts (in the UK for this case) are understanding.

As for the Iraqi's, you have to be impressed with their dedication, intelligence, fundamental courtesy, and capability. They are very good colleagues with both hope and worry about their future. I tend to think that they will make it. Sometimes I think it may be in spite of our bureaucracy rather than because of it but that is largely an over statement. We are getting an awful lot done.

Finally, an interesting run: jogged by Uday's Palace of the Concubines. This is the place where he would take women that he had forcefully abducted to "have his way with them" ... and they never came out! Pretty evil stuff. The place appropriately was bombed but is still standing . I will send a picture when I get to working with my camera.

That's all for now. This was more rambling and longer than I had intended. Hope it is worth the read. Take care. My best to all. John