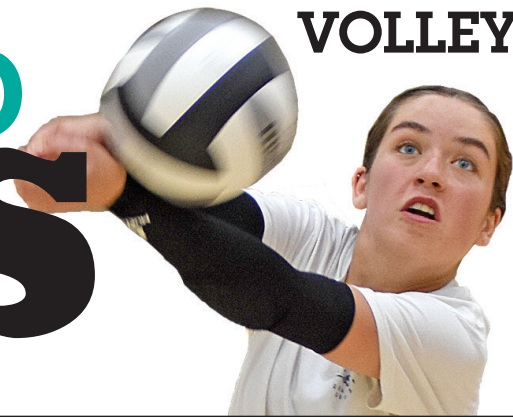




# THE LAKELAND TIMES



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### Bangstad revocation hearing adjourned abruptly

Timmons shuts down meeting, citing wayward testimony

By Richard Moore  
OF THE LAKELAND TIMES

At a contentious public hearing Wednesday that descended into chaos, the Oneida County planning and development committee abruptly adjourned without taking any action on the possible revocation of Minocqua Brewing Company's (MBC) administrative review permit (ARP).

Acting committee chairman Mike Timmons adjourned the meeting in the middle of MBC owner Kirk Bangstad's testimony, after Timmons repeatedly warned Bangstad to stick to the issues of his alleged permit violations and possible revocation, after stating that Bangstad's testimony about property history and other businesses were not relevant to the issue at hand.

At one point, Timmons admonished Bangstad "one more time"; Timmons then  
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## The U.S. Vaccine Court: A stacked deck against the victims of vaccines?

Despite billions paid, critics say program works against the vaccine-injured

News analysis

Part 1 of a five-part series

By Richard Moore  
OF THE LAKELAND TIMES

Most Americans are unaware of the National Vaccine Injury Compensation Program, or the vaccine court,

as it is commonly known, one of the only ways victims and the families of victims can receive compensation for vaccine-related injuries and deaths.

At least most were unaware until tens of thousands of people reported being injured by Covid vaccines and began seeking redress.

Covid vaccines aren't actually covered under the National Vaccine Injury Compensation Program (NVIC), but those alleged Covid-related injuries have focused the spotlight once

again on the NVIC and overall vaccination injuries. The truth is, most victims or their families never receive compensation.

To government lawyers, that's as it should be. Though the program was supposed to offer a no-fault alternative to civil litigation — the trade off is that pharmaceutical companies can't be held civilly liable for vaccine injuries — and to serve up quick and

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TREVOR GREENE/LAKELAND TIMES

### A 'PLANTASTIC' EVENT

Kandace Lynn hands Laura Fiala and her daughter Amelia, left, a plant they bought during the inaugural GardenFest event at the Aspirus Seasons of Life Hospice House on Saturday, July 22, in Woodruff.

## Florida company interested in establishing a 'solar farm' at Lakeland Airport

Blue Lake Road property in Minocqua belongs to the airport

By Brian Jopek  
OF THE LAKELAND TIMES

A Florida company has indicated interest in installing a solar energy system at the Lakeland Airport in Arbor Vitae.

Airport administrator Jon Schmitz made the four-member Lakeland Airport commission aware of the contact he'd received from Miami-based Origis Energy at the commission's July 20 meeting.

The commission looked at an overhead photo of the airport provided by the company, showing the north south and east west runways.

The photo highlighted "Option A" as an area south of the north-south runway with the "Option B" in the eastern end of the east-west runway.

The first option, Schmitz said, was some-

*See Solar Farm... page 19*

## LUHS board takes action to move forward with community complex upgrades

LUHS gets new director of special education and pupil services

By Trevor Greene  
OF THE LAKELAND TIMES

After a lengthy discussion at its monthly meeting Monday, Lakeland Union High School's (LUHS) board of education decided to take action and move the district's community complex project forward.

District administrator Bob Smudde said at prior meetings he has continued to work with Stevens Point-based civil engineering and landscape architecture firm Point of Beginning (POB) on the project, which was originally approved by the board in the early to mid-2010s.

The community complex project has been whittled down since the board took up the task again that include upgrades centered around the district's bleachers, press box, bathrooms, concession stand and tennis courts.

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# Solar Farm

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thing the airport commission, along with the towns of Arbor Vitae, Woodruff, Lac du Flambeau and Minocqua who own the airport, would be able to agree to.

"It's a safety zone but option B, the eastern end of our short runway, I'm asking them for a concept paper and whatever else they wanna do and we can deal with it," he said. "The FAA (Federal Aviation Administration) would have to approve it and the BOA (Bureau of Aeronautics) would have their fingers in it and we'd have to take it to the four towns."

The annual meeting of the four town boards to review and approve the airport's budget and to discuss and make decisions on other items regarding the airport is usually during the month of September.

Schmitz said the airport layout plan (ALP) which has been submitted to the FAA, will need to be modified if it's decided to pursue installation of what he referred to as a "solar farm."

"So, I'm basically trying to do a business plan for us," he said. "A

cost benefit analysis ... I don't know any detail as far as what we'd get out of it or how they'd sell it (the power). On the grid, I'm sure. That's what you hear about but it's something that really interested me. We certainly need more money and that could be a possible way to get some."

## Blue Lake Road land

Schmitz also reported he'd been contacted by a realtor who requested "that she be allowed to broker the sale" of property of property on Blue Lake Road in Minocqua, that he's found, after discussions with town staff, the airport owns.

"It's tax exempt property," he said, adding he told Minocqua town clerk Roben Haggart he needs to determine if the airport would ever use the property again.

On the land is a small building containing navigational and other equipment that at one time was used to aid pilots landing at the airport.

"If we're not going to (use it), I'll bring it back to the four-town meeting to see if they would give us approval to liquidate it," Schmitz said.

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# Victims

From page 1

fair decisions, few of those decisions favor the injured, and the government says that's because real vaccine injuries are few and far between.

To be sure, as of July 1, since the court was founded, 26,312 petitions for compensation have been filed. Of those, 22,422 cases have been adjudicated, with 12,466 being dismissed and 9,956 being compensable. The awards total more than \$4.5 billion to petitioners, not counting attorneys fees.

That sounds like a lot, but vaccine proponents say the numbers verify the government's position that vaccines are safe and effective. That is to say, those injury and death numbers are small relative to the total number of vaccines delivered in the United States.

Indeed supporters point out, between the beginning of 2006 and the end of 2021, more than 6 billion doses of common compensable vaccines have been distributed, with only 7,686 compensated cases. That's one compensable claim for every 783,337 doses distributed.

As Time Magazine proclaimed in 2015: "But the antivaxxers are utterly wrong in their interpretation of what the numbers mean. And in fact, the numbers prove that vaccines are as safe as the medical community says they are."

Critics say that figure is

misleading because it's calculated per dose rather than per child. Because a child may receive up to 50 doses of vaccine up to age 18, vaccine injury odds are more likely to be in the range of one in every 15,667 children who follow the maximum vaccine schedule.

Because compensable vaccine claims involve serious injury, including death, critics say that's one too many.

Indeed, simmering beneath the mainstream headlines is a current of stories that wash ashore a different picture. In his 2014 book, "The Vaccine Court: The Dark Side of America's Vaccine Injury Program," Wayne Rohde, a father who believes his child's autism is linked to vaccination, wrote that the reality was far different from the fair, just, and efficient system the government promised.

Rohde delved into what he called the inner workings of the program and found what he called a long process that took several years to navigate, with families running headlong into a system where "the end result is manipulated by the government in defense of vaccine policy."

Rohde described an arcane and adversarial process in which he wrote that families seeking compensation had difficulty finding lawyers to defend them, found a stacked deck of expert government witnesses arrayed against them, with the government acting as both judge and jury, and who waited years and suffered repeated appeals by

the government when they did win.

Not least, many families are denied even when the facts of their cases are identical or similar to others who did win.

## A story long known

Back in the early 2000s, Congress was a different beast than it is today. As is the case today, Republicans were far more interested in questioning vaccines and the pharmaceutical industry than Democrats, but back then there were loud skeptics in both parties.

In 2002, for example, the VICP came into the crosshairs in a hearing before the U.S. House of Representatives Committee on Government Reform, then chaired by Republican Rep. Dan Burton of Indiana.

"Our concern has been that this program has become too adversarial and that people who have been injured aren't getting a fair shake," Burton said in his opening remarks. "This program was intended to be less adversarial than civil litigation. It was intended by Congress to provide compensation quickly and easily to people who have suffered very serious injuries."

On close calls, the families are supposed to get the benefit of the doubt, Burton said.

"Unfortunately, that doesn't seem to be happening," he said. "While approximately 1,700 families have received compensation under

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# Victims

From page 19

this program, many families have seen their cases tied up for years in a system that has become too contentious. At last year's hearings, we heard from six different families. They all had a very difficult time getting through this program."

Even when families won their case, Burton observed, they had trouble getting paid and sometimes had trouble getting the government to accept the decision.

One family named Rogers won a decision from the vaccine court judge, officially known as a "special master," Burton said.

"Instead of accepting that decision gracefully, the government has filed appeal after appeal to try to overturn it; and I just think that's wrong," he said. "That's not how we intended this program to run."

Indeed, Rogers and another family had their cases drag on for eight to 10 years. The other family named Zuhlke, Burton said, had a daughter who was severely injured after she received her prekindergarten vaccines. She became mentally challenged, suffered periodic bouts of blindness that were getting progressively worse, had seizures, and was confined to a wheelchair.

"A team of respected medical specialists diagnosed her case as a vaccine-related encephalopathy, which is a table injury," Burton said. "Table injuries are supposed to receive compensation quickly and without opposition. Unfortunately, Janet had to fight for nine years to get compensation — nine years."

Burton said his own family had been impacted. For one, the lawmaker said he had a grandson with autism, who became so two days after vaccination. And his granddaughter ran into problems, too.

"My granddaughter received a vaccination when she was about six months old for six-month olds, for hepatitis B, and she quit breathing within just a matter of a few hours; and they rushed her to the hospital," he said. "And they saved her life, and she's been a very normal child, but now she's suffering from a mild form of epilepsy, and we wonder how that happened. There's nothing else that we can think of that could have caused it. There's no history in our family of anything like that."

## Program issues

Two years before that hearing, Burton's committee produced a detailed report on issues and flaws within the VICP.

For example, the law establishes a "table" of injuries that qualifies for compensation. That's critical because an injury on the vaccine table automatically is presumed to be caused by the vaccine if it occurs within a certain defined time period after vaccination.

So-called "off-table" injuries must prove causation to be awarded even if they are temporally associated.

However, the law gave the Health and Human Services agency unilateral power to amend those tables. That's what happened in the early years, especially in 1995 and 1997, the report stated — and over time the injuries removed from the table were the most common ones prompting petitions.

"Far more claims were associated with the injuries removed from the Table than were associated with the injuries that were added," the 2000 committee report stated. "Prior to the Table revisions, three quarters of the claims alleged injuries on the Table, after the revisions were implemented, more than half of the claims filed were Table injuries. Of note, almost half of past claims awarded compensation were for injuries subsequently removed from the Table."

The report cited criticisms that HHS procedural actions taken in revising the table were inconsistent with the intent of Congress, and that some changes have been made to the table restricting compensation coverage for reasons of both science and policy.

In a 2011 paper, "Fixing the flaws in the federal vaccine injury compensation program," Peter Meyers, professor of clinical law and director of the Vaccine Injury Clinic at The George Washington University Law School, found that many of the same flaws cited in the 2000 committee report still existed, along with the same vulnerabilities in the vaccine tables. Specifically, Meyers singled out the 1995 changes for producing a tremendous change in the nature of the vaccine claims litigated in the program.

"In the first few years, practically all cases involved only satisfying the Table requirements and adjudicating whether another factor unrelated to the vaccine was the likely cause of the injury," Meyers wrote. "With the changes in the Table and the subsequent addition of many new vaccines without any Table injuries, the focus of vaccine case adjudication is now dramatically different. Ninety percent of vaccine cases are now causation-in-fact cases."

And Dr. Richard Goldberg of Durham University in the UK observed in a 2022 report that, between 2009 and 2014, "more than 98% of new claims filed alleged off-Table injuries, which required the petitioner to prove their injury was caused by the vaccine they received."

There have been some mitigating circumstances. Goldberg was citing a 2014 GAO report that pointed out that, "at the end of the fiscal year 2014, 16 vaccines were covered by the program, 8 of which did not have associated covered injuries on the table."

So while people could file claims for those vaccines, any injury was automatically considered off-table and thus required proof of causation rather than just temporal association.

That defect has been remedied — all 17 covered vaccines injuries have injuries associated with them. What's more, the addition of the influenza vaccine to the table injury list has led to a burst in influenza claims and a growing dominance of claims for adult injuries.

Some experts now believe that claims related to influenza vaccines will become the majority of all VICP claims ever compensated.

Still, the vaccine injury table is a table constricted by the number of covered vaccines and the number of eligible associated injuries. Many claims involve alleged injuries not on the table, including ADEM, multiple sclerosis, transverse myelitis, rheumatoid arthritis, narcolepsy, vaccine site abscess, CIDP, seizure disorders, and small fiber neuropathy.

## Longer, more adversarial process

Multiple reports through the years also contend that the compensation process continues to take much longer than Congress intended. The 2000 committee report observed that almost a third of claims through 1999 took five or more years, when the original legislation required a judgement within one year and was then amended to require a decision by the Court's Special Master within 240 days.

The 2022 Goldberg analysis also reported lengthy adjudication times many years later.

"In addition, there has been widespread criticism of the failure to expedite adjudications," Goldberg wrote. "Between 1999 and 2014, VICP claims filed have taken on average five and a half years to adjudicate."

That figure has improved but is still lengthy, and far longer than the original and amended version of the enabling legislation intended.

"In its most recent statistics report published on the VICP (January 2021), the Division of Injury Compensation Programs (DICP) noted that on average it now takes 2 to 3 years to adjudicate a petition after it is filed," Goldberg wrote.

Multiple critics also point to what they say are unreasonable caps on compensation claims. Goldberg was among them.

"The increasing governmental reluctance to accept financial risks with vaccine programmes resulted in the VICP capping certain types of awards," he wrote. "Thus the petitioner can recover actual unreimbursable expenses and reasonable projected unreimbursable expenses which are for diagnosis and medical care or for rehabilitation, but 'actual and projected pain and suffering, and emotional distress' is limited to \$250,000. Awards for a vaccine-related death are capped at \$250,000."

Another long-running criticism is the adversarial posture taken by the government — the very situation the enabling legislation hoped to spare victims of vaccine injury. The 2000 House report observed that the DOJ pursued aggressive defenses in compensation cases, entitlement, and compensation determinations.

"According to a GAO report, the availability of more funds has enabled DOJ to 'establish a cadre of attorneys specializing in vaccine injury,'" the report stated. "According to DOJ, there are 16 trial attorneys in the vaccine compensation program. HHS 'established an expert witness program' to challenge claims. ... During our September 28, 1999 hearing, the Subcommittee on Criminal Justice, Drug Policy, and Human Resources (the sub-committee) received testimony from petitioners, their experts and attorneys charging that the government's defense has, in the words of one witness, 'become increasingly stubborn and aggressive, to the point that in its spirit, it is now indistinguishable from the adversarial manner in which some civil lawsuits are conducted.'"

And, the report stated, "contrary to DOJ's views, critics cite a number of questionable practices by DOJ, even with the sanction of the Court, appeals resulting in multiple entitlement hearings, aggressive use by government of expert witnesses and investigators, and highly adversarial conduct aimed at impeaching petitioner experts."

In his 2011 paper, Meyers found the DOJ adversarial still.

"The cases are now substantially more difficult, complex, and time-consuming to litigate," he wrote. "The science is less clear, and the special masters have much more difficult and complex scientific disputes to resolve than they did for the relatively simpler Table injury claims. Both petitioners' counsel and government counsel now need to search for experts in cutting-edge medical areas, such as genetics and neurology, where a great deal of uncertainty still exists. This contributes to a much more adversarial process than was supposed to exist in a program that was designed to be less adversarial."

## More barriers

As these and other analyses demonstrate, the same flaws in the nation's vaccine court system have been recurring almost since its inception. Payouts have been limited, the process has been slowed, the government has aggressively and adversarially played the role of the pharmaceutical industry's defense attorneys, vaccine tables have been constricted, and, when fair hearings don't happen, appeals are virtually impossible.

The problems persists in 2023.

In an article this month in Health Affairs, Renée J. Gentry, one of the leading experts on vaccine injury litigation, and Richard Hughes, a partner at Epstein, Becker & Green and a professorial lecturer in law at The George Washington University Law School, argued for reform in "Insult to the Injured: The Case For Modernizing Vaccine Injury Compensation."

They too cite the influx of claims after the addition of the influenza virus, but they also point to non-table injury barriers that require an claimant to demonstrate causation.

"In 2015, the tenor of proceedings changed when HHS moved aggressively to delegitimize all non-Table vaccine injuries," Gentry and Hughes wrote. "Demands that would have previously been settled reasonably faced increasing briefing, oral argument, and full-blown damages trials. Despite considerable efforts by special masters to bring parties to settlement, HHS either refused to participate in settlement discussions or offered nuisance value amounts — including in cases in which the injuries were profound and lifelong — which resulted in failed settlement."

Cases were increasingly defended with multiple experts, Gentry and Hughes asserted.

"Even damages proceedings were aggressively prosecuted, with HHS ignoring vast numbers of comparable cases and proffering compensation amounts substantially below the comparables," they wrote. "At times, the difference between what was proffered and what was awarded in comparable prior cases was by a factor of three. Even Table injuries were met with often frivolous challenges, despite losing these same arguments repeatedly in the Court."

HHS's aggressive posturing as well as additional litigation resulted in excessively prolonged proceedings by years and ratcheted up litigation costs, including inevitably increased attorney's fees, the attorneys argued.

"The average time for obtaining a decision awarding fees and costs exploded from one to three days to five to six months in cases in which the fees were unchallenged by HHS, even to upwards of a year in some circumstances," they wrote. "HHS also continued to object to fees in which they felt a reasonable basis challenge existed. These fees decisions took even longer."

The lawyers called attention again to the programs defects identified in the GAO's 2014 report, but said no reforms have been undertaken in the past decade.

The attorney called for Congress to pass legislation to increase compensation levels, extend the statute of limitations, require the Centers for Disease Control and Prevention to update the vaccine injury table, and streamline the process for adding vaccines to the vaccine injury table.

*Richard Moore is the author of "Dark State" and may be reached at richardd3d.substack.com.*