

HEALTH CARE LAW ADVISOR ALERT: VACCINE INJURY CLAIMS AND THE FEDERAL VACCINE COURT

As the development of a potential COVID-19 vaccine continues, so too do questions about the types of vaccines being developed and how they will be administered. Vaccines offer overwhelming public health benefits, but a small number of individuals who receive vaccines are harmed by them. Most claims alleging health problems caused by vaccines must be brought in the “Vaccine Court” of the United States Court of Federal Claims under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. § 300aa-1, *et seq.*

The Act creates the National Vaccine Injury Compensation Program to handle vaccine-related claims. The program is administered by a secretary who may compensate a party who has suffered a vaccine-related injury or death. The Act largely preempts traditional tort claims against vaccine administrators or manufacturers for vaccine-related injuries and it limits claimants to only those sustaining injury or their legal representatives.

The Act creates a Vaccine Injury Table listing various vaccines and medical conditions that may result from them. Claimants must show, by a preponderance of evidence, that they suffered an injury listed in the Table or that a vaccine caused or significantly aggravated their injury within the time periods set forth in the Table. *Terran ex rel. Terran v. Sec’y of Health and Human Servs.*, 195 F.3d 1302, 1307 (Fed. Cir. 1999), *cert. denied*, 531 U.S. 812 (2000). If claimants do so for an injury listed in the Table within the time period stated in the Table, they are presumed to be entitled to compensation. *Knutson by Knutson v. Sec’y of Health and Human Servs.*, 35 F.3d 543, 547 (Fed. Cir. 1994). For claims not falling within the Table, claimants must prove the vaccine at issue caused their injury by a preponderance of evidence. *Golub v. Sec’y of Health and Human Servs.*, No. 99-5161, 2000 WL 1471643, at *2 (Fed. Cir. Oct. 3, 2000). Claimants are limited to a recovery of \$250,000 for pain and suffering, but may recover additional damages for actual and projected un-reimbursable expenses, actual and anticipated lost earnings, and reasonable attorneys’ fees and costs.

Claims made to the Vaccine Court are sent to the office of the Chief Special Master, who then assigns the claim to a special master to review and issue a decision to be entered as a judgment by the Federal Court of Claims. Either party can request that the Federal Court of Claims review this decision, and also can seek further review in the United States Court of

Appeals for the Federal Circuit. Judicial review of the special masters' decision is limited; the decision can be set aside only if either court determines it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. If claimants choose to reject a judgment by the Vaccine Court, they then may pursue a tort action in state or federal court. However, the Act offers certain defenses and presumptions to defendants facing such claims.

For more information about the Vaccine Court, or other legal issues relating to the COVID-19 pandemic, contact [Grant Killoran](#) of O'Neil, Cannon, Hollman, DeJong & Laing S.C. at 414-276-5000 or grant.killoran@wilaw.com.