



Chapter 17 Appendices

Appendix F: Information on Legal Claims and Assessments for Annual Financial Statements Data Request

Memorandum

To: Solicitor

From: James E. Cason /s/

Subject: Request for Legal Representation Letters for Audited Financial Statements

At the end of fiscal year 2007, bureau and Departmental finance offices will prepare financial statements as of and for the fiscal year ending September 30, 2007, and, pursuant to 31 U.S.C. § 3515, KPMG LLP will conduct, under contract, an audit of those financial statements. In addition, bureau finance offices now prepare quarterly financial statements.

In performing audits of government entities, auditors are required to follow *Government Auditing Standards* issued by the Comptroller General of the United States (The *Yellow Book*). For financial statement audits, the *Government Auditing Standards* incorporate the fieldwork and reporting standards of the American Institute of Certified Public Accountants (AICPA) and the *Statements on Auditing Standards* that interpret them. Consistent with the guidance contained in AU 337, *Inquiry of a Client's Lawyer Concerning Litigation, Claims, & Assessments*, of the AICPA's *Codification of Statements on Auditing Standards*, and consistent with procedures contained in Office of Management and Budget Bulletin No. 06-03, *Audit Requirements for Federal Financial Statements*, KPMG LLP has inquired about litigation, claims, and assessments to satisfy itself as to the financial accounting and reporting of such matters in the fiscal year financial statements.

The primary purpose of this memorandum is to request your assistance in responding to that inquiry by preparing four legal representation letters. Additionally, I ask that you provide contingent liability information to the finance offices to use in preparing the required quarterly financial statements.

In accordance with Statement of Federal Financial Accounting Standards Number 5, *Accounting for Liabilities of the Federal Government*, as amended by SFFAS Number 12, and *Interpretation Number 2 of SFFAS*



Numbers 4 and 5, the Department and bureaus report certain information in the financial statements and notes concerning contingent liabilities arising out of litigation, claims, and assessments. Please provide to the OIG and KPMG, with a copy to the Office of Financial Management, information involving matters to which your Office has been engaged and to which it has devoted substantive attention on behalf of the Department and the bureaus in the form of legal consultation or representation.

Please include any litigation, claims, assessments, and unasserted claims and assessments (hereinafter “matters”) to which your Office has been engaged and to which it has devoted substantive attention on behalf of the Department, its bureaus, offices, officers, and employees in the form of legal consultation or representation, even those matters where you believe the Judgment Fund or some financing source other than the Department’s or a bureau’s budgetary resources will pay any potential loss. Under U.S. Generally Accepted Accounting Principles, such amounts may need to be included as liabilities or disclosed in the Department’s and a bureau’s financial statements. Please report all new matters, still-pending matters that were previously reported in legal representation letters, and those that were reported in the FY 2006 but have been closed in FY 2007. Include matters being handled by the Department of Justice on behalf of the Department. All matters not previously reported should be marked “original.” Matters similar in nature may be aggregated where appropriate.

Please furnish: (1) an initial response by June 21, 2007, including matters that existed as of June 20, 2007; (2) a update by October 3, 2007, that includes any additions, changes, and deletions from June 21, 2007 through September 30, 2007; (3) an update by November 7, 2007, that includes any additions, changes, and deletions from October 1, 2006 through November 5, 2007; and (4) a final update by November 27, 2007 that includes any additions, changes, and deletions from November 6, 2007 through November 23, 2007 for matters that existed as of September 30, 2007. The three updates should include only matters with information that changed from the previous legal representation letter or update and any new matters.

The American Bar Association’s *Statement of Policy Regarding Lawyers’ Responses to Auditors’ Requests for Information* (December 1975) provides relevant guidance for the Office of the Solicitor’s legal representation letters. Regarding cases where DOJ attorneys are handling legal matters on behalf of the Department, additional guidance can be found in Federal Financial Accounting and Auditing Standards Technical Release No. 1, *Audit Legal Letter Guidance*, dated March 1, 1998.

The Office of the Solicitor’s legal representation letters should follow the



guidance in OMB Bulletin No. 06-03, and they should provide descriptions of legal contingencies on standard forms depending on the type of matter involved—i.e., pending, unasserted, or closed (See Attachments 1, 2, and 3). The Office of the Solicitor should complete a separate form for each matter or group of related cases, and attach the forms to the four legal representation letters (preliminary and three update letters). In addition, the Office of the Solicitor should promptly submit advance copies of update forms to PFM for cases in which significant developments change the likelihood of unfavorable outcome or the estimate of loss.

Please provide your data in the attached standard formats, as applicable; these formats are PFM's revised of formats suggested by DOJ. Note that the applicable dollar threshold level for reporting (specified below) should be entered at the top of each form in the designated field. Also, please complete the appropriate field to indicate either an original submission or an update, and provide the date. You should include the notation "potential environmental cleanup liability" in field 2 (Nature of Matter) for all matters which may involve possible environmental cleanup liabilities. Also, please combine related matters where appropriate, group matters by bureau, and sequence them in descending order by amount of potential liability. You should place matters for which the amount of potential loss cannot be estimated at the end of the sequence.

It is important that the legal representation letters include an explanation for each change in either the evaluation of likelihood of unfavorable outcome or the estimate of potential loss (i.e., a change from the previously reported status). Similarly, please provide a brief explanation where the estimate of potential loss is not entered. These explanations can be included under *Progress of the Case to Date* for pending or threatened litigation, and under *Nature of the Matter* for unasserted claims and assessments. Having these explanations should help minimize the need for finance and audit personnel to contact the responsible attorneys.



The following data fields are described in the attached standard formats:

A. Pending or Threatened Litigation

The first standard form requires the following information regarding pending or threatened litigation:

1. Case Name
2. Nature of Matter (including, a description of the proceedings, the claim(s) asserted, the damages sought, the objectives sought by the plaintiff (if any) other than monetary, or other damages (such as performance or discontinued performance of certain actions), and where appropriate, a notation for *potential environmental cleanup liability*)
3. Progress of the Case to Date
4. The Government's Response or Planned Response (e.g., to contest the case vigorously, or to seek an out-of-court settlement)
5. An Evaluation of the Likelihood of Unfavorable Outcome (e.g., categorized as probable (likely to occur), or as reasonably possible (less than probable but more than remote))
6. An Estimate of the Amount or Range of Potential Loss (for losses considered to be probable or reasonably possible) and Expected Source of Funds for Payment (If an amount or range cannot be estimated, state the reasons.)
7. The Name and Phone Number of the Agency and DOJ Attorneys Handling the Case
8. The Sequence Number

For threatened litigation, please indicate "not yet filed" as progress to date.

B. Unasserted Claims and Assessments

The second standard form requires the following information regarding unasserted claims and assessments involving matters that you consider probable of assertion, and which, if asserted, have a reasonable possibility of an unfavorable outcome:

1. Name of Matter
2. Nature of Matter (including, where appropriate, a notation for *potential environmental cleanup liability*)
3. The Government's Planned Response
4. An Evaluation of the Likelihood of Unfavorable Outcome (e.g., categorized as probable (likely to occur), or as reasonably possible (less than probable but more than remote))
5. An Estimate of the Amount or Range of Potential Loss and Expected Source of Funds for Payment



6. The Name and Phone Number of the Agency and DOJ Attorneys Handling the Case (Matter)
7. The Sequence Number

C. No-Longer-Pending Cases That Were Reported in the Prior Legal Representation Letter

1. Name of Matter
2. Sequence Number
3. Resolution of Matter
4. The Name and Phone Number of the Agency and DOJ Attorneys

For purposes of this request, please include any matter individually or in the aggregate where similar / related matters are grouped involving amounts of \$300,000 or more for the Bureau of Indian Affairs, the Bureau of Land Management, the Fish and Wildlife Service, the Bureau of Reclamation, the National Park Service, the Minerals Management Service, and the Departmental Offices, and amounts of \$50,000 or more for the Office of the Special Trustee for American Indians, the Office of Surface Mining, and the United States Geological Survey.

In the legal representation letter, please specifically confirm to the auditors that my understanding of the following is correct: whenever, in the course of performing legal services for the Department or its bureaus with respect to a matter recognized to involve an unasserted claim or assessment that may call for financial statement disclosure, you have formed a professional conclusion that the Department should disclose or consider disclosure concerning such possible claim or assessment, as a matter of professional responsibility to the Department, you will: (1) advise me of your conclusion, and (2) consult with me concerning the question of such disclosure and the applicable requirements of SFFAS No. 5, as amended.

Matters Individually Not Greater Than Threshold Amounts

Please provide the maximum aggregate amount (the total) of loss contingencies for matters that individually are less than or equal to the threshold amounts identified above. Claimed amounts, if any, may be used for these lower-dollar matters; where there are no firm claimed amounts or you consider them unreasonable, the maximum potential loss amounts should be estimated. (Based on input from your divisions and field offices, the total for FY 2006 was about \$27.2 million.) As you did last year, please state the total of loss contingencies that are individually less than or equal to the threshold amounts in your legal representation letters.

Matters That May Involve Another Governmental Entity



Please separately identify matters for which the Office of the Solicitor has devoted substantive attention on behalf of the Department in the form of legal consultation or representation for which you believe another governmental entity may be responsible for any potential liability. Please specifically identify the nature of and reasons for limitations on your response to this request.

Closed Documentation

Please provide documentation for the outcome of each matter that is closed in FY 2007. Documentation for each matter should have the Bureau/Office(s) and the Sequence Number of the matter written on the top of the first page to facilitate record keeping and distribution to the auditors.

Quarterly Information

In addition to the four legal representation letters discussed above, finance offices require information about contingent liabilities from litigation, claims, and assessments in their preparation of quarterly financial statements. Unlike the fiscal year-end requirements, this information need not be submitted as part of a formal legal representation letter. After the fiscal year-end information is provided with the legal representation letters, please resume submitting to PFM quarterly information electronically, on the standard forms one week before each fiscal-quarter end. Submission of the information one week before fiscal-quarter end will enable environmental and finance office personnel to resolve apparent differences in liability likelihood or estimate regarding matters identified as having potential environmental cleanup liability.

Confirmation of Matters Communicated to the OIG and Department Management

Please confirm in your legal representation letters that all information brought to your attention indicating the occurrence of a possible illegal act committed by the Department or any of its agents or employees has been reported to the OIG and, as appropriate, to the Department of the Interior management.

Submission of the Information

You should submit the legal representation letters, with information and updates about contingent liabilities for litigation, claims, and assessments, to Mr. Earl E. Devaney, Inspector General, and to Mr. Jeff Norris, KPMG LLP, at jnorris@kpmg.com. Please submit these documents electronically



in PDF format, including required signatures. The Inspector General is required to submit these documents to the Department of Justice, the U.S. Department of the Treasury— Financial Management Service, and the GAO. In addition, please submit the quarterly information, discussed above, directly to PFM.

If you have any questions, please contact Daniel L. Fletcher, Director— Office of Financial Management, on (202) 208-4701.

Attachments (3)

**PENDING OR THREATENED LITIGATION****BUREAU/OFFICE:** _____**AGENCY'S DOLLAR THRESHOLD LEVEL FOR REPORTING:**
_____ **Original** **Update** **Date:** _____

1. **Case Name.** *(Include Case Citation, Case Number, and other names by which the case or group of cases is commonly known.)*
2. **Nature of Matter.** *(Include a description of the case or cases and amount claimed, if specified. State "Potential environmental cleanup liability" where applicable.)*
3. **Progress of the Case to Date.**
4. **The Government's Response or Planned Response.** *(For example, to contest the case vigorously or to seek an out-of-court settlement.)*
5. **An Evaluation of the likelihood of Unfavorable Outcome.** *(Choose one.)*

_____ PROBABLE – (An unfavorable outcome is likely to occur.)
_____ REASONABLY POSSIBLE – (The chance of an unfavorable outcome is less than probable but more than remote.)
_____ REMOTE – (The chance of an unfavorable outcome is slight.)
6. **An Estimate of the Amount or Range of Potential Loss and Expected Source of Funds for Payment** *(if one can be made, for losses considered to be probable or reasonably possible; if one cannot be made, briefly explain the reasons under 'Progress of the Case to Date'; source of funds is Judgment Fund or agency appropriation).*
7. **The Name and Phone Number of the Interior and DOJ Attorneys Handling the Case** *(and names of any outside legal counsel/other lawyers representing or advising the government in the matter).*
8. **The Sequence Number** *(based on the total number of Pending or Threatened cases your agency/component is submitting. Number ____ of ____ (total)).*

Attorney-Client Agency Work Product Privilege

**UNASSERTED CLAIMS AND ASSESSMENTS****BUREAU/OFFICE:** _____**AGENCY'S DOLLAR THRESHOLD LEVEL FOR REPORTING:**
_____ **Original** **Update** **Date:** _____

1. **Name of Matter.** *(Include name by which the matter is commonly known.)*

2. **Nature of the Matter.** *(Include a description of the matter. State "Potential environmental cleanup liability" where applicable.)*

3. **The Government's Planned Response** *(if the claim is asserted).*

4. **An Evaluation of the likelihood of Unfavorable Outcome.** *(Choose one.)*

_____ PROBABLE – (An unfavorable outcome is likely to occur.)
_____ REASONABLY POSSIBLE – (The chance of an unfavorable outcome is less than probable but more than remote.)

5. **An Estimate of the Amount or Range of Potential Loss and Expected Source of Funds for Payment** *(if an estimate can be made; if one cannot be made, briefly explain the reasons under 'Nature of the Matter'; source of funds is Judgment Fund or agency appropriation).*

6. **The Name and Phone Number of the Interior and DOJ Attorneys Handling the Case** *(and any outside legal counsel/other lawyers representing or advising the government in the matter).*

7. **The Sequence Number** *(based on the total number of Unasserted Claims and Assessments your agency/component is submitting. Number _____ of _____ (total))*

Attorney-Client Agency Work Product Privilege



**NO-LONGER-PENDING CASES
THAT WERE REPORTED IN PRIOR LEGAL REPRESENTATION
LETTER**

BUREAU/OFFICE: _____

AGENCY'S DOLLAR THRESHOLD LEVEL FOR REPORTING:

Original **Update** **Date:** _____

1. **Name of Matter.** *(Include case citation and name by which the matter is commonly known.)*

2. **Sequence Number** *(Number assigned in prior legal letter).*

3. **Resolution of the Matter** *(a brief description of how the case was resolved, including date of resolution and amount of settlement or judgment, if applicable).*

4. **The Name and Phone Number of the Interior and DOJ Attorneys Handling the Case** *(and any outside legal counsel/other lawyers representing or advising the government in the matter).*

Attorney-Client Agency Work Product Privilege