

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

Nancy Beth Firestone

2. **Position**: State the position for which you have been nominated.

Judge, United States Court of Federal Claims (Re-Appointment)

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

United States Court of Federal Claims
Howard T. Markey
National Courts Building
717 Madison Place, N.W.
Washington, DC 20439

4. **Birthplace**: State year and place of birth.

1951; Manchester, New Hampshire

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1974 – 1977, University of Missouri (Kansas City); J.D. (with Distinction), 1977

1969 – 1973, Washington University (St. Louis, Missouri); B.A., 1973

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

1998 – Present
United States Court of Federal Claims
717 Madison Place, N.W.

Washington, DC 20439
Judge

1985 – Present
Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, DC 20001
Adjunct Professor of Law

1995 – 1998
United States Department of Justice
Environment and Natural Resources Division
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
Deputy Assistant Attorney General

1992 – 1995
United States Environmental Protection Agency
Environmental Appeals Board
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Judge

1989 – 1992
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Associate Deputy Administrator

1985 – 1989
United States Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
Deputy Chief

1984 – 1985
United States Department of Justice
Environment and Natural Resources Division
Policy Legislation and Special Litigation Section
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
Assistant Chief

1977 – 1984

United States Department of Justice
Environment and Natural Resources Division
Appellate Section and Environmental Enforcement Section
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
Staff Attorney

1975 – 1977

United States Attorney's Office for the District of Kansas
500 State Avenue
Kansas City, KS 66101
Law Clerk

1973 – 1974

B. Dalton Bookseller
St. Louis, MO
No Longer In Business
Sales Clerk

Other affiliations (uncompensated):

1993 – 1998

Lake Barcroft Homeowner's Association
P.O. Box 1085W
Falls Church, VA 22041
Vice-President, Board of Directors

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have no military service. I was not required to register for selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Randolph Thrower Award, Court of Federal Claims Bar (2010)

Vicennial Medal, Georgetown University Law Center (2010)

Panelist for Regional Finals, White House Fellows (2001 – 2009, 1993 – 1996)

Loren A. Smith Award for Service to the Court (2004)

Georgetown University Law Center Charles Fahy Distinguished Adjunct Professor Award (1998)

Presidential Distinguished Executive Award (1997)

Attorney General Delegate to National Trust for Historic Preservation (1995)

Presidential Meritorious Executive Award (1993)

Attorney General Award for Distinguished Service (1988)

U.S. Department of Justice Special Commendation for Outstanding Service Awards (1981 – 1988)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association

Court of Federal Claims Bar Association

Judicial Conference Liaison (2002 – Present)

Federal Bar Association

Federal Circuit Bar Association

State of Missouri Bar Association

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Missouri, 1977

There has been no lapse in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States Court of Appeals for the Fourth Circuit, 1979

United States Court of Appeals for the Fifth Circuit, 1982

United States Court of Appeals for the Eighth Circuit, 1979

United States Court of Appeals for the Ninth Circuit, 1977

United States Court of Appeals for the Tenth Circuit, 1978

United States Court of Appeals for the District of Columbia Circuit, 1978

There have been no lapses in membership.

11. Memberships:

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Lake Barcroft Homeowner's Association (1987 – Present)

Architectural Review Committee (2001 – 2005, 2012 – Present)

Board Member

Community Garden LBA-WID Task Force (2012)

LBWID Dam Safety Regulations Committee (2007 – 2008)

Vice-President, Board of Directors (1993 – 1998)

Resource Conservation and Recovery Act Implementation Task Force Executive Committee (1990)

Policy Steering Committee Task Group for the Superfund Program (1991)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin, either through formal membership requirements or the practical implementation of membership policies.

12. Published Writings and Public Statements:

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

Bid Protest Overview Part II, WEST GOVERNMENT CONTRACTS YEAR IN REVIEW CONFERENCE, FEBRUARY 2013 CONFERENCE (2013). Copy supplied.

Another View: The Environmental Context, THE ENVTL. FORUM, Mar.-Apr. 2010, at 39. Copy supplied.

With Elizabeth C. Brown, Ensuring The Fairness of Agency Adjudications: The Environmental Appeals Board's First Four Year, 2 ENVTL. LAW. 291 (1996).

The Environmental Protection Agency's Environmental Law Appeals Board, 1 ENVTL. LAW. 1 (1994). Copy supplied.

ENVIRONMENTAL LAW PRACTICE GUIDE §11A (Matthew Bender & Co. 1994) (out of print). I have been unable to obtain a copy.

With Philip F. W. Ahrens, III, Michael K. Slattery & Karen Florini, Regulating Solid and Hazardous Wastes: Has Federal Regulation Lived Up to Its Mandate or Can the States Do a Better Job?, 22 ENV. L. REP. 10,038 (1992). Copy supplied.

Government Perspectives on Bankruptcy and Environmental Law Interaction, 18 ENV. L. REP. 10,358 (1988). Copy supplied.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

As a member of the Environmental Protection Agency (EPA) Policy Steering Committee, I reviewed a report about the management of the Superfund program before its publication. U.S. ENV'L PROT. AGENCY, A MANAGEMENT REVIEW OF THE SUPERFUND PROGRAM (1991), available at <http://nepis.epa.gov/Exe/ZyPURL.cgi?Dockey=2000SHV2.txt>.

As a member of the Executive Committee of the EPA Resource Conservation and Recovery Act Implementation Study Task Force, I reviewed the study before its publication. U.S. ENV'L PROT. AGENCY, THE NATION'S HAZARDOUS WASTE MANAGEMENT PROGRAM AT A CROSSROADS: THE RCRA IMPLEMENTATION STUDY (1990), available at <http://nepis.epa.gov/Exe/ZyPURL.cgi?Dockey=10003RCO.txt>.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

On October 6, 1998, I appeared before the U.S. Senate Judiciary Committee for my hearing when I was first nominated to the United States Court of Federal Claims. Confirmation Hearings on Federal Appointments Before the S. Comm. On the Judiciary, 105th Cong (1998). Transcript supplied.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

Since becoming a judge, I have lectured on a variety of law topics at various bar association sponsored events, including the court's annual judicial conference. I do not have any formal written speeches or published lectures. For the most part, my participation in these events has involved review of recent decisions. I have identified, on the list below, the conferences or occasions for which I have found a draft of my remarks or had prepared remarks.

March 20, 2014: I participated in a judge's panel at the American Bar Association's Annual Federal Procurement Institute in Annapolis, MD. Case summaries supplied.

February 24, 2014: I participated as a moderator on a panel at the Court of Federal Claims Judicial Conference in Washington, DC. The panel reviewed key Supreme Court decisions in the October 2013 Term. I have no notes, transcript or recordings. The address of the Court of Federal Claims is 717 Madison Place, N.W., Washington, DC 20439.

June 18, 2013: I participated in an American Bar Association "Ask the Judges" Brown Bag on bid protest cases at the Court of Federal Claims in Washington, DC. I have no notes, transcript or recordings. The address of the American Bar Association is 1050 Connecticut Avenue, N.W., Suite 400, Washington, DC 20036.

April 11, 2013: I participated as a judge in the George Washington Law School Government Contracts Moot Court at the Court of Federal Claims in Washington, DC. I have no notes, transcript or recordings. The address of George Washington Law School is 2000 H Street, N.W., Washington, DC 20052.

April 4, 2013: I provided brief remarks at a Portrait Presentation for Chief Judge Emily C. Hewitt at the Court of Federal Claims. Remarks supplied.

February 21, 2013: I participated in a Bid Protest Panel at West's Government Contract Year in Review in Washington, DC. Case summaries supplied.

October 31, 2012: I participated on a panel entitled, "The Role of the Judiciary in Improving Governance and Law for Environmental Sustainability," before visiting judges from Brazil at the Organization of American States in Washington, DC. I have no notes, transcript, or recording. The address of the Organization of American States is 200 17th Street, N.W., Washington, DC 20006.

September, 27, 2012: I participated in the Environmental Law Institute Training Program in Judicial Specialization for the Protection of Environmental Right and spoke with judges from the Mexico Supreme Court at the Court of Federal Claims in Washington, DC. I spoke on general principles of administrative law and the role of courts in reviewing agency decisions. I have no notes, transcript or recording. The address of the Court of Federal Claims is 717 Madison Place, N.W., Washington, DC 20439.

May 17, 2012: I participated on a panel at the Federal Circuit Judicial Conference Breakout Session on the Court of Federal Claims in Washington, DC. I spoke on recent contract cases before the Court of Federal Claims. I have no notes, transcript or recordings. The address of the Court of Appeals for the Federal Circuit is 717 Madison Place, N.W., Washington, DC 20439.

March 23, 2012: I participated on a judge's panel entitled, "Judges Panel – Effective and Efficient Case Preparation and Presentation," at the American Bar Association's Annual Federal Procurement Institute in Annapolis, MD. I reviewed various pre-trial and post-trial orders that I use to streamline the trial and focus the parties on the issues to be decided. I have no notes, transcript, or recording. The address of the American Bar Association is 1050 Connecticut Ave. N.W., Suite 400, Washington, D.C. 20036.

February 25, 2012: I participated as a judge in the National Environmental Law Moot Court at Pace Law School in White Plains, New York. I have no notes, transcript or recordings. The address of Pace Law School is 78 North Broadway, White Plains, New York 10603.

October 18, 2011: I participated as a moderator on a panel on "Rails to Trails" cases at the Court of Federal Claim Judicial Conference in Berkeley, California. I spoke on the issue of certifying questions of state property law to state supreme courts. I have no notes, transcript or recordings. The address of the Court of Federal Claims is 717 Madison Place, N.W., Washington, DC 20439.

June 21, 2011: I participated in an American Bar Association "Ask the Judges" Brown Bag on bid protest cases at the Court of Federal Claims in Washington, DC. I have no notes, transcript or recordings. The address of the American Bar

Association is 1050 Connecticut Ave. N.W., Suite 400, Washington, D.C. 20036.

February 26, 2011: I participated as a judge in the National Environmental Law Moot Court at Pace Law School in White Plains, New York. I have no notes, transcript or recordings. The address of Pace Law School is 78 North Broadway, White Plains, New York 10603.

October 27, 2010: I participated as a moderator for a panel entitled, "Record Review in the Court of Federal Claims," at the Court of Federal Claims Judicial Conference in Washington, DC. I introduced each panelist. I have no notes, transcript or recordings. The address of the Court of Federal Claims is 717 Madison Place, N.W., Washington, DC 20439

June 29, 2010: I participated in a Court of Federal Claims Brown Bag Lunch entitled, "Using your Clerkship as a Springboard to a Law Career," in Washington, DC. I spoke in general terms about careers at the Department of Justice and other federal agencies following a clerkship. I have no notes, transcript or recordings. The address of the Court of Federal Claims is 717 Madison Place, N.W., Washington, DC 20439.

June 21-25, 2010: I participated in a training for judges in Guatemala, in Guatemala City, Guatemala. I spoke on the importance of expert witness testimony in environmental cases. The program was organized by the Environmental Protection Agency. I have no notes, transcript, or recording. The address of the Environmental Protection Agency is 1200 Pennsylvania Avenue, N.W., Washington, DC 20460.

May 5, 2010: I participated in a meeting with visiting judges from Egypt at the Court of Federal Claims in Washington, DC. I discussed general administrative law principles used by judges in the United States. I have no notes, transcript or recording. The address of the Court of Federal Claims is 717 Madison Place, N.W., Washington, DC 20439.

April 6, 2010: I gave a tour to visiting students from the Citadel at the Court of Federal Claims in Washington, DC. Talking points supplied.

December 16, 2009: I participated in a Court of Federal Claims Bar Association Brown Bag Lunch in Washington, DC. At this event, I spoke on recent bid protest cases before the court. I have no notes, transcript or recordings. The address of the Court of Federal Claims Bar Association is P.O. Box 7614, Ben Franklin Station, Washington, DC 20044.

October 29, 2009: I gave an introduction to a panel on tax issues potentially affecting tax cases at the Court of Federal Claims at the Court of Federal Claims Judicial Conference, which was held in conjunction with the Tulane Tax Institute in New Orleans, Louisiana. I have no notes, transcript or recordings. The address

of Tulane Law School is 6329 Freret Street, New Orleans, LA 70118.

July 12, 2007: I participated in a Court of Federal Claims Bar Association Brown Bag Lunch entitled, "Practice at the Court of Federal Claims," in Washington, DC. I discussed various techniques for presenting evidence to a court. I have no notes, transcript or recordings. The address of the Court of Federal Claims Bar Association is P.O. Box 7614, Ben Franklin Station, Washington, DC 20044.

April 20, 2007: I served as a judge in the 34th Annual Giles Rich Moot Court Competition at the Federal Circuit in Washington, DC. I have no notes, transcript or recordings. The address of the American Intellectual Property Law Association is 241 18th Street South, Suite 700, Arlington, VA 22202.

April 22, 2004: I participated in a Brown Bag Lunch with Federal Circuit judges to discuss the Court of Federal Claims' approaches to alternative dispute resolution in Washington, DC. I have no notes, transcript or recordings. The address of the Court of Appeals for the Federal Circuit is 717 Madison Place, N.W., Washington, DC 20439.

October 14, 2003: I participated in a panel discussion on ethics at the Court of Federal Claims Judicial Conference in Washington, DC. Remarks supplied.

February, 14, 2003: I participated in an American Bar Association Panel discussion on alternative dispute resolution in government contracting at the Court of Federal Claims in Washington, DC. I have no notes, transcript or recordings. The address of the American Bar Association is 1050 Connecticut Avenue, N.W., Suite 400, Washington, DC 20036.

October 2002: I moderated a panel discussion entitled, "The Future," at the Court of Federal Claims Judicial Conference in Washington, DC. I introduced the panel speakers, who then discussed suggestions for improving gaps in the court's jurisdiction. I have no notes, transcript, or recording. The address of the Court of Federal Claims is 717 Madison Place, N.W., Washington, DC 20439.

March 1, 2002: I participated on a panel entitled, "Judicial Perspective," at the American Bar Association's Annual Federal Procurement Institute in Annapolis, MD. I was responsible for providing an update on the court's ADR program. I have no notes, transcript, or recording. The address of the American Bar Association is 1050 Connecticut Avenue, N.W., Suite 400, Washington, DC 20036.

November 13, 2001: I participated in a Fairfax County Chamber of Commerce lunch panel discussion on alternative dispute resolution in government contract disputes in McLean, Virginia. I have no notes, transcript or recordings. The address of the Fairfax County Chamber of Commerce is 8230 Old Courthouse Road, Suite 350, Vienna, VA 22182-3853.

June 29, 2001: I participated in a question-and-answer session at the Embassy of Thailand to visiting Administrative Judges from Thailand regarding my former role as a judge on the Environmental Protection Agency's Environmental Appeals Board. I have no notes, transcript or recordings. The address of the Embassy of Thailand is 1024 Wisconsin Avenue, N.W., Washington, DC 20007.

June 15, 2000: I participated in an American Bar Association Brown Bag Panel discussion entitled, "Importance of Using Plain Language," at the ABA offices in Washington, DC. Outline supplied.

April 11, 2000: I participated as a judge for the Government Contracts Moot Court Competition held by the George Washington University Law School at the Court of Federal Claims in Washington, DC. I have no notes, transcript, or recording. The address of the Court of Federal Claims is 717 Madison Place, N.W., Washington, DC 20439.

December 3, 1991: I participated in The Federal Agency Recycling Conference II in Washington, DC. I spoke on the importance of recycling in federal buildings. I have no notes, transcript or recordings. The address of the Environmental Protection Agency is 1200 Pennsylvania Avenue, N.W., Washington, DC 20460.

November 29-30, 1990: I participated on a panel Colloquium on Federal-State Relationships in Environmental Enforcement sponsored by the Environmental Law Institute in Westfields, VA. I discussed how the Department of Justice participated with State Attorneys General on certain cases. I have no notes, transcript or recordings. The address of the Environmental Law Institute is 2000 L Street, N.W., #620, Washington, DC 20036.

July 31, 1990: I provided opening remarks for the National Pollution Prevention Conference, Denver, CO. Remarks supplied.

November 13-16, 1989: I participated in the National Environmental Information Conference in Kansas City, Missouri. I discussed the importance of good data in building good enforcement cases. I have no notes, transcript or recordings. The address of the Environmental Protection Agency is 1200 Pennsylvania Avenue, N.W., Washington, DC 20460.

August 13-14, 1987: I participated in a workshop at the University of Delaware entitled, "Environmental Monitoring and Enforcement: Theory and Practice Workshop," Newark, DE. I discussed the importance of environmental penalty policies on providing consistency in enforcement settlements. I have no notes, transcript or recordings. The address of the Environmental Protection Agency is 1200 Pennsylvania Avenue, N.W., Washington, DC 20460

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these

interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Christine Hooks, Judicial Profile: Hon. Nancy B. Firestone, U.S. Court of Federal Claims, Federal Lawyer, June 2011. Copy supplied.

Susan Rieff, Governing the Environment: The Public Sector and the Public Interest, May 2004. I discovered this article while performing an Internet search to ensure that my responses to this question were complete. The statement for which I am cited, however, was misattributed to me. The author has confirmed that the footnote citation should have been placed after the next sentence in the paragraph instead. Copy supplied.

Deirdre Davidson, On Lake Barcroft, Residents Find It's a Waterful Life, Washington Post, Aug. 10, 1996. Copy supplied.

Joe Morgan, Lever Workers Shake, Rattle, Roll Packages, The Baltimore Sun, Sept. 19, 1990. Copy supplied.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I was appointed by President William Jefferson Clinton and unanimously confirmed by the Senate to a 15-year term as a judge for the United States Court of Federal Claims in 1998. My 15-year term expired on October 21, 2013, at which point I assumed senior status. The Court of Federal Claims has jurisdiction over claims for breach of contract, tax refunds, military and civilian pay and breach of Tribal trust responsibility. It also has jurisdiction over claims arising under the Fifth Amendment Takings Clause and over claims for compensation under the National Childhood Vaccine Injury Act. In addition to awarding money damages, judges on the court have the authority to grant equitable relief in cases filed by disappointed bidders who fail to obtain or retain contracts with the federal government.

I was appointed to be a judge on the Environmental Appeals Board for the Environmental Protection Agency by William Reilly, the Administrator of the Environmental Protection Agency, in 1992 and my term continued under Carol Browner. The Environmental Appeals Board has jurisdiction over the decisions of the agency's Administrative Law Judges and over the agency's permitting decisions.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment?

In my 15 years as a judge on the Court of Federal Claims, I have presided over approximately 725 civil cases, which include approximately 560 that went to judgment.

i. Of these, approximately what percent were:

jury trials:	0%
bench trials:	100%
civil proceedings:	100%
criminal proceedings:	0%

b. Provide citations for all opinions you have written, including concurrences and dissents.

Please see attached list of cases.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. Teledyne, Inc. v. United States, 50 Fed. Cl. 155 (2001), aff'd sub nom. Allegheny Teledyne Inc. v. United States, 316 F.3d 1366 (Fed. Cir. 2003).

In this case, I was tasked with resolving most of the Court of Federal Claims' Cost Accounting Standard ("CAS") cases involving the allocation of pension benefits from the sale of business segments. This case, as well as those involving General Electric, General Motors, Unisys and Raytheon, involve claims for hundreds of millions of dollars either owed to the United States or to the company, depending on the funding status of the subject pension plans. In this case of first impression, I resolved multiple questions concerning the threshold issue of the government's right to recover a portion of a company's pension surplus attributable to a business segment upon the sale of that segment to another company. After reviewing the text of the regulations, CAS regulatory history, and agency interpretations of those regulations, I held that the sale of a business segment constituted a segment closing, which required a segment closing adjustment to account for surplus assets or deficits attributable the government's contributions to qualified pension plans. I also held that, absent an express contract to the contrary, the regulation did not require a segment closing adjustment for pension surpluses or deficits attributable to firm-fixed-price contracts. I further held that pension surpluses attributable to the government contributions under flexibly-priced contracts are recoverable by the government as a current period adjustment at the time of the segment closing. Therefore, I granted-in-part and denied-in-part the plaintiffs' motion for partial summary judgment, and I granted-in-part and denied-in-part the defendant's cross-motion for partial summary judgment. These rulings were all upheld by the Federal

Circuit. The complaint and counterclaim were then dismissed on February 5, 2007, pursuant to a stipulated dismissal with prejudice filed by all parties.

Plaintiff's Counsel:

Harvey G. Sherzer
Dickstein, Shapiro LLP
1825 Eye Street, N.W.
Washington, DC 20006-5403
(202) 420-4745

Defendant's Counsel:

C. Coleman Bird
United States Department of Justice
Civil Division
Post Office Box 480
Ben Franklin Station
Washington, DC 20044
(202) 514-7300

2. Gen. Elec. Co. v. United States, 92 Fed. Cl. 798 (2010) ("GE IV").

This case also involves a government claim for reimbursement of pension costs associated with the sale of various General Electric ("GE") segments. The opinion cited above is the fourth in a series of opinions seeking to resolve the treatment of pension assets and liabilities transferred by GE as part of the sale of two of its business segments. I addressed whether the plaintiff's pay-as-you-go post-retirement benefit costs following the 1993 closing of two of its business segments were to be included as part of the segment closing adjustments for pension costs required for each segment under CAS 413. Due to the complexity of the interrelationship of the various CAS and Federal Acquisition Regulation provisions to the measurement, allocation and payment of PRB costs, I called for expert testimony as to how these provisions are applied by accountants in practice. I held that non-compellable pay-as-you-go post-retirement benefits were not subject to a CAS segment closing adjustment, and that costs associated with those plans could not be offset from pension surpluses in the segment closing adjustment. I therefore granted the defendant's motion for partial summary judgment as to inclusion of non-compellable pay-as-you-go post-retirement benefits. The case is still pending, and I have issued five GE decisions in total in the litigation: Gen. Elec. Co. v. United States, 60 Fed. Cl. 782 (2004) ("GE I"); Gen. Elec. Co. v. United States, 84 Fed. Cl. 129 (2008) ("GE II"); Gen. Elec. Co. v. United States, 84 Fed. Cl. 566 (2008) ("GE III"); and Gen. Elec. Co. v. United States, 112 Fed. Cl. 1 (2013) ("GE V").

Plaintiff's Counsel:

Richard Douglas Bernstein
Willkie, Farr & Gallagher, LLP
1875 K Street, N.W.
Washington, DC 20006
(202) 303-1108

Defendant's Counsel:

C. Coleman Bird
United States Department of Justice
Civil Division
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Washington, DC 20044
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3. Gen. Motors Corp. v. United States, 78 Fed. Cl. 336 (2007).

This General Motors case concerns the treatment of pension assets and liabilities transferred by General Motors as part of the sale of one of its business segments. In my 2007 decision, I addressed what actuarial assumptions associated with interest and mortality rates for pension plans should be used to calculate segment closing adjustments to pension costs under CAS 413 for pension plans that have not been terminated. Prior to ruling, I received affidavits and testimony of four expert witnesses from the government and the plaintiff on how pension actuaries use different assumptions depending on whether they are valuing ongoing pension plans or settling pension liabilities. I held that the plain language of CAS 413 and the subsequent revisions required that a contractor use the actuarial assumptions developed under CAS 412.40(b)(2) to calculate the actuarial liability of a segment's pension plan when the pension plan has not been terminated. I therefore granted the government's motion for partial summary judgment as to the actuarial assumptions to be used, and I denied the plaintiff's motion for partial summary judgment as to the same. The case is still pending. Other CAS-related issues were resolved in Gen. Motors Corp. v. United States, 66 Fed. Cl. 153, 161 (2005).

Plaintiff's Counsel:

Marcia G. Madsen
Mayer Brown LLP
1999 K Street, N.W.
Washington, DC 20006
(202) 263-3274

Defendant's Counsel:

C. Coleman Bird
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Civil Division
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4. Unisys Corp. v. United States, 111 Fed. Cl. 191 (2013).

The Unisys case concerns the treatment of pension assets and liabilities transferred by Unisys as part of the sale of four of its business segments. In this decision, I addressed whether a deferred annuity plan should be included in a segment closing calculation and how fixed-price incentive contracts should be treated when calculating a segment closing adjustment. Prior to ruling, I received expert presentations from the government and plaintiff to help ascertain the extent to which the government contributed to the cost of pension plans on Unisys' firm-fixed price incentive contracts. I then held that deferred annuity plans should be included in a segment closing calculation and fixed-price incentive contracts should be included when calculating the Teledyne share at a 30% government participation rate. As a result of this holding, the amount owed to the government by Unisys was reduced to zero. I therefore ordered that judgment be entered in favor of the plaintiff. No appeal was filed.

Plaintiff's Counsel:

Terry L. Albertson
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
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(202) 624-2635

Defendant's Counsel:

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Jeffrey Andrew Regner
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5. Raytheon Co. v. United States, 105 Fed. Cl. 236 (2012) (“Raytheon III”), aff’d, No. 2013-5004 (Fed. Cir. Apr. 4, 2014).

The Raytheon case concerns the treatment of pension assets and liabilities transferred by Raytheon as part of the sale of three of its business segments. The parties moved for partial summary judgment on multiple issues, including whether Raytheon waived and transferred its claims for two of its segment closing adjustments under the terms of novation agreements entered into with Raytheon, the government, and the purchasers of each segment; and whether the court possessed jurisdiction to grant the government’s equitable adjustment claim because the government failed to comply with the requirements of the Contract Disputes Act. I denied the parties’ cross-motions for summary judgment on these two issues. As a result, I presided over a trial on these issues. The trial was conducted in two phases over the course of 11 days in October and November 2011. In the first phase, I heard testimony and received evidence regarding the issues surrounding the novation agreements. The second phase of the trial focused on the appropriateness of the various methods, assumptions, and calculations used by the parties in performing a post–1995 CAS 413 segment closing adjustment. In total, I heard live testimony from 21 witnesses and allowed 194 exhibits into evidence.

After trial, I concluded that the novation agreements for two of Raytheon’s segment closing adjustments did not act to waive and transfer its claims. I further determined that the court lacked jurisdiction over the government’s equitable adjustment claims. I therefore entered judgment of \$59.2 million plus interest in favor of the plaintiff. I issued two additional decisions in this case: Raytheon Co. v. United States, 92 Fed. Cl. 549 (2010) (“Raytheon I”) Raytheon Co. v. United States, 96 Fed. Cl. 548 (2011) (“Raytheon II”). The matter is pending before the Federal Circuit.

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Defendant’s Counsel:

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6. National Westminster Bank, PLC v. United States, 58 Fed. Cl. 491 (2003),
aff'd, 512 F.3d 1347 (Fed. Cir. 2008).

In this case involving the application of a tax treaty between the United States and the United Kingdom, the plaintiff sought a refund for taxes paid after the Internal Revenue Service rejected its interest deduction for interest paid on funds it received from NatWest branches outside the United States to conduct its banking operations. Specifically, the plaintiff claimed that it was entitled to deduct the interest paid to those branches under the “separate entity” provision of Article 7 of the Convention for the Avoidance of Double Taxation. Both parties moved for partial summary judgment on the issue of the calculation of a branch’s deductible interest. In order to reach a decision, I was required to determine the proper interpretation of the treaty between the United States and the United Kingdom. After looking to the plain meaning of the text and various forms of legislative history, I found that the plaintiff’s interpretation was the proper one. As a result, I granted the plaintiff’s cross-motion for partial summary judgment and denied the defendant’s motion for partial summary judgment. The decision was appealed to the Court of Appeals for the Federal Circuit, which affirmed.

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7. Santa Barbara Applied Research, Inc. v. United States, 98 Fed. Cl. 536 (2011).

This case involved the question of whether an incumbent government contractor could challenge an agency's decision to in-source work that had been performed by that incumbent contractor. In 2008 Congress amended 10 U.S.C. § 2463 to provide that greater consideration be given to using the Department of Defense's ("DOD") civilian employees to perform DOD functions. In 2010, the Air Force notified the plaintiff that it intended to in-source certain functions under its contracts with the plaintiff. The plaintiff brought suit in the Court of Federal Claims claiming that the Air Force's statutorily mandated cost analysis was erroneous and resulted in an improper in-sourcing decision.

The government moved to dismiss the complaint for lack of standing and failure to state a claim for relief, and both parties moved for judgment on the administrative record. I held that the government made its in-sourcing decision "in connection with a procurement" for the purposes of the Tucker Act because, in effect, it represented a decision to stop procuring services from outside contractors like the plaintiff. I also rejected the government's argument the plaintiff lacked prudential standing, holding that the concept of prudential standing did not apply to bid protests under the Tucker Act. On the merits, however, I rejected the plaintiff's allegation that the Air Force's in-sourcing decision was irrational due to faulty cost calculations. I therefore denied the defendant's motions to dismiss for lack of standing and failure to state a claim; denied the plaintiff's motion for judgment on the administrative record; and granted the defendant's motion for judgment on the administrative record.

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8. Macy Elevator, Inc. v. United States, 97 Fed. Cl. 708 (2011).

This case is an example of the Court of Federal Claims' many Rails to Trails cases involving the right of landowners to just compensation under the Fifth Amendment when recreational trails are authorized by the Surface Transportation Board within abandoned railroad corridors. The plaintiffs in this case are landowners who claimed to own the fee interest in land underlying a previously-operating railroad line. They alleged that the government had affected a Fifth Amendment Taking of their fee interest in the railroad right-of-way when it converted the line to a recreational trail under the "railbanking" provision of the Trails Act. Both parties moved for summary judgment. There were three classes of deeds that conveyed an easement and additional subclasses, each of which required its own analysis. Since this was a case of first impression for railbanking in Indiana, I was required to perform an analysis of the relevant state statutes and apply it to the language of the deeds at issue to determine the scope of the easement that had been granted. Based on that, I found that the government had in fact affected a taking for many of the classes of deeds. I therefore granted-in-part and denied-in-part both parties' motions for summary judgment. The case was not appealed by either party and thus terminated. When a similar case came before the Indiana Supreme Court in Howard v. United States, 964 N.E.2d 779 (Ind. 2012), the Indiana Court followed the approach that I took.

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9. Morganti National, Inc. v. United States, 49 Fed. Cl. 110 (2001), aff'd, 36 F. App'x 452 (Fed. Cir. 2002).

This case involved the termination of a government contract. The plaintiff was a contractor who alleged that the government's termination of the contract for default should be converted to a termination for convenience. Because this case dealt with a significant number of disputed factual issues, I held a 19-day trial at which I heard testimony from over 25 witnesses who presented more than 400 exhibits. The witnesses testified as to the nature of the contract and modifications thereof, the completion of the work, and various other factual issues, after which I ruled that the termination for default was justified and therefore must be upheld. The case was appealed to the Court of Appeals for the Federal Circuit, which affirmed.

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10. Nat'l Treasury Emps. Union, et al. v. United States, 54 Fed. Cl. 791 (2002).

This case reached me after the plaintiff union had reached a proposed settlement with the government for a class of 210,000 members of approximately \$173 million. I held a fairness hearing to determine whether the settlement could

proceed. After the hearing, I ruled that none of the objections to the lump sum payment, the accuracy of the databases, the remedial methodology, the settlement distribution plan, or the information provided to the class undermined the fairness of the settlement as a whole. I therefore ruled that the settlement was fair, adequate, and reasonable. I thereafter monitored the settlement. I received quarterly reports from the trustee of the settlement for several years before the settlement funds were fully dispersed and the settlement was completed.

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- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. Teledyne, Inc. v. United States, 50 Fed. Cl. 155 (2001), aff'd sub nom. Allegheny Teledyne Inc. v. United States, 316 F.3d 1366 (Fed. Cir. 2003).

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2. Gen. Elec. Co. v. United States, 92 Fed. Cl. 798 (2010) (“GE IV”).

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3. Gen. Motors Corp. v. United States, 78 Fed. Cl. 336 (2007).

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4. Unisys Corp. v. United States, 111 Fed. Cl. 191 (2013).

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5. Raytheon Co. v. United States, 105 Fed. Cl. 236 (2012) ("Raytheon III"),
aff'd, No. 2013-5004 (Fed. Cir. Apr. 4, 2014).

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6. Santa Barbara Applied Research, Inc. v. United States, 98 Fed. Cl. 536 (2011).

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7. Macy Elevator, Inc. v. United States, 97 Fed. Cl. 708 (2011).

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8. National Westminster Bank, PLC v. United States, 58 Fed. Cl. 491 (2003), aff'd, 512 F.3d 1347 (Fed. Cir. 2008).

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9. Morganti National, Inc. v. United States, 49 Fed. Cl. 110 (2001), aff'd 36 F. App'x 452 (Fed. Cir. 2002).

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10. G4S Tech. CW LLC v. United States, 109 Fed. Cl. 708 (2013).

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- e. Provide a list of all cases in which certiorari was requested or granted

Abrahamsen v. United States, 44 Fed. Cl. 260 (1999), aff'd, 228 F.3d 1360 (Fed. Cir. 2000), cert. denied sub nom. Willoughby v. United States, 532 U.S. 957,

U.S., Apr. 02, 2001.

White Mountain Apache Tribe v. United States, 46 Fed. Cl. 20 (Fed. Cl. 1999), rev'd, 249 F.3d 1364 (Fed. Cir. 2001), aff'd and remanded, 537 U.S. 465 (2003).

Am. Fed'n of Gov't Emps., AFL-CIO v. United States, 46 Fed. Cl. 586 (2000), aff'd on other grounds, 258 F.3d 1294 (Fed. Cir. 2001), cert. denied, 534 U.S. 1113 (2002).

Teledyne, Inc. v. United States, 50 Fed. Cl. 155 (2001), aff'd sub nom. Allegheny Teledyne Inc. v. United States, 316 F.3d 1366 (Fed. Cir. 2003), cert. denied sub nom. Gen. Motors Corp. v. United States, 540 U.S. 1068 (2003).

Christopher Vill., LP v. United States, 53 Fed. Cl. 182 (2002), aff'd, 360 F.3d 1319 (Fed. Cir. 2004), cert. denied, 543 U.S. 1146 (2005).

Nw. LA Fish & Game Pres. Comm'n v. United States, 79 Fed. Cl. 400 (2007), aff'd, 574 F.3d 1386 (Fed. Cir. 2009), cert. denied, 558 U.S. 1113 (2010).

- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

Over the course of 15 years, I have authored approximately 400 decisions. As a result, the below list of cases in which I was reversed in whole, reversed in part, or affirmed on other grounds represents a very small percentage of my decisions.

Am. Fed'n of Gov't Emps., AFL-CIO v. United States, 46 Fed. Cl. 586 (2000), aff'd, 258 F.3d 1294 (Fed. Cir. 2004), cert. denied, 122 S. Ct. 920 (2002). The American Federation of Government Employees ("AFGE") challenged the determination of the Defense Logistics Agency ("DLA") that it was more economical to contract out to a private contractor the operation of three DLA material distribution depots than to use in-house personnel. I held that the plaintiffs lacked standing to challenge DLA's cost comparison, but that the Administrative Dispute Resolution Act ("ADRA") did not limit standing. On appeal, the Federal Circuit affirmed that plaintiffs lacked standing, but held that the ADRA limited standing to actual or prospective bidders or offerors whose direct economic interest would be affected by the award of the contract or by failure to award the contract. The decision was eventually modified by Congress, which authorized government employee claims before the Government Accountability Office.

Brach v. United States, 98 Fed. Cl. 60 (2011), aff'd, 443 F. App'x 543 (Fed. Cir. 2011). Plaintiff alleged that his tax refund was erroneously denied as untimely

and that he was entitled to recovery on other grounds. I held that some claims were time-barred, other claims lacked subject matter jurisdiction due to his failure to fully pay taxes for those years, and that the government had not definitively and finally agreed to refund the claimed amount. On appeal, the Federal Circuit held that the court did not lack subject matter jurisdiction, but that the claims still failed due to the lack of any facts showing the existence of a contract between the plaintiff and the Internal Revenue Service.

Cameron v. United States, 106 Fed. Cl. 551 (2012), rev'd, 2013 WL 6050867 (Fed. Cir. Nov. 18, 2013). This case arose after a retired U.S. Army Reserve Colonel—and member of the Oregon Army National Guard—was separated from the federal Active Guard Reserve without first being considered by a service retention board. After finding that the regulatory language addressing retention was ambiguous, I concluded that the Army reasonably interpreted its own regulations, and subsequently affirmed the decision of the Army Board for Correction of Military Records. On appeal, the government conceded for the first time that the plaintiff was eligible for automatic consideration by a retention board. In a non-precedential opinion, the Federal Circuit reversed the trial court and remanded the case, holding that the plaintiff was entitled to an opportunity to be considered for retention by either the Oregon National Guard or the National Guard Bureau.

Data Marketing Co. v. United States, 55 Fed. Cl. 685 (2003), aff'd-in-part, vacated-in-part, 107 F. App'x 187 (Fed. Cir. 2004). Contractors that entered into a joint venture with the National Technology Information Service (“NTIS”) to provide the public with procurement-related data from the Department of Defense (“DOD”) contended that they were entitled to damages for breaches of their respective joint venture agreements. I held that the contractor could not assert breach of contract claims against the United States based on the actions of DOD. On appeal, the Federal Circuit held that I properly dismissed appellants’ claims against DOD and Data Marketing’s claims against NTIS, but erred in dismissing plaintiff Standard Development Association’s claim of breach of express and implied contractual provisions that required NTIS to cooperate in the transition to a new program by exercising good faith efforts to keep it intact through the participation of another organization.

La Van v. United States, 56 Fed. Cl. 580 (2003), aff'd-in-part, vacated-in-part, 382 F.3d 1340 (Fed. Cir. 2004). Plaintiffs sought restitution and damages for the government’s failure to honor the terms of a conversion transaction following the enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989. I held that restitution was appropriate, but that plaintiffs lacked standing for expectancy or reliance damages. Additionally, I dismissed the takings claim. On appeal, the Federal Circuit affirmed the finding of a formation of a contract and the dismissal of the takings claim but reversed as to plaintiffs’ standing to recover expectancy damages.

Lion Raisins, Inc. v. United States, 58 Fed. Cl. 391 (2005), aff'd, 416 F.3d 1356

(Fed. Cir. 2005). Raisin marketers alleged a taking by the Raisin Administrative Committee (“RAC”) of their share of money generated by a reserve raisin pool required by statute. I held that the RAC was a non-appropriated fund instrumentality (“NAFI”) and thus could not waive sovereign immunity to grant the court subject matter jurisdiction. This holding adopted the decision of another judge in a parallel case by the same plaintiff. On appeal, the Federal Circuit held that a claim against a NAFI is a claim against the United States and thus grants jurisdiction, but that the complaint did not properly allege a takings claim.

Nicon, Inc. v. United States, 51 Fed. Cl. 324 (2001), vacated, 331 F.3d 878 (Fed. Cir. 2003). Nikon’s contract was terminated for convenience before a notice to proceed was issued. I held that Nikon’s claim for unabsorbed home office overhead was properly denied. On appeal, the Federal Circuit held that Nikon could recover unabsorbed overhead costs as part of its termination for convenience settlement if a reasonable method of allocation could be determined on the facts of the case and the contractor could otherwise satisfy strict prerequisites for recovery of unabsorbed overhead costs.

Northwest Louisiana v. United States, 62 Fed. Cl. 760 (2004), rev’d, 446 F.3d 1285 (Fed. Cir. 2006). The state of Louisiana alleged that actions of the Army Corps of Engineers resulted in a trespass or continuing nuisance, as well as an unlawful appropriation of lands, waters, and properties, without full and fair just compensation. I held that the claim was time-barred based on the date that the minimum pool level was set by the Corps of Engineers. On appeal, the Federal Circuit held that the claim was not time-barred based on the date of the Corps of Engineers’ final refusal to reduce the minimum pool level.

Poole v. United States, No. 02-454 (March 18, 2003), rev’d, No. 03-5078 (Fed. Cir. May 24, 2004). Poole sought an increased disability rating from the military. I held that because his discharge was voluntary, the court lacked jurisdiction over the case. On appeal, the Federal Circuit reversed and remanded having resolved in another case that a voluntary discharge does not deprive the court of jurisdiction over a complainant seeking disability benefits.

Rotoli v. Sec’y of Health & Human Servs., 89 Fed. Cl. 71 (2009) rev’d sub nom. Porter v. Secretary of Health and Human Services, 663 F.3d 1242 (Fed. Cir. 2011). Plaintiffs sought review of a special master’s decision denying compensation under the National Childhood Vaccine Injury Act for plaintiffs’ autoimmune hepatitis that allegedly resulted from a hepatitis B vaccination. I held that the special master’s decisions were not in accordance with the law due to a recent Federal Circuit opinion prohibiting special masters from cloaking their causation determination under the guise of a credibility determination. On appeal, a divided panel of the Federal Circuit held that the special master had properly performed the credibility and causation determinations, and was permitted to find certain experts more credible than others.

Texas Peanut Farmers v. United States, 59 Fed. Cl. 70 (2003), vacated, 409 F.3d

1370 (Fed. Cir. 2005). Peanut farmers whose crops were reinsured by the Federal Crop Insurance Corporation alleged that their policies were improperly and unfairly adjusted due to an act of Congress, causing a reduction in monetary recovery for lost crops. I held that pursuant to the jurisdictional statute to which the farmers agreed to be bound, subject matter jurisdiction over their breach of contract claims lay in the United States district court in the district in which their peanut farms were located. On appeal, the Federal Circuit held that the Court of Federal Claims did not have jurisdiction but that instead of dismissing the case, it should have been transferred to the district court.

United Keetowah Band v. United States, 67 Fed. Cl. 695 (2005), rev'd, 480 F.3d 1318 (Fed. Cir. 2007). Keetoowah Band of Cherokee Indians sought compensation for the extinguishment of all right, title, and interest to Arkansas Riverbed Lands, as well as damages for breaches of the government's fiduciary duties with respect to Arkansas Riverbed Lands and minerals therein. The Cherokee Nation intervened to file a motion to dismiss for failure to join an indispensable party and for lack of jurisdiction. I held that the Cherokee Nation was indispensable and, because it did not give its consent to be sued, dismissal was required. On appeal, the Federal Circuit held that the Cherokee Nation did not have a sufficient interest to permit it to intervene as a party that was necessary to adjudicate the Band's action.

Walther v. Sec'y of Health & Human Servs., 69 Fed. Cl. 123 (Fed. Cl. 2005) vacated and remanded, 485 F.3d 1146 (Fed. Cir. 2007). Plaintiff sought review of a special master's decision denying compensation under the National Childhood Vaccine Injury Act for the plaintiff's acute disseminate encephalomyelitis that allegedly resulted from a diphtheria-tetanus vaccination. I held that the plaintiff had to prove causation by a preponderance of evidence, as the special master required. Therefore, the special master's decision was not arbitrary and capricious and therefore must be affirmed. On appeal, the Federal Circuit held, based on a decision that it had issued after my ruling, that the plaintiff was not required to eliminate other potential causes of her illness in order to recover from the government and therefore remanded the case back directly to the special master.

Western Management, Inc. v. United States, 101 Fed. Cl. 105 (2001), aff'd-in-part, rev'd-in-part, 498 F. App'x 10 (Fed. Cir. 2012). Western Management sought a refund of tax penalties paid to the IRS. I held that the Tax Court had previously resolved the issue on some counts, that another claim was time-barred, and that the plaintiff was liable for the property taxed. On appeal, the Federal Circuit held that the Tax Court did not resolve the issue as I held, but that the liability of the plaintiff did not entitle them to any refund.

White Mountain Apache v. United States, 46 Fed. Cl. 20 (1999), rev'd, 249 F.3d 1364 (Fed. Cir. 2001), reversal aff'd, 123 S. Ct. 1126 (2003). The plaintiff tribe alleged that the government breached its trust with respect to certain property, and improvements thereon, held by the government in trust for the tribe. I held that

controlling legislation did not impose a fiduciary obligation on the government to maintain, protect, repair, and preserve Fort Apache for the financial benefit of the tribe, and that jurisdiction was lacking over tribe's monetary claim against the government for permissive waste, absent statutory authority for injunctive relief. On appeal, the Federal Circuit held that the statute in question created a trust relationship between United States and the tribe; the relationship included a fiduciary obligation on the part of the United States to maintain or restore buildings it controlled exclusively, and potentially to restore buildings upon transfer to the tribe, the breach of which could support a claim for money damages; and that the claim based on the United States' alleged breach of obligations thus came within jurisdiction of Court of Federal Claims. The Supreme Court held that the United States' breach of fiduciary duty to maintain and preserve the trust property gave rise to substantive claim for money damages under the Indian Tucker Act.

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

I have filed all of my memorandum opinions using the federal judiciary's electronic filing system, which automatically publishes each opinion on the court website, <http://www.uscfc.uscourts.gov>. In addition, Westlaw, Lexis, and other publishers gather those opinions from the court website to include in their electronic databases.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

W. Chelsea Buildings, LLC v. United States, 109 Fed. Cl. 5 (2013), aff'd, No. 13-5066 (Fed. Cir. Feb. 12, 2014)

Rasmuson v. United States, 109 Fed. Cl. 267 (2013)

Voth Oil Co., Inc. v. United States, 108 Fed. Cl. 98 (2012)

Thomas v. United States, 106 Fed. Cl. 467 (2012)

Macy Elevator, Inc. v. United States, 105 Fed. Cl. 195 (2012)

Textainer Equip. Mgmt. Ltd. v. United States, 105 Fed. Cl. 69 (2012)

Big Oak Farms, Inc. v. United States, 105 Fed. Cl. 48 (2012)

Lamson v. United States, 101 Fed. Cl. 280 (2011)

Biery v. United States, 99 Fed. Cl. 565 (2011)

Textainer Equip. Mgmt. Ltd. v. United States, 99 Fed. Cl. 211 (2011)

Macy Elevator, Inc. v. United States, 97 Fed. Cl. 708 (2011)

Cent. Pines Land Co. v. United States, 107 Fed. Cl. 310 (2010)

Mike's Contracting, LLC v. United States, 92 Fed. Cl. 302 (2010)

Clark v. United States, 2007 WL 2142652 (Fed. Cl. July 17, 2007)

Cherbanaeff v. United States, 77 Fed. Cl. 490 (2007), aff'd, 300 F. App'x 933 (Fed. Cir. 2008)

Alost v. United States, 73 Fed. Cl. 480 (2006), aff'd sub nom., Morgan v. United States, 254 F. App'x 823 (Fed. Cir. 2007)

Block v. United States, 66 Fed. Cl. 68 (2005)

Royal Manor, Ltd. v. United States, 69 Fed. Cl. 58 (2005)

Seay v. United States, 61 Fed. Cl. 32 (Fed. Cl. 2004)

Lion Raisins, Inc. v. United States, 58 Fed. Cl. 391 (2003), aff'd, 416 F.3d 1356 (Fed. Cir. 2005)

La Van v. United States, 56 Fed. Cl. 580 (2003), aff'd in part, vacated in part and remanded, 382 F.3d 1340 (Fed. Cir. 2004)

Pax Christi Mem'l Gardens, Inc. v. United States, 52 Fed. Cl. 318 (2002)

Johnson v. United States, 49 Fed. Cl. 648 (2001), aff'd, 317 F.3d 1331 (Fed. Cir. 2003)

Carolina Power & Light Co. v. United States, 48 Fed. Cl. 35 (2000)

Gonzales v. United States, 48 Fed. Cl. 176 (2000), aff'd, 275 F.3d 1340 (Fed. Cir. 2001)

Boyle v. United States, 44 Fed. Cl. 60 (1999), aff'd, 200 F.3d 1369 (Fed. Cir. 2000)

- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on a federal court of appeal.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system

by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

Under the Court of Federal Claims Rules, a disclosure statement must be filed by the plaintiff identifying the corporate identity of the party. I simply review the statement to ensure that I have no known affiliation with the corporation or party. To date I have not had to recuse myself from any case.

15. Public Office, Political Activities and Affiliations:

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have never held a public office other than judicial office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have not held any offices in or rendered services to any political party or election committee. I have not held a position or played a role in a political campaign.

16. Legal Career: Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation

from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I did not clerk for a judge.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have not practiced law alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1977 – 1984

United States Department of Justice
Appellate Section and Environment and Natural Resources Division
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
Staff Attorney

1984 – 1985

United States Department of Justice
Environment and Natural Resources Division
Policy Legislation and Special Litigation Section
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
Assistant Chief

1985 – 1989

United States Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
Deputy Chief

1989 – 1992

United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Associate Deputy Administrator

1995 – 1998

United States Department of Justice

Natural Resources Division
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
Deputy Assistant Attorney General

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

No.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

My first legal job after graduation from law school in 1977 was with the Environment and Natural Resources Division, United States Department of Justice. I was selected through the Honors Program and began working as a staff attorney in the Appellate Section, where I served until 1982, when I moved to the Environmental Enforcement Section. I worked on approximately 75 cases while in the Appellate Section, and approximately 15 cases as an attorney in the Environmental Enforcement Section. In addition, I served on special trial teams defending President Carter's selection of an oil port in Washington State and the 1980 decision to house Haitian boat-people at the Krome facility in Southern Florida.

In July 1984 I became the Assistant Chief of the Policy Legislation and Special Litigation Section of the Environment and Natural Resources Division. In this position, I helped to shape one of the nation's strongest and most important environmental statutes as one of two principal career spokespersons during reauthorization of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*, also known as the Superfund.

In February 1985, I became the Deputy Chief for the Environmental Enforcement Section of the Environment and Natural Resources Division. In this position, my responsibilities included the supervision and management of over 100 attorneys, as well as guiding and shaping the Division's legal arguments in federal district court litigation arising from the enforcement of the nation's environmental laws. In addition, I supervised and personally participated in the litigation and settlement of numerous high profile Superfund cases.

In May 1989, I moved to the United States Environmental Protection Agency ("EPA"), where I served as Associate Deputy Administrator. In

this role, I served as the principal career policy coordinator in the Office of the Administrator. I was responsible for reviewing the EPA's regulatory and science decisions and implementing major environmental initiatives, including the initiative of EPA's 33/50 Pollution Prevention Program and the development of EPA's new multi-program approach to environmental regulation. I also worked with the EPA Deputy Administrator in negotiating with the Office of Management and Budget on budget and regulatory matters. In addition, I coordinated with EPA officials in discussing legislation in which EPA had an interest.

From May 1992 through September 1995, I served as a judge on the EPA's Environmental Appeals Board ("EAB"). In this position, I heard and decided administrative permit and enforcement appeals under all major federal environmental statutes administered by EPA. In addition, the EAB served as EPA's final decision maker on EEOC and related labor and employment matters. While on the EAB, I served as Chief Judge from March 1994 to March 1995.

In October 1995, I returned to the United States Department of Justice, where I became Deputy Assistant Attorney General of the Environment and Natural Resources Division. I supervised the Division's appellate and Supreme Court docket together with the Division's defensive environmental litigation; reviewed, edited and approved all briefs filed by the Division in the U.S. Court of Appeals and the U.S. Supreme Court; argued important Division cases; and coordinated the Division's work with the Office of the Solicitor General in seeking authorization for appeal and certiorari. I also was responsible as the Division's Ethics Officer for providing formal responses to ethical issues raised (outside of and within the Department of Justice) against Division attorneys and approving all motions for sanctions filed by the Division.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

During my tenure at the U.S. Department of Justice I represented numerous federal agencies, including the U.S. Departments of Interior, Energy, Defense and Transportation in connection with litigation challenging the environmental compliance of these agencies. In addition, I represented the EPA in affirmative litigation against alleged violators of the nation's environmental laws and for reimbursement under Superfund.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

Overall, approximately 75% of my practice has been spent in litigation. I joined

the United States Department of Justice in 1977. From 1977 until 1984, I served as a litigation attorney and devoted 100% of my practice to litigation. After I became a manager in 1985, I only directly participated in litigation occasionally, appearing in court only in certain cases. However, the remainder of my time was spent supervising others who were engaged in litigation. I was responsible for reviewing their work, conducting settlement negotiations, and managing the section's overall litigation docket. From 1989 to 1995, during my time at the United States Environmental Protection Agency, I did not directly participate in litigation. When I returned to the United States Department of Justice in 1995 as Deputy Assistant Attorney General, I oversaw the litigation conducted by the Appellate and Environmental Defense Sections, as well as directly participating in litigation occasionally.

- i. Indicate the percentage of your practice in:
 1. federal courts: > 99%
 2. state courts of record: < 1%
 3. other courts: 0%
 4. administrative agencies: 0%
- ii. Indicate the percentage of your practice in:
 1. civil proceedings: 100%
 2. criminal proceedings: 0%
- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.
 - i. What percentage of these trials were:
 1. jury: 0%
 2. non-jury: 100%
- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

While an attorney at the Department of Justice, I was identified on the following Supreme Court briefs and requests for certiorari as one of the attorneys who participated in the drafting of the document.

Brief for the United States as Amicus Curiae Supporting Respondents, Midlantic Nat'l Bank v. N.J. Dep't of Env't Prot., 474 U.S. 494 (1986) (No. 84-801), 1985 WL 669575.

Brief for the United States as Amicus Curiae Supporting Petitioners, Williamson

Cnty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson City, 473 U.S. 172 (1985), 1984 WL 565763.

Brief for the Petitioner, Ruckelshaus v. Monsanto Co., 467 U.S. 986 (1984) (No. 83-196), 1983 U.S. S. Ct. Briefs LEXIS 833.

Brief for the Petitioner, Andrus v. State of Alaska, 451 U.S. 259 (1981) (No. 79-1890), 1980 WL 339693.

Petition for Writ of Certiorari, Andrus v. State of Alaska, 451 U.S. 259 (1981) (No. 79-1890), 1980 U.S. S. Ct. Briefs LEXIS 1397.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. National Wildlife Federation v. Gorsuch, 693 F.2d 156 (D.C. Cir. 1982) (Robinson, Wald, Bork, Circuit Judges)

At issue in this appeal was whether EPA had violated a mandatory duty under the Clean Water Act by failing to regulate dams as point sources. I was responsible for preparing the United States' briefs as appellant. The D.C. Circuit reversed the district court and held that EPA's decision to treat dam-induced water pollution as non-point source pollution was reasonable and entitled to deference.

Co-Counsel:

Peter R. Steenland, Jr.
Sidley Austin LLP
1501 K Street, N.W.
Washington, DC 20005
(202)-736-8532

Opposing Counsel:

Patrick H. Parenteau
(Formerly with National Wildlife Federation)
Vermont Law School
164 Chelsea Street
South Royalton, VT 05068
(802) 831-1305

2. No Oilport v. Carter, 520 F. Supp. 334 (W.D. Wash. 1981)
(Belloni, District Judge)

For a period of two years from 1979 to 1981, I was junior counsel for the Department of Justice in representing President Carter and Secretary of the Interior Andrus in connection with three actions challenging President Carter's decision to approve an oil pipeline to carry Alaskan crude oil from Port Angeles, Washington to Clearbrook, Minnesota. The three consolidated actions were brought by numerous environmental groups, a number of Indian Tribes and the city and county government of Port Angeles, Washington. My responsibilities included taking depositions of non-government witnesses and experts, participating in negotiations with the Tribes, and preparing large portions of the United States' summary judgment brief. I also participated in several days of argument on the motions for summary judgment filed by the United States and Northern Tier Pipeline Corporation. On January 9, 1981, the district court granted summary judgment to the United States on all issues other than the Tribes' claims relating to an alleged breach of trust responsibility concerning whether the Tribes' fishing rights would be adequately protected by the conditions placed on the permittee. Eventually, the company abandoned the project and the case became moot.

Co-Counsel:

Andrew F. Walch (deceased)
(formerly United States Department of Justice)

Robert H. Loeffler
Morrison & Foerster
2000 Pennsylvania Avenue, N.W.
Washington, DC 20006
(202) 887-1506

Opposing Counsel:

Craig L. Miller
Law Office of Craig L. Miller
711 East Front Street, Suite A

Port Angeles, WA 98362
(360) 457-3379

3. Bob Graham, Governor of Florida v. William French Smith, Attorney General, S.D. Fla.81-1497 (Joe Easton, District Judge) (no reported decision).

In 1981 the State of Florida sued the United States to force the closure of the Krome facility, a temporary detention site for Haitian refugees. At issue was the United States' compliance with various environmental statutes in establishing and maintaining the facility as a refugee camp. Florida argued that the facility could not maintain the then level of population without running afoul of state and federal environmental laws. Florida sued and sought a preliminary injunction to close the Krome facility and have the refugees moved out of the State of Florida. I was selected as one of three attorneys to participate in the special litigation team formed to address this lawsuit. My responsibilities included defending the depositions and then presenting the direct examination of the Krome Public Health doctor and camp sanitarian who were two of the federal government's key witnesses in defense of the United States' effort to keep the facility open. The district court denied the preliminary injunction, but placed the United States on a regular reporting schedule to ensure that efforts to limit the camp's population were contained and that it was being maintained in an environmentally sound manner.

Co-Counsel:

Judge Kathryn A. Oberly, Associate Judge (retired)
(Formerly United States Department of Justice)

Opposing Counsel:

J. Skelly Wright, Jr.
(Formerly with Morgan, Lewis & Beckius)

4. United States v. Hooker Chemicals & Plastics Corporation, 680 F. Supp. 546 (W.D.N.Y.) 1988) (Curtin, Chief Judge)

For a two year period, from 1983 to 1984, I served as co-counsel in the above-captioned Love Canal litigation. During that period, I was responsible for collecting all available documents for discovery, establishing the litigation database, managing over ten paralegals and support staff, and helping to select experts and review affidavits in support of the United States' motion for partial summary judgment on liability against Hooker Chemicals. While I participated in the drafting of the motion for partial summary judgment on liability, I changed jobs before it was argued and decided. The motion was not decided until 1988 and the case was finally settled in 1999.

Co-Counsel:

Albert M. Cohen
Loeb & Loeb
1011 Santa Monica Boulevard, Suite 2200
Los Angeles, CA 90067
(310) 282-2228

New York Attorney General
120 Broadway
New York, NY 10271
(202) 861-3900

Opposing Counsel:

Steve K. Yablonski
Piper Rudnick LLP
1200 19th Street, N.W.
Washington, DC 20036
(202) 861-3874

5. State of New York v. General Electric, 592 F. Supp. 291 (N.D.N.Y. 1984)
(Miner, District Judge)

In this case, General Electric (“GE”) attempted to dismiss a cleanup action brought by New York State on several grounds, including the argument that Superfund does not extend to the cleanup of sites that were not established for waste disposal purposes. GE argued that they were not liable to clean up a drag strip that had been contaminated with transformer oil from a GE facility. While GE conceded it had intended to get rid of the waste when it gave the waste oil to the drag strip for dust suppression purposes, GE argued that this was not a disposal within the meaning of the federal Superfund law. I was responsible for briefing and arguing against GE’s motion to dismiss and based largely on the arguments the United States made as amicus curiae, the district court denied the motion to dismiss and concluded that the statute extended to GE’s disposal arrangement with the drag strip owner. As a result, GE was required to pay for the cleanup.

Co-Counsel:

Norman Spiegel
New York State Department of Law
Environmental Protection Bureau
120 Broadway
New York, NY 10271
(212) 416-8454

Opposing Counsel:

Allan J. Topol
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, DC 20044
(202) 662-6000

6. Oregon Natural Desert Association v. Dombeck, 172 F.3d 1092 (9th Cir. 1998) (Schroeder, Ferris, Tashima, Circuit Judges)

At issue in this matter was the extent to which federal permit holders may be subject to Clean Water Act citizen enforcement for pollution from indirect non-profit sources of pollution. The district court concluded that federal cattle grazing permittees must obtain state Clean Water Act approval under Section 401 of the Clean Water Act before seeking a federal grazing permit. This decision for the first time extended the reach of Section 401 of the Clean Water Act to so-called non-point source pollution, namely pollution that is not directed through a pipe or other conduit into a water of the United States. Given the interest of so many federal agencies in protecting against this expansion of Section 401 of the Clean Water Act, I was asked as the Deputy Assistant Attorney General to prepare the brief and present the argument in the case before the Ninth Circuit. On July 22, 1998, the Ninth Circuit overturned the district court decision and, adopting the United States' argument on appeal, concluded that Section 401 does not extend to federal licenses that cause pollution solely from non-point sources.

Co-Counsel:

David E. O'Leary
1300 SW Fifth Avenue, Suite 2400
Portland, OR 97201
(503) 778-5203

Opposing Counsel:

Michael Axline
1050 Fulton Avenue, #100
Sacramento, CA 95825
(916) 488-6688

7. United States ex rel. Tennessee Valley Authority v. Tennessee Water Quality Control, 717 F.2d 992 (6th Cir. 1983) (Edwards, Lively, Circuit Judges, Guy, District Judge)

I briefed and argued before the Sixth Circuit this case on behalf of the United

States as amicus curiae. The United States was concerned with extending the reach of the Clean Water Act permitting requirements to the construction and operation of dams. The Sixth Circuit adopted the Justice Department's argument on behalf of the Environmental Protection Agency ("EPA") and held that Tennessee Valley Authority was not required to obtain a state water quality permit for reconstruction and operation of a dam on the grounds that the EPA had reasonably determined that dams should be treated as non-point sources of pollution.

Co-Counsel:

James Fox, Associate General Counsel
Tennessee Valley Authority
400 Summit Hill Drive
Knoxville, TN 37902
(615) 632-4151

Opposing Counsel:

Michael Pearigen
Luna Group, PLLC
333 Unions Street, Suite 300
Nashville, TN 37201
(615) 254-9146

8. Pacific Legal Foundation v. Andrus, 657 F.2d 829 (6th Cir. 1981)
(Edward, Kennedy, Circuit Judges, Newblatt, District Judge)

At issue in this case was whether the Secretary of the Interior was required to prepare an environmental impact statement under the National Environmental Policy Act ("NEPA") prior to listing seven mussel species under the Endangered Species Act ("ESA"). I briefed and argued the appeal on behalf of Secretary Andrus. On appeal, we argued that the ESA displaced NEPA. The Sixth Circuit agreed and held, based on the conflicting goals of the ESA and NEPA, that the Secretary of the Interior is relieved of his NEPA obligations when listing species under ESA.

Opposing Counsel:

Ronald A. Zumbrun
(Formerly with Pacific Legal Foundation)
Zumbrun Law Firm
47 Robert Court East
Acata, CA 95521
(707) 825-0466

9. Save the Bay, Inc. v. US Corps of Engineers, 610 F.2d 322 (5th Cir.1980), cert. denied, 449 U.S.900 (1980) (Brown, Tjoflat, Garza, Circuit Judges)

I briefed and argued this case concerning the scope of the Corps of Engineers' ("Corps") National Environmental Policy Act obligations when issuing a dredge and fill permit. Citizens seeking to block construction of a DuPont facility in Gulfport, Mississippi argued that the Corps' permit authorizing the construction of an outfall triggered an obligation to evaluate the environmental impacts of the entire facility. The Corps had limited its environmental review to construction of the outfall. The Court of Appeals affirmed the Corps' decision to limit its environmental review to the specific federal action at issue, here the outfall permit.

Co-Counsel:

David Sebree (retired)
(Formerly with Legal Department of E.I. DuPont)

Opposing Counsel:

Stanford E. Morse, Jr.
Law Offices of Stanford E. Morse, Jr.
2400 14th Street
Gulfport, Mississippi 39501
(228) 864-4525

10. District of Columbia v. Schramm, 631 F.2d 854 (D.C. Cir. 1979) (Lumbardi, Senior Judge for the Second Circuit, Tamm, Mikva, Circuit Judges)

I briefed and argued this appeal. At issue in this appeal was whether the Environmental Protection Agency's ("EPA") decision not to veto a state-issued Clean Water Act permit is subject to judicial review. The D.C. Circuit agreed with the United States' position that a state-issued water permit was subject to review only in state court, and that the Clean Water Act did not provide for review of EPA decisions not to veto state permits.

Co-Counsel:

Thomas A. Deming
Office of the Attorney General
State of Maryland
200 Saint Paul Place
Baltimore, MD 21202-2202
(410) 576-6300

Opposing Counsel:

Frederick F. Stiehl (retired)
(Formerly Assistant Corporation Counsel for Washington, DC)

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

In addition to the significant litigation identified above, I received the Attorney General Award for Distinguished Service in 1998 for my work on the settlement between the United States and Shell Oil Company with regard to the cleanup of the Rocky Mountain Arsenal outside of Denver, Colorado. Together with Myles Flint, the then Deputy Assistant Attorney General in the Environment and Natural Resources Division, we secured the cleanup of one of the nation's most contaminated federally owned hazardous waste sites.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I am currently co-teaching Federal Litigation Practice: Litigating Challenges to Federal Agency Decisions with Sheila Jones in the Spring 2014 Semester at Georgetown University Law Center. The course provides students with an introduction to federal practice associated with cases challenging agency decision-making on the administrative record from filing a complaint to arguing various motions in a court setting. Syllabus supplied.

I co-taught Takings with Judge Eric Bruggink in Fall 2000, Fall 2001, and Spring 2004; with Timothy J. Dowling in Spring 2004, Spring 2006, and Spring 2008; and with Robert Meltz in Spring 2010 and Spring 2012 at Georgetown University Law Center. The course was a survey class of all major Supreme Court takings cases that was designed to trace the evolution of takings jurisprudence in the Supreme Court, involving mock arguments of each case along with a discussion of the case's significance. Spring 2012 Syllabus supplied.

I co-taught Environmental Law with Lois Schiffer each Fall from 1986 to 1999 at Georgetown University Law Center. The course was a survey course designed to give students a working knowledge of key environmental statutes. No syllabus available.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have none.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I have been an adjunct professor at Georgetown University Law Center for over 25 years and plan to continue that affiliation and to teach in the next year.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

Please see attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

Please see attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

I am not aware of any conflicts of interest. Under the Court of Federal Claims Rules, a disclosure statement must be filed by the plaintiff identifying the corporate identity of the party. I review the list of parties and the statement to ensure that I have no known affiliation with the corporation or party. To date I have not had to recuse myself from any case. When I first joined the bench, I did not take any cases from my former division at the Department of Justice for a year in order to avoid any appearance of conflict.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I will follow the same procedures I have followed for the past 15 years to avoid any conflict or appearance of conflict.

25. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I do not engage in any legal pro bono work. I do however teach and take time to participate in mentoring law students and high school students with limited means regarding opportunities in the practice of law.

26. **Selection Process**:

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In accordance with 28 U.S.C. § 178, I wrote to President Obama on January 22, 2013, requesting reappointment to the Court of Federal Claims. On August 15, 2013, I spoke with an official from the White House Counsel's Office to confirm my interest in reappointment. On September 4, 2013, I was informed that the White House Counsel's Office was interested in pursuing reappointment. Since September 10, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On November 1, 2013, I met with attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC. On April 10, 2014, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AFFIDAVIT

I, Nancy B. Firestone, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

4/11/14
(DATE)

Nancy Firestone
(NAME)

Brigitte Tenor
(NOTARY)



BRIGETTE TENOR
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires October 31, 2018