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Court Administrator

JUL 18 2011

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

By  Deputy

SECOND JUDICIAL DISTRICT

In re Government Shutdown Litigation,

Case Type: Civil
Court File No. 62-CV-11-5203

In Re Temporary Funding of Core Functions of
the Executive Branch of the State of Minnesota

**ORDER REGARDING PETITIONS OF
THE OFFICE OF ADMINISTRATIVE
HEARINGS, THE LEAGUE OF
MINNESOTA CITIES, MINNESOTA
DEPARTMENT OF HEALTH
RECOGNITION OF PARENTAGE
PROCESS, AND MINNESOTA
LICENSED BEVERAGE ASSOCIATION**

On June 23, 2011, the undersigned heard oral argument pursuant to the Motion of Petitioner Lori Swanson, Attorney General for the State of Minnesota, for temporary funding of the executive branch. On June 29, 2011, the Court issued its Findings of Fact, Conclusions of Law and Order Granting Motion for Temporary Funding.

In its Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding dated June 29, 2011, the Court appointed retired Minnesota Supreme Court Chief Justice Kathleen Blatz as Special Master to hear and make recommendations to the Court with respect to issues regarding compliance with the terms of its Order. On July 5, 2011 and July 12, 2011, Special Master Blatz conducted evidentiary hearings regarding Petitioners seeking state funding as providers of critical core functions of government.

The Court accepts and adopts the attached findings of the Special Master subject to modification pursuant to Minn. R. Civ. P. 53.07(b) with respect to the requests of government offices and petitions brought by programs (hereinafter listed).

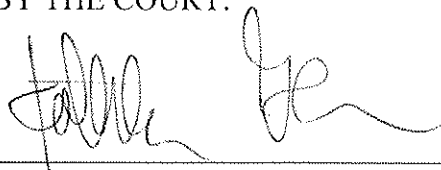
Based on the file, proceedings, and recommendations, the Court makes the following

ORDER:

1. The clarifications regarding the Office of Administrative Hearings, as set forth in the attached Special Master's recommendation, are adopted and made part of this Court's Order. The Court denies the Office of Administrative Hearings' request to provide discretion to its chief judge to rehire additional critical personnel after August 1, 2011.
2. The petition filed by the League of Minnesota Cities is denied.
3. The clarifications regarding the Minnesota Department of Health Recognition of Parentage Process, as set forth in the attached Special Master's recommendation, are adopted and made part of this Court's Order.
4. The petition filed by the Minnesota Licensed Beverage Association is denied, at present. If the budget issues are not resolved by the end of this week, the petitioners may schedule a hearing on the constitutional issues during the week of July 25, 2011.
5. The attached memorandum is incorporated into this Order.

Dated:

BY THE COURT:



The Honorable Kathleen Gearin
Chief Judge
Ramsey County District Court

Memorandum

The constitutional arguments of the Minnesota Licensed Beverage Association fall beyond the scope of the Special Master's authority. They involve complex interpretations of the Minnesota Constitution. If the shutdown has not ended by the end of this week, the Association should contact the Court to schedule a hearing on these issues. The Court urges the Association members to make the compelling arguments regarding the impact of the shutdown on hundreds of small liquor establishments to the Governor and their local legislators. A resolution of the budget issues will alleviate the concerns and fears of these business owners.

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STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Court File No. 62-CV-11-5203

In Re: Temporary Funding of Core Functions
of Executive Branch of the State of Minnesota

**SPECIAL MASTER
RECOMMENDATIONS FOR THE
OFFICE OF ADMINISTRATIVE
HEARINGS**

This matter came before the Special Master, the Honorable Kathleen A. Blatz, in Room 230 of the Minnesota Judicial Center on July 12, 2011. Present before the Special Master were Alan Gilbert, Solicitor General and Deputy Attorney General; Jacob Kraus, Assistant Attorney General; David Lillehaug, Special Counsel to the Office of the Governor; Joseph Cassioppi, Special Counsel to the Office of the Governor; Raymond R. Krause, Chief Judge of the Office of Administrative Hearings; and Susan Schleisman, Court Executive of the Office of Administrative Hearings

Based upon the testimony provided at the hearing, the Special Master now makes the following:

Recommendation

1. The Court should **AMEND** its Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding of June 29, 2011 (“Order”) to allow sufficient funding to be directed to the Office of Administrative Hearings (“OAH”) to staff a complement of 41 FTE as of Monday, July 18, 2011. The Court should **CLARIFY** that the Order provides for the staffing of one Administrative Law Judge (“ALJ”) to hear the Public Utilities Commission ratemaking case, which is continuing during the shutdown pursuant to express language in

Exhibit A to the Order, and to oversee any emergency claims for suspension of licensing related to misconduct or maltreatment investigations by the Department of Human Services, or involving special education. The Court should **TAKE NO ACTION** on Petitioner's request to provide discretion to its Chief Judge to rehire additional critical personnel after August 1, 2011.

Concerns of Petitioner

1. Petitioner seeks funding sufficient to staff Compensation Judges within the Workers' Compensation Division to address the following time-sensitive requests: (1) emergency-medical requests; (2) notices of intent to discontinue workers' payments; and (3) settlement stipulations.

2. Petitioner also seeks funding for one ALJ to oversee any emergency claims regarding the suspension of licensing related to misconduct or maltreatment reports or investigations and to hear the ratemaking proceedings involving the Public Utilities Commission and the Department of Commerce that are presently continuing during the shutdown pursuant to the Order. (Order Ex. A (Under "Public Utilities Commission").)

3. Petitioner also seeks funding for a 4 FTE management team to provide necessary administrative and support services for the rehired staff. The management team staff is included in the 41 FTE complement requested.

4. Petitioner seeks an order granting the Chief Judge discretion to rehire additional staff as of August 1, 2011.

Analysis

1. Petitioner seeks funding for a complement of 41 FTEs as of Monday July 18, 2011. This would include (1) Compensation Judges in the Worker's Compensation Division and the necessary legal support and administrative staff; (2) a single ALJ and necessary support staff;

and (3) a four-person management team to oversee administrative support services for the Compensation Judges and the ALJ. At full staffing levels, Petitioner has more than 75 FTEs. Petitioner highlighted that it was not seeking to restore full operations but was seeking funding necessary to address requests by claimants that are of an emergency or critical nature.

2. Petitioner first seeks funding for rehiring Compensation Judges in its Worker's Compensation Division only insofar as necessary to address three specific types of time-sensitive requests submitted by Workers' Compensation claimants. The first type of request is emergency medical requests, which involve claims submitted by injured workers seeking a ruling on whether workers' compensation benefits are available to cover emergency medical services. The second type of request concerns notices of intent to discontinue payments ("NOID"). Absent a claimant's ability to access a Compensation Judge to get the NOID stayed or reversed, worker's compensation payments will stop. The final type of request involves the approval of settlement stipulations by a Compensation Judge, which is required by law before any payments may be made to a Workers' Compensation claimant under a settlement agreement.

3. Chief Administrative Law Judge Ray Krause testified that not all Compensation Judges would be rehired if Petitioner's request were granted. The Chief Judge would determine which Compensation Judges would be needed to address the three categories of time-sensitive requests and whether these Compensation Judges would be required to work full-time or intermittently.

4. Petitioner also seeks the funding of one Administrative Law Judge to oversee the ratemaking case between the Public Utilities Commission and the Department of Commerce, which, pursuant to the Order, is continuing to proceed during the ongoing government shutdown. (*See* Order Ex. A (under "Public Utilities Commission").) The Court has already recognized that

this case is “time-sensitive”. (*Id.*) The hearing is presently scheduled for July 19, 2011 and cannot proceed without an ALJ and a necessary support person.

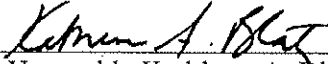
5. Beyond the PUC hearing, Petitioner also requests ongoing funding of this single ALJ position and necessary staff support to ensure that it can address cases involving immediate suspension of human services and special education licensing that may arise during the ongoing government shutdown. The Court has already recognized that investigations by the Department of Human Services’ Licensing Division related to maltreatment and misconduct are critical core functions of government that should continue to be funded during the shutdown. (July 8, 2011 Order (adopting Report and Recommendations of Special Master Regarding Background Studies by the Minnesota Department of Human Services Licensing Division).) Similarly, the staffing of a single ALJ to address cases involving the immediate suspension of human services or special education licensing due to maltreatment and misconduct is a critical core function that should remain funded during the shutdown.

6. The Order specifically identified Petitioner as an agency recommended to close during the government shutdown. (Order Ex. A (“Agencies Recommended to Close”).) However, the Special Master received evidence that minimal rehiring was necessary to rule on certain emergency and time-sensitive requests for relief that must be submitted to Petitioner. The Office of the Governor and the Attorney General fully support Petitioner’s request.

7. The Special Master recommends that the Court grant Petitioner’s request for relief. The Compensation Judges who address the three identified time-sensitive requests for relief provide necessary administration and supportive services related to core critical functions of government involving the provision of benefit payments and medical services to individuals. (Order p. 9 ¶ 27, subds. 3, 5.) In addition, the rehiring of the single ALJ to hear the ongoing

PUC ratemaking case is implicit in the Order's continued funding of PUC staff to handle this case during the shutdown. (*Id.* Ex. A (Under "Public Utilities Commission").) Similarly, continued funding for this ALJ position after the completion of the PUC rate-making case is necessary to address any time-sensitive suspension requests arising from ongoing misconduct/maltreatment investigations. Finally, Petitioner also needs authorization to rehire management and administrative employees to provide necessary administrative assistance to the rehired Compensation Judges and ALJ. At this juncture, the evidence is not sufficient to support a determination that further additional staffing by Petitioner will become necessary after August 1, 2011 to support or process benefits, programs, etc. determined by the Court to be critical core functions. Accordingly, the Special Master recommends that the Court take no action on Petitioner's final request at this time.

Dated: July 13, 2011



The Honorable Kathleen A. Blatz
Special Master

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Court File No. 62-CV-11-5203

In Re: Temporary Funding of Core Functions
of Executive Branch of the State of Minnesota

**SPECIAL MASTER
RECOMMENDATIONS ON PETITION
OF THE LEAGUE OF MINNESOTA
CITIES**

This matter came before the Special Master, the Honorable Kathleen A. Blatz, in Room 230 of the Minnesota Judicial Center on July 5, 2011. Present before the Special Master were Lori Swanson, Attorney General; Alan Gilbert, Solicitor General and Deputy Attorney General; David Lillehaug, Special Counsel to the Office of the Governor; Joseph Cassioppi, Special Counsel to the Office of the Governor; Tom Grundhoefer, Attorney for the League of Minnesota Cities; Tony Paetznick, Deputy Director of Public Safety for the City of New Brighton; Dan Hatten, Police Chief for the City of Hutchinson; and Kurt Glaser, Prosecutor for the Cities of Lexington, Centerville and Circle Pines.

Based upon the arguments of counsel and the testimony provided at the hearing, the Special Master makes the following:

Recommendation

1. Petitioner's request for immediate continued funding of the Peace Officer Standards and Training ("POST") Board should be **DENIED**.
2. Petitioner's request for funding and staffing of the Division of Vehicle Services ("DVS") of the Department of Public Safety ("DPS") to allow for timely and accurate updating

of driver and vehicle licensing information to be used by police departments, prosecutors and the courts should be **DENIED**.

Concerns of Petitioner

1. Petitioner requests the continued funding of the POST Board as a critical core function of government in order to allow the continued hiring of newly licensed peace officers by cities during the ongoing government shutdown in order to fill vacancies. Petitioner argues that this concern is of greater importance in smaller municipalities with small police forces and that the inability to fill vacancies will seriously impair their public safety efforts. Petitioner argues that even in larger communities, public safety is implicated because current officers are required to work extra shifts.

2. Petitioner requests the continued funding of DVS services sufficient to allow ongoing access to timely and accurate driver and vehicle licensing information from DVS by law-enforcement officers, prosecutors and the courts.

Analysis

1. Petitioner argues that the operations of the POST Board are critical core functions of government that should continue to receive funding during the ongoing government shutdown because it is a core critical function of government necessary for public safety.

2. The POST Board is the entity that licenses peace officers in the State of Minnesota.

3. The Special Master heard testimony that licensure from the POST Board is the last step in a very lengthy hiring process for hiring new law-enforcement officers that is drawn out over the course of three to four months even without a shutdown of the POST Board.

Generally, officers get conditional offers of employments, which are subject to their successful

completion of certain tests and securing their POST license. Until an individual receives a license from the POST Board, he or she may not begin the training process to be a police officer with a specific municipality.

4. The Court's Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding of June 29, 2011 ("Order") specifically identified the POST Board as an agency to be closed during the government shutdown as recommended by the Commissioner of Public Safety. (Order Ex. A ("Agencies Recommended to Close").) Several weeks prior to the shutdown, the Commissioner had informed police departments throughout the State that she would be recommending the POST Board be closed and advised them to ensure that any license renewals were completed prior to July 1, 2011.

5. The Special Master does not recommend that the Court amend the Order at this time to provide for continued funding of the operations of the POST Board. Undoubtedly, the Court was fully aware that the closure of the POST Board would adversely impact on the full staffing of law enforcement positions, but determined that this disruption did not imperil public safety to the degree that the Court's concern for the requirements of the Minnesota Constitution were trumped.

6. Petitioner's second request is to allow continued funding of the driver and vehicle licensing information verification functions of the Driver and Vehicle Services division of DPS. Petitioner states that this function is needed to ensure access to timely and accurate DVS information by city police departments, city prosecutors and the courts. Petitioner argues that the present inability of these entities to access current DVS information undermines the ability of police officers and prosecutors to effectively and accurately charge individuals with driving offenses.

7. Prosecutors no longer have access to DVS information on their desktops. Law-enforcement officers can continue to access DVS information through a police department's Criminal Justice Information System ("CJIS") terminal, but there is limited access to these terminals because only certain individuals are permitted to use them. City prosecutors who operate under contract with a city do not have access to this information because although local police departments could run these records for them, such a course of conduct would violate the police departments' access agreements with DVS.

8. Evidence was also received that since the shutdown, the DPS is not updating any drivers' licenses statuses. The effects of this were provided through example: If you are revoked on June 30 but become valid, your driver's license will not reflect that; if you are due to lose your license on July 1, your license will still show as valid. Petitioner asserts that this will raise some issues in prosecuting current and future cases. Similarly, Violations Bureaus run by the Courts are not able to access updated driver's license information during the ongoing government shutdown. This will result in an increased number of cases that are set on for court hearings rather than resolved through Violations Bureaus.

9. The Court's Order allows for funding of those services that relate to critical core functions that are designed "to ensure the health, safety and welfare of Minnesota citizens." (Order p. 7 ¶ 24.) While the Order clearly includes many public safety employees and functions as falling within the Court's definition, a faithful reading of the Order leads to the conclusion that not all public safety functions must be deemed critical core functions. In light of this analysis, the Special Master recommends that the Court deny the Petitioner's request regarding the DVS division of the DPS.

Dated: July 12 2011


The Honorable Kathleen A. Blatz

Special Master

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Court File No. 62-CV-11-5203

In Re: Temporary Funding of Core Functions
of Executive Branch of the State of Minnesota

**SPECIAL MASTER
RECOMMENDATIONS REGARDING
PETITION OF MINNESOTA
DEPARTMENT OF HEALTH
RECOGNITION OF PARENTAGE
PROCESS**

This matter came before the Special Master, the Honorable Kathleen A. Blatz, in Room 230 of the Minnesota Judicial Center on July 12, 2011. Present before the Special Master were Alan Gilbert, Solicitor General and Deputy Attorney General; Jacob Kraus, Assistant Attorney General for the State of Minnesota; David Lillehaug, Special Counsel to the Office of the Governor; and Joseph Cassioppi, Special Counsel to the Office of the Governor. Dave Orren, Chief Legal Counsel, Minnesota Department of Health; and Greg Poehling, Minnesota Department of Human Services, appeared on behalf of Petitioner.

Based upon the arguments of counsel at the hearing, the Special Master makes the following:

Recommendation

1. The Court should **CLARIFY** that its Order authorizes the Minnesota Department of Health (“MDH”) to operate the Recognition of Parentage (“ROP”) process to support the Minnesota Department of Human Service’s (“DHS”) critical core function of Child Support Payment Services.

Concerns of Petitioner

1. The Court previously deemed child support services as a critical core function of government. Petitioner seeks recognition from the Court that the ROP process is integral to supporting DHS's child support services.

Analysis

1. Petitioner seeks recognition that ROP serves a critical core function of child support payment services through DHS. Approximately thirty percent of births in Minnesota are to unmarried women. In many instances, the father's name is added to the child's birth certificate at the hospital and the birth is registered with the State Registrar of Vital Statistics at MDH. If the father's name is not added to the birth certificate at the time of birth, the parents may sign a ROP form which is then registered and filed with the State Registrar as part of the birth record.

2. The Court heard testimony that federal law requires DHS to establish an Order for Support within 90 days after the father has been identified. The ROP process establishes a father's legal relationship to a child and allows DHS to timely obtain an Order for Support. Alternatively, DHS must resort to litigation to establish parentage through a paternity hearing or DNA testing.

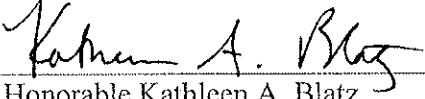
3. In order for DHS and County Child Support Offices to enforce child support payment services, a ROP must be filed with the State Registrar. The State Registrar receives approximately 10-20 ROPs each day from local child support offices. Currently, there are 25 cases in Anoka County and 46 cases in Hennepin County awaiting certification. Petitioner requests minimal staffing required to process ROP forms.¹

¹ Petitioner represented that, for security and fraud-prevention reasons, the ROP process requires the involvement of two separate and distinct employees.

4. The Court's Order recognized that certain "critical core functions of government should continue to be funded" in the event of a government shutdown. (Order p. 9 ¶ 27.) The list expressly includes "[p]rovision of benefit payments ... to individuals." (*Id.* ¶ 27(3).) More explicitly, in Exhibit A under "Human Services," the Court has deemed "critical child support payment services" as a critical core function. (*Id.* Ex. A.) The ROP process is clearly involved in supporting this function.

5. The Special Master recommends that the Court clarify the Order as authorizing MDH to operate the ROP process to support the critical core function of child support payment services and provide the minimal staffing needed to certify ROP forms.

Dated: July 3, 2011



The Honorable Kathleen A. Blatz
Special Master

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Court File No. 62-CV-11-5203

In Re: Temporary Funding of Core Functions
of Executive Branch of the State of Minnesota

**SPECIAL MASTER
RECOMMENDATIONS REGARDING
PETITION OF MINNESOTA LICENSED
BEVERAGE ASSOCIATION**

This matter came before the Special Master, the Honorable Kathleen A. Blatz, in Room 230 of the Minnesota Judicial Center on July 12, 2011. Present before the Special Master were Alan Gilbert, Solicitor General and Deputy Attorney General; Jacob Kraus, Assistant Attorney General for the State of Minnesota; David Lillehaug, Special Counsel to the Office of the Governor; and Joseph Cassioppi, Special Counsel to the Office of the Governor. Attorney Corey Ayling, and Frank Ball, Executive Director of the Minnesota License Beverage Association, appeared on behalf of Petitioner.

Based upon the arguments presented at the hearing, the Special Master makes the following:

Recommendation

1. Petitioner's request that the Court authorize the Minnesota Department of Public Safety ("DPS") to review and issue liquor licenses to licensed beverage retailers should be **DENIED**.

Concerns of Petitioner

1. Petitioner seeks an order from the Court compelling DPS to issue Buyer's Cards during the pendency of the government shutdown so that Petitioner and similarly-situated

licensed beverage retailers may legally purchase certain alcoholic beverages necessary to the ongoing viability of their businesses. Without a Buyer's Card, members of Petitioner's association cannot purchase alcoholic beverages containing more than 3.2% alcohol by weight.

Analysis

1. Petitioner Minnesota Licensed Beverage Association ("MLBA") represents licensed beverage retailers in Minnesota. It appears on its own behalf and on behalf of the American Legion 567, and the Triple Rock Social Club.

2. Licensed beverage retailers are required to be in possession of a liquor license as a condition of operation. On an annual basis, retailers submit an application to their local municipality for a liquor license. After necessary investigation and a background check, the license is either approved or denied. If approved, the license holder pays a fee to the DPS, and upon verification of the license by DPS, a Buyer's Card is issued. DPS then mails a Buyer's Card to the retailer. Retailers are required to have a Buyer's Card to purchase alcohol for resale. The Buyer's Card must be displayed in the retailer's establishment and presented to wholesalers at the time purchased liquor is delivered.

3. There are approximately 6,000 retailers in Minnesota who require these cards, which are renewed annually on a rolling basis. Currently, there are over 300 retailers statewide who are unable to receive a Buyer's Card necessary to purchase liquor containing over 3.2% alcohol by weight for their establishments. Petitioner estimates that if the shutdown persists, 400 additional retailers will lose their authorization to purchase alcoholic beverages by August 1, 2011.

4. Petitioner argues that although the State has determined that enforcement is a critical core function of government, it has not accorded the same status to the provision of permits and regulation of license holders. Petitioner asserts it is in an untenable situation, i.e., the State is

enforcing the law without giving Petitioner the ability to comply therewith. Petitioner also raises constitutional due process and equal protection arguments and asserts that the Court's Order specifically provides that "the protection of rights of citizens under the Minnesota and United States Constitutions" constitutes a critical core function of government.¹ (Order p. 15 ¶ 4.) Further, Petitioner relies on Exhibit A to the Order to assert that the Court has recognized that critical core functions include those activities "having a severe and permanent negative financial impact to business" within Minnesota." (Order Ex. A III(B)(2.2).) Petitioner maintains that permanent and significant damage will be incurred by businesses unable to get Buyer's Cards.

5. Retailers were limited in their ability to secure adequate supplies of liquor prior to the shutdown. Inventory of alcoholic beverages is generally low because alcohol must be stored on-site and certain products are perishable. Additionally, retailers are legally precluded from purchasing alcohol from other retailers. The industry draws a strong distinction between retailers and wholesalers such that retailers are prohibited from functioning as wholesalers and selling their extra stock of alcoholic products. Petitioner maintains that the inability to get a Buyer's Card will cost many owners their business because customers will leave, employees will follow, and ultimately, that the "goodwill" of the business will be dissipated.

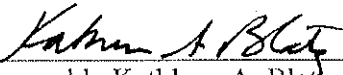
6. The Special Master received compelling evidence that the inability to get a buyer's card has a negative effect on small businesses that have done everything in their power to ensure compliance with the law but who, due to the government shutdown, now face a permanent loss to their livelihood. The Special Master recognizes that some establishments will not be able to

¹ Specifically, Petitioner argues that failing to provide Buyer's Cards to licensed businesses who have properly and fully applied for them represents a deprivation of property without due process of law and also creates two unequal classes of license holders based on the arbitrary distinction of when their Buyer's Card terminated. Petitioner asserts such a result violates the Federal and State Constitutions' equal protection and due process clauses. The Special Master believes that Petitioner's constitutional arguments are better directed to the Court for clarification or determination as they fall outside the scope of the Special Master's appointment.

return to their previous level of enterprise after the government shutdown ends because of a lost customer base, and that some businesses may close. Nevertheless, the Special Master's analysis must be informed by the Court's Order. The Court recognizes that private businesses "will be significantly and adversely impacted by the failure of the executive and legislative branches to successfully enact laws appropriating funds." (Order p. 10 ¶ 30.) However, "the negative impact of a government shutdown ... does not justify a court in over-extending its [constitutional] authority." (*Id.*)

7. Based upon a clear reading of the Court's Order, the Special Master recommends that the Court deny Petitioner's request. The effects of the shutdown will be harmful, if not crippling, to many businesses but the solution to this problem does not rest with the judicial branch but rather those branches charged with enacting the State's budget.

Dated: July 12 2011



The Honorable Kathleen A. Blatz
Special Master