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SNOWSHOE BASEBALL

Golden Glove Outfielder: Big Ed

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In Today's TIMES

GAS WATCH

Nat. Average:	$3.87
WI Average:	$3.72
Green Bay:	$3.59
Janesville:	$3.39
Madison:	$3.39
Minocqua:	$3.79
Waukesha:	$3.69
Wautoma:	$3.59

Latest prices reported for one gallon of unleaded gasoline according to local observations and GasBuddy.com as of 1:30 p.m., Wednesday, August 16, 2023.

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Cassian town board gives a thumbs down to tribal adolescent wellness center

Resolution stating opposition to be drafted then approved at a future meeting

By Brian Jopek
OF THE LAKELAND TIMES

The three-member Cassian town board Monday decided to move forward with a resolution in opposition to an adolescent recovery and wellness center (ARWC) that the Great Lakes Inter-Tribal Council, Inc. (GLITC) plans to be build on 154 acres it purchased on North Pine Square Road in Cassian.

"The ARWC is a 36-bed residential facility centrally located in Wisconsin to best serve all Member Tribes and urban Indians," the GLITC website states. "It will provide culturally relevant services and responsive residential substance abuse treatment for Native American youth, ages 13-17, who are suffering from Substance Use Disorder (SUD) and any co-occurring mental health conditions. Priority will be given to Native American youth, but the facility would be available to non-Native adolescents as well."

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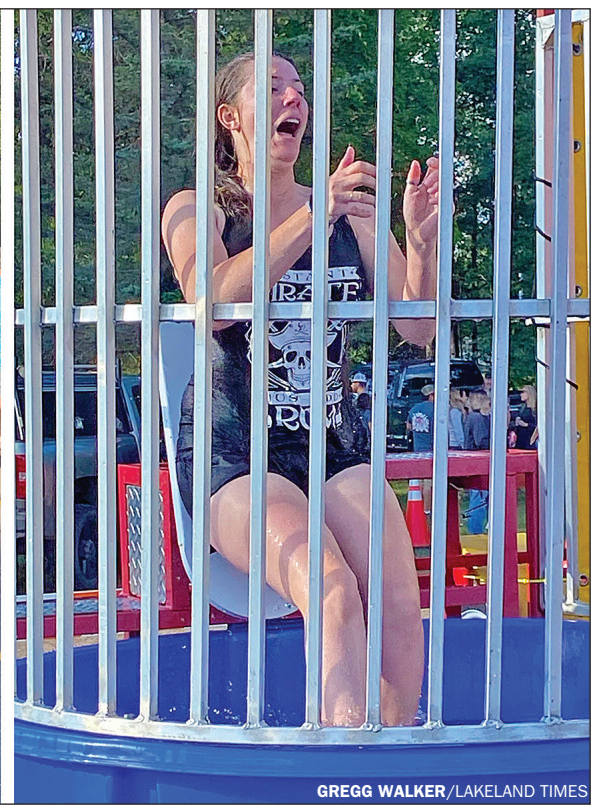

HEATHER HOLMES/LAKELAND TIMES GREGG WALKER/LAKELAND TIMES

Travis and Balie Strasburg were repeatedly dunked while raising funds for firefighters during the annual Firemen's Ball on Saturday, Aug. 12, at the Hazelhurst Fire Station.

Government's firewall against vaccine compensation: federal courts

Recent court has rewritten the vaccine statute — and overturned case law

Part four of a five-part series

News analysis

By Richard Moore
OF THE LAKELAND TIMES

It was a huge win at the time for the victims of vaccine injuries and their families — a decision a few years back that a suite of early vaccinations likely caused the death of an infant by Sudden Infant Death Syndrome and that the child's family deserved compensation.

It was a rare win indeed for Family B (*The Lakeland Times* is eliminating identifiers to protect privacy, including precise dates), despite a long-established temporal association between early vaccinations and Sudden Infant Death Syndrome (SIDS).

To cite just one example, of 2,605 SIDS deaths within 60 days of vaccination reported to the government between 1990 and 2019, 440 occurred on the day of vaccination, 760 happened the day after vaccination, and 2,041 died within a week of

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Oneida County Tourism Council seeks budget boost for mapping project

Budget request scissored into two for consistency

By Richard Moore
OF THE LAKELAND TIMES

The Oneida County administration committee has kicked off its 2024 budget process by entertaining departmental budget proposals, and this past week the county's tourism council came by with a 2024 request for $135,758.

That's substantially more than last year's $80,000 net tax levy, but $45,000 of that would represent a one-time expenditure for a trail fulfillment piece to obtain current maps of all Oneida County trails.

Because it is a one-time expense, supervisors split the budget into two pieces, voting to send $90,758 to the October budget hearings for review, and sending the $45,000 line-item request for the trail project to the county's capital improvement committee.

At the meeting, administration committee chairman Billy Fried expressed more than once his desire to see the budget request reduced. Over the years Fried has raised concerns about duplication of services in tourism — if there are any — and he says the complexity of funding mechanisms makes all the dollars difficult to follow.

"Sometimes over the years, I get kind of confused with funding sources coming from your towns, from the two different counties, and how we're not making sure we're making the best use of that pool of

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TREVOR GREENE/LAKELAND TIMES

COOKING UP SOME IDEAS

Dorene Schlecht and her 13-year-old grandson Liam Schlecht enjoy browsing the cookbook section at the Minocqua Public Library's used book sale on Friday, Aug. 4. Liam said he enjoys cookbooks and helping his grandma in the kitchen. Dorene admitted her grandson is a good cook.

Boost

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works and we all have a different language we're speaking, so that we're not all saying the exact same thing. Obviously Travel Wisconsin is Wisconsin tourism, and then it kind of bleeds down into those individual pieces and then our businesses ultimately then feed all of that information to us and then that goes back up the chain."

Fried attempted to simplify his view of things.

"Let's say the mothership is doing a state bike trail, snowmobile trail and mapping everywhere, and now I'm sitting here four rounds below the mothership looking for funding," he said. "Are we duplicating?"

Westfahl said that was exactly why directed marketing for the county was all important "because you can get lost in the wash."

"So if Door County is doing a similar trail sequence, who's got the most money behind it to speak the loudest?" she said. "And that's I think what we are ultimately trying to get to is, we want to be able to speak at the same level as other counties in the state so that we're able to pull them here and then individually we're working to pull them into our communities."

One-time expenses

Supervisor Steven Schreier said it appeared that some of the budget items, such as the trail fulfillment piece, were one-time expenses rather than yearly and ongoing.

Westfahl said the trail fulfillment piece could hopefully not need updating every year.

"We'll probably ride with that for another who knows how many years," she said. "It would be nice to be able to say every five years we're going to update that travel piece so that we've got a new and fresh look. It's too hard to do that at a county level and not understanding where that money is going to be coming from in the future to put us on a schedule like that."

But Westfahl said the council would definitely not like to wait as long as it has since the last one got updated.

"So that would be a carry through over a period of time," Schreier said. "We're not seeing it as like a $45,000 ask every year."

Westfahl agreed that it would be a one-time ask, and Schreier said he thought that maybe it belonged in the Capital Improvement Committee, or ARPA funding.

"If you're going to categorize it more as a one-time, let's-get-this-trail-thing-updated sort of thing, I would see benefit in that," he said. "I don't know how the rest of the committee feels about it and I don't know if there's anything else you would identify as kind of a one-time thing that relates."

Schreier said he, like Fried, would like to see more consistency in the year-to-year ask, which he said has usually been around $90,000, give or take, not $135,758 like this year.

"But if the majority of that ask really appears to be a one-time to get our trail stuff updated, then maybe fund that out of a source other than the general fund," he said. "I like to think that's where we normally fund the majority of these asks."

Westfahl said in the future they could produce a year-over-year bottom-dollar request to maintain, and then the additional asks for projects that are being looked at.

Fried made the motion to reduce the tourism council budget request by $45,000 to $90,758 and to forward it to the budget hearings, and he cautioned that there would be further review at that time.

"But I will tell you my concern when we next meet, I want you to identify that $40,000 you talk about for matching grants, which I want to know what's on the table because if we're starting to search for money, you know that this is one of the first areas I always look at and I want to know what we'd be sacrificing if we're not able to fund you to what you're requesting here today," he said. "And the bigger picture is the unwinding of these different agencies, different things having some similarity of what they're working on and the revenue, so that we're maximizing the use of dollars that are out there and we don't have duplication of trail maps, et cetera."

Fried's motion passed, and Schreier followed with a motion to consider ARPA funding for the new trail fulfillment piece and travel website as presented in the tourism council budget and forward it on to the CIP committee.

That motion passed as well.

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

Firewall

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vaccination, compared to just 564 deaths after one week one to 60 days.

In other words, the longer after vaccination, the fewer the number of SIDS deaths.

Even so, those who have sought compensation from the nation's Vaccine Injury Compensation Program (VICP), which Congress established to ease victims through an informal, accommodating, and just system designed to relieve them of an adversarial process, have faced daunting challenges and improbable odds, and not only in alleged SIDS cases.

Indeed, the system's critics say too few injuries are considered vaccine-caused by temporal association — meaning automatic compensation — while most victims and their families, who must show causation in court, lack the resources and expertise to challenge a government that acts as defense attorney for the pharmaceutical industry or to satisfy special masters, the judges in the cases, who often turn out to be hostile or indifferent.

And when there is that rare win, critics say, the government uses relentless appeals to limit and reduce compensation or to reverse the decision altogether, and that they almost always win.

And that's just what happened in the case of Family B. They won before the special master, only to lose twice on appeal, once before the United States Court of Federal Claims and again in the U.S. Court of Appeals.

This particular decision — the death, the original decision, and the appeals occurred with the past decade — is particularly damaging, though, because the appeals court used the case to rewrite the very text of the law establishing the vaccine injury program in the first place, and overturned vaccine case law to do so, all in the government's favor.

The decision was so egregious that it prompted an unusual dissent about the process in the U.S. Court of Appeals.

The recap

In this case, the healthy infant child of Family B died of SIDS the day after receiving five vaccines at the age of four months, after becoming feverish and fussy and not sleeping well, and then becoming abnormally quiet.

The parents filed a claim with the VICP. Because SIDS is not recognized as a death that is automatically vaccine-induced if it occurs within a short time after vaccination, the family had to satisfy three prongs of a test called Althen, based on the findings in a previous court case.

In short, under the Althen test, petitioners must establish: (1) a medical theory causally connecting the vaccination and the injury; (2) a logical sequence of cause and effect showing that the vaccination was the reason for the injury; and (3) a showing of a proximate temporal relationship between vaccination and injury.

The special master in the case issued a 55-page decision in favor of Family B, citing more than a score of studies and listening to an array of testimony from expert witnesses on both sides of the case. The special master found that the family met all three prongs of the Althea test.

To summarize, according to the prevailing scientific majority opinion, SIDS is due to what is called a Triple Risk Factor. In this model, SIDS occurs when: (1) an infant in a critical development period; (2) possessing an underlying vulnerability; (3) encounters an exogenous stressor. So the model goes, SIDS only occurs when all three factors are present.

The first risk factor is a critical development period, which is generally seen as being the first year of life, and more often the first six months of life.

The second risk factor is a vulnerable infant, the most significant vulnerability being a brain stem abnormality focused on a child's serotonin system. That's important, because that system is key to a body's internal environmental controls, including responding to imbalances in respiratory, cardiovascular, and/or metabolic regulation. The abnormality impairs the system's ability to mediate protective respiratory and autonomic responses during sleep, but is not by itself fatal.

Finally, there must always be a "critical exogenous factor" causing insufficient function, according to the model. If serotonin levels are further suppressed by a stressor, a child could die because carbon dioxide is not processed properly. There are multiple potential stressors, such as prone sleeping or airway obstruction.

Through the years, lead SIDS researchers have also postulated that one of those stressors is a mild respiratory infection that stimulates a cytokine response in the body. Elevated cytokine levels suppress the serotonin system, and can, in those infants with the underlying abnormality, trigger a fatal response, according to the theory.

The win

If that's the case, the special master in the Family B case asked and the petitioners alleged with an expert witness, could vaccinations, which also cause cytokine levels to spike, have triggered the same tragic perfect storm?

Expert witness Dr. Douglas Miller testified that that was the case, namely, that when a child gets a vaccine or a whole group of vaccines at once, it evokes a response that includes the production of cytokines that can inhibit the activity of the neurons in the medulla.

The special master recapped the doctor's testimony.

"If you take an infant who has a defective medulla with a defective 5-HT (serotonin) system already, you put in a stress situation with elevated carbon dioxide or low oxygen, and there is a vaccination which further shuts down the 5-HT system, and you can get a complete failure of response and therefore a death," the special master wrote, concluding that the mechanism was plausible and the petitioners has established a medical theory causally connecting the vaccination and the injury, or prong 1.

Now the tough part, the second prong.

"Having accepted the theory of a causal role of vaccine stimulated cytokines as an exogenous factor converging with the first two prongs of the Triple Risk Model, the question of logical cause and effect requires a review of the likely mechanism and comparing it to the operative facts of the case," the special master wrote.

The special master found that the petitioners met that bar as well.

"[Miller] noted that the child was a 'healthy infant... developing normally,'" the special master wrote. "He was 'immunologically normal.' Therefore, after receiving vaccinations, his body mounted an innate immune response including the production of cytokines. Those cytokines circulated in [the child's] body, going to the central nervous system. These peripheral cytokines interacted with the hypothalamus to provoke fever the night after the vaccinations and during the following day (before [the child's death]). 'Those cytokines then acted in the brainstem which was already deficient in serotoninergic drive for respiratory effort, leading to an apneic episode from which he did not recover, i.e., SIDS.'"

In addition, the special master observed that Miller could find "no other demonstrable inciting event" for the sudden death: There was no evidence of the fever being related to anything other than vaccinations, and

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the autopsy did not identify any other infectious processes.

"An innate immune response to either mild infection or to a vaccine is likely to be fast and begins the process of immune attack of a foreign antigen," the special master wrote. "Part of that response is the triggering of cytokines to signal further response in the immune system. The triggering of the innate immune system by vaccination is necessary and fundamental to producing the adaptive response and immune memory which vaccines are designed to produce. … After review and consideration of all of the testimony and the literature submitted, I have concluded that Dr. Miller has presented a reasonable and persuasive theory that the cytokine cascade triggered by the innate response to the vaccine antigens is similar to the cytokine response to a mild infection, and that the inflammatory cytokines had an immune modulatory effect on J.B.'s impaired medullary 5-HT system causing a prolonged apneic event resulting in his death."

As such, the special master concluded, the progression from vaccination to an unexplained death within approximately 28 hours was logical, and prong 2 was satisfied. Prong 3, the temporal association, was obvious.

The special master also addressed the needed standards in the case, that is, that the petitioner shows that vaccination was the cause of death by a preponderance of the evidence.

"Petitioners must establish each Althen prong by the preponderance of the evidence," the special master wrote. "This does not require 'conclusive scientific evidence' or 'certainty.' Instead, the standard has been interpreted to mean that a fact is more likely than not. The Federal Circuit has observed that this preponderance standard enables 'the finding of causation in a field bereft of complete and direct proof of how the vaccines affect the human body.'"

The special master ruled that it was more likely than not that the vaccinations caused the sudden death.

Sweet while it lasted

Family B's success was short lived.

The United States Court of Federal Claims reversed the special master, and, though the U.S. Court of Appeals for the Federal Circuit said that most of that court's reversal analysis was flawed, it upheld it on the essential conclusion, that the petitioners had failed to meet the burden of proving causation.

In so doing, an examination of the reversal reveals that it effectively overturned the Althen court, which had previously been the gold standard in non-Table Injury cases and that had sought to align case law with statutory intent.

However, the reversal set a newer, tougher standard for proving causation.

"The Court of Federal Claims was correct, however, in determining that the Special Master erred by lowering the standard of proof for causation," the reversal decision stated. "Under the proper standard, petitioners failed to meet their burden to prove by a preponderance of evidence that vaccinations can and did cause or contribute to [the child's] death from SIDS."

According to the majority in reversal, a petitioner must provide a "reputable medical or scientific explanation," and, while that does not require medical or scientific certainty, it must still be "sound and reliable."

Among other things, the majority attacked the special master's conclusion that the medical theory was plausible.

"We have consistently rejected theories that the vaccine only 'likely caused' the injury and reiterated that a 'plausible' or 'possible' causal theory does not satisfy the standard," the majority wrote. "By the Special Master's and Dr. Miller's own assessment, Dr. Miller's theory is only 'plausible.' The Special Master erred in allowing a theory that was at best 'plausible' to satisfy the Petitioners' burden of proof."

The problem is, the special master only used the plausible assessment to establish the first Althen prong, not the entire case.

Then, too, the Althen court interpreted the preponderance of the evidence standard referred to in the Vaccine Act as one of proof by a simple preponderance, of "more probable than not" causation. In other words, a finding that the vaccine "likely caused" the death, as the special master determined.

In addition, the majority in reversal found the special master's conclusion that the theory that vaccinations can be an exogenous risk factor under the Triple Risk Model to be unsound and unreliable. That would extend the list of stressors under the Triple Risk Model, they wrote, and that should not be considered, the majority wrote, because outside the vaccine court universe, medical professionals did not assert that it could be one.

"Dr. Miller testif[ied] that, other than experts in Vaccine Act cases, no one in the medical community has asserted that vaccines are more likely than not an external risk factor for SIDS," the majority wrote. "Here there is nothing more than the assertion of Dr. Miller."

Note that the majority not only invalidated the testimony of Miller but all other "experts" testifying in vaccine court in support of the theory, validating only the expert opinion of the medical establishment.

The Althen court also rejected the reversal majority's finding that more was needed than the "assertion of Dr. Miller."

Indeed, establishing preponderance does not require medical literature but only medical records or opinion, the Althen court determined.

"By requiring medical literature, it contravenes [the law's] allowance of medical opinion as proof," the Althen court found. "This prevents the use of circumstantial evidence envisioned by the preponderance standard and negates the system created by Congress, in which close calls regarding causation are resolved in favor of injured claimants."

Indeed, the Althen court found in favor of the petitioner who did not prove the medical theory presented, but merely established that the "possible link" was enough in any given case to win, given all the evidence.

"While this case involves the possible link between TT vaccination and central nervous system injury, a sequence hitherto unproven in medicine, the purpose of the Vaccine Act's preponderance standard is to allow the finding of causation in a field bereft of complete and direct proof of how vaccines affect the human body," the Althen decision stated.

When they got to the studies used in the case, the majority in reversal also dismissed those not introduced by the government, including studies showing that cytokines cross the blood brain barrier and interfere with the central nervous system.

The majority also rejected the use of statistics to establish the child's brain stem vulnerability. The use of statistics was necessary because no autopsy was performed to establish such a vulnerability.

However, under the current majority opinion, SIDS deaths only occur when a child has such a vulnerability, which is triggered by an exogenous risk factor. Because no one contested that the child's death was caused by SIDS, the majority in effect dismissed existing scientific majority opinion about SIDS.

However, it offered no alternative theory. In other words, the government challenged the standing science, and the appeals court sided with the government, which presented no evidence to challenge the theory. The court's finding was only that the petitioners had not proved it.

That's critical because, as the dissent contended and Althen explained, the petitioners had presented enough evidence to allow the special master to rule in their favor, and in such a case the burden of proof shifted to the government to prove the vaccines did not cause the death. It did not do so.

"The petitioner is not required to prove the case to a level of scientific certainty," the Althen court stated. "Rather, the burden of showing something by a preponderance of the evidence, the most common standard in the civil law, simply requires the trier of fact to believe that the existence of a fact is more probable than its nonexistence before [he] may find in favor of the party who has the burden to persuade the [judge] of the fact's existence."

The dissent

The judge in the minority in the case issued a blistering dissent, asserting that the court's ruling conflicted with the text and purpose of the vaccine act that established the program.

"It is the obligation of the courts to assure that the statutory purpose is implemented," the dissenting judge wrote. "Although vaccine injury is sparse, the purpose of the Vaccine Act is to provide compensation in the event of injury that is reasonably attributable to vaccine. The record shows, on undisputed facts that [this child's] injury and death more-likely-than-not were reasonably attributable to vaccine. My colleagues' ruling ignores the evidence, negates the statutory purpose, and contravenes the policy of supporting public health and well-being."

The judge pointed to a 1989 legislative report that stated the guiding principles of the program.

"In proposing this legislation, the committee reiterates its intent that the vaccine injury compensation system be informal, flexible, and expeditious, and that all participants proceed accordingly," the report stated. "The re-invention of the adversarial process will serve neither to compensate injured children nor maintain the stability of the immunization programs of the United States."

The point was, the judge stated, both then and now there has been inadequate medical understanding of the causes of vaccine injury, and that equating a preponderance of evidence with proven medical theories and science would tilt the vaccine program toward a denial of most vaccine injuries, even if logic and common sense deemed otherwise.

"The Knudsen [Knudsen v. Sec'y of Dep't Health & Human Servs.] court explained that 'to require identification and proof of specific biological mechanisms would be inconsistent with the purpose and nature of the vaccine compensation program,'" he wrote. "The Vaccine Act does not contemplate full blown tort litigation. The court held that compensation is available when vaccine injury is 'logical' and legally probable, not medically or scientifically certain."

In Althen, the dissenting judge wrote, the court recognized the dearth of scientific understanding of vaccine injury, and explained that Congress encouraged "the use of circumstantial evidence" and envisioned that "close calls regarding causation [would be] resolved in favor of injured claimants."

"This precedent conforms to a goal of the Vaccine Act — to foster public confidence and participation in childhood immunizations — by compensating the rare vaccine injury," the judge wrote. "Today's decision, denying compensation for a highly probable vaccine injury, does not conform to the statutory purpose."

Just how logical and probable was it?

For one thing, the judge observed, far from lowering the standard, the special master conducted an impressive examination.

"The Special Master discussed the evidence and arguments at length and depth," the judge wrote. " … The Special Master provided a detailed analysis of all the evidence and argument, in light of the statute and precedent."

The majority ignored the weighty records compiled in the case, the judge wrote, and concluded that vaccinations were not to have shown to cause the death.

"The majority states that the cause of death was not the vaccine, but was SIDS," the judge wrote. "The majority states that 'because the Petitioners failed to present a sound and reliable theory of how vaccinations can cause SIDS, they have also failed to show that vaccinations caused or contributed to [the child's] death from SIDS.'"

However, the judge continued, SIDS is not a cause of death but an admission that the cause of death is unknown.

"The close proximity between vaccine administration to a healthy baby, and fever and death soon thereafter, presents a sufficient relationship among these events to produce a reasonable — likelihood, a prima facie case that the vaccine caused or contributed to the injury," he wrote.

A "prima facie" case is established when a party produces enough evidence to allow the fact-trier to infer the fact at issue and rule in the party's favor. The prima facie case then shifts the burden of proof to the opposing party.

"Here, a prima facie case was established by [the child's] physiological response within hours of vaccine administration, with death within a day," the judge wrote. "The petitioners' expert witness opined that an adverse reaction to a vaccine had a critical role in [the child's] death. The government's expert witness never opined that there was no relation between the vaccine and … events; he simply stated that he did not know the cause of [the child's] death."

Upon provision of a prima facie case, the duty of coming forward with evidence befalls the opponent, the judge continued.

"Here, not even minimal contrary evidence was offered," he wrote. "The government's expert did not opine that the vaccines could not have been a factor; he offered no theory to counter [the child's] observed fever and death. However, the majority holds that since no cause of death was established, it is irrelevant that a vaccine more-likely-than-not caused or contributed to the injury. This reasoning contravenes the legislative purpose to provide an informal, flexible, and fair system."

Both sides' experts had acknowledged the inadequacy of present scientific knowledge, even as both criticized the medical examiner's autopsy, the judge wrote.

"Meanwhile, common sense must suffice," he wrote. "On the standard of common sense and sound reason, vaccination of a well-baby with seven powerful toxins, soon followed by fever and death, provide a prima facie case of a causal or contributing relationship between the vaccine and these ensuing events, whereby the duty of coming forward with evidence and argument befalls the opponent."

Next: Calls for reform of the VICP grow.

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