

Civil Division
United States Department of Justice

FY 2010 Performance Budget
Congressional Submission

May 2009

Table of Contents

| | Page No. |
|---|------------|
| I. Overview..... | 1 |
| II. Summary of Program Changes | 7 |
| III. Appropriations Language and Analysis of Appropriations Language | N/A |
| IV. Decision Unit Justification | |
| A. Legal Representation..... | 9 |
| 1. Program Description | |
| 2. Performance Tables | |
| 3. Performance, Resources, and Strategies | |
| 4. Program Changes | |
| V. Exhibits | |
| A. Organizational Chart | |
| B. Summary of Requirements | |
| C. Program Increases by Decision Unit | |
| D. Resources by DOJ Strategic Goal/Objective..... | |
| E. Justification for Base Adjustments | |
| F. Crosswalk of 2008 Availability | |
| G. Crosswalk of 2009 Availability | |
| H. Summary of Reimbursable Resources..... | |
| I. Detail of Permanent Positions by Category..... | |
| J. Financial Analysis of Program Increases/Offsets | |
| K. Summary of Requirements by Grade..... | |
| L. Summary of Requirements by Object Class..... | |
| M. Status of Congressionally Requested Studies, Reports, and Evaluations | N/A |

Civil Division: Overview

MISSION: The Civil Division represents the United States in any civil or criminal matter within its scope of responsibility – protecting the public fisc, ensuring that the Federal Government speaks with one voice in its view of the law, preserving the intent of Congress, and advancing the credibility of the Government before the courts.

The Civil Division's role is two-fold in that it must represent some 200 federal agencies and Congress while maintaining uniformity in government policy. For any particular case, Civil must provide the best possible representation to the client agency involved. This responsibility must be balanced with the need to represent the government as a whole and to ensure lasting precedents favorable to the United States.

Generally, the Division's litigation falls into one of the following categories:

- Cases that involve national policies:
 - Numerous lawsuits challenge the constitutionality of the Foreign Intelligence Surveillance Act, which establishes procedures for requesting judicial authorization for surveillance and search of persons suspected of espionage.
- Cases that are so massive and span so many years that they would overwhelm the resources and infrastructure of any individual field office:
 - The Federal Emergency Management Agency (FEMA) has received 30,000 administrative tort claims seeking to recover damages for personal injuries allegedly resulting from exposure to formaldehyde in mobile homes issued by FEMA after Hurricanes Katrina and Rita. Thousands more claims are expected and several suits have already been filed.
- Cases filed in national or foreign courts:
 - Nuclear utilities filed 71 claims against the Department of Energy (DOE) in the United States Court of Federal Claims alleging breach of contract for DOE's failure to begin accepting spent nuclear fuel in 1998.
- Cases that cross multiple jurisdictions:
 - Pharmaceutical and procurement fraud cases often involve overlapping claims, defendants, and witnesses. The Civil Division plays a critical role in ensuring that investigations and litigation are properly coordinated among federal and state entities.

- Cases to remove illegal aliens:
 - Every year, Immigration and Customs Enforcement apprehends thousands of aliens deemed removable. Many of these aliens appeal their enforcement decisions through administrative mechanisms. They may further appeal adverse opinions in circuit courts of appeals. These appellate cases are handled by the Civil Division.

The Civil Division is also responsible for the administration of two compensation programs created by the National Childhood Vaccine Injury Act of 1986 and the Radiation Exposure Compensation Act of 1990.

Finally, Civil Division attorneys play a significant leadership role within the Department of Justice (DOJ) and the Executive Branch. The Division consults with and advises U.S. Attorneys, other DOJ components, and client agencies to ensure that the government's litigation position is unified, consistent, and successful. Many of the Division's cases are handled jointly by the Civil Division and the U.S. Attorneys. With respect to client agencies, Civil Division attorneys work closely with agencies' general counsels to head off potential litigation and prevent unfavorable outcomes should cases proceed in court.

The Civil Division current workload exceeds 60,000 cases and administrative claims. The overwhelming majority – about 89 percent – of these cases are defensive. Each year, thousands of lawsuits are filed against the government as a result of its policies, laws, and involvement in commercial activities, domestic and foreign operations and entitlement programs, as well as law enforcement initiatives, military actions, and counterterrorism efforts. Civil defeats billions of dollars in unmeritorious claims every year. The Division also brings suits on behalf of the United States, primarily to recoup money lost through fraud, loan defaults, and the abuse of federal funds. Annually, hundreds of millions, and often billions, of dollars are returned to the treasury, Medicare, and other entitlement programs as a result of Civil's affirmative litigation efforts.

It is possible for the public to better understand the responsibilities and goals of the Civil Division by viewing the electronic copies of DOJ's Congressional Budget Justifications and Capital Asset Plan and Business Case exhibits at: <http://www.usdoj.gov/jmd/2010justification>.

Full Program Costs

Funds for the Legal Representation Decision Unit, the Civil Division's only decision unit, are devoted almost entirely to front-line litigation in observance of the management initiatives contained in the DOJ Strategic Plan (2007-2012). Of the Division's roughly 1,300 employees, the vast majority are assigned to the six litigating branches.

In FY 2008, \$424,800,000 was available to the Division, exclusive of the RECA Trust Fund (see Civil's RECA Trust Fund Budget). Fifty-nine percent of this funding came from the General Legal Activities appropriation while forty-one percent was provided through DOJ allotments and reimbursements. The table on the following page displays a list of the Civil Division's funding sources, including appropriations and reimbursements.

| Civil Division Funding Sources (Dollars in Millions) | | | | | | | |
|--|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
| Appropriations | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 |
| Legal Representation (GLA) | 162.5 | 167.5 | 174.4 | 174.9 | 192.2 | 208.3 | 250.1 |
| Immigration & Katrina Emergency Supplemental | 0 | 0 | 0 | 0 | 9.6 | 0 | 0 |
| RECA - Admin. (Became part of Legal Representation in FY 2003) | 1.9 | 0 | 0 | 0 | 0 | 0 | 0 |
| Subtotal | 164.4 | 167.5 | 174.4 | 174.9 | 201.8 | 208.3 | 250.1 |
| Reimbursements: | | | | | | | |
| FDIC - Winstar | 63.3 | 32.3 | 38.5 | 30.2 | 18.3 | 17.5 | 11.4 |
| Vaccine Compensation Program | 4.0 | 4.0 | 4.0 | 6.3 | 6.3 | 6.3 | 6.8 |
| Three Percent - Debt Collection | 32.8 | 15.7 | 34.8 | 31.7 | 10.0 | 16.2 | 12.5 |
| Health Care Fraud Abuse Control | 21.0 | 14.4 | 14.5 | 15.5 | 15.3 | 15.9 | 15.9 |
| Other Reimbursements | 32.7 | 59.0 | 36.9 | 75.4 | 36.3 | 44.2 | 57.4 |
| Subtotal | 153.8 | 125.4 | 128.7 | 159.1 | 86.2 | 100.1 | 104.0 |
| DOJ Accounts: | | | | | | | |
| Working Capital Fund | 0 | 23.4 | 0 | 0 | 0 | 0 | 0 |
| AFF & Super Surplus | 0 | 0 | 0 | 0 | .8 | .8 | .8 |
| Expert Witnesses (FEW) | 38.1 | 38.0 | 46.6 | 45.1 | 49.1 | 54.0 | 53.2 |
| Private Counsel (FEW) | 7.0 | 7.2 | 9.0 | 12.3 | 15.3 | 13.0 | 11.0 |
| Foreign Counsel | 0 | 0 | 0 | 0 | 0 | 0 | 3.4 |
| ALS No Year | 0 | 0 | 2.5 | 3.3 | 15.6 | 7.0 | 2.1 |
| VCR Carry Forward | 2.0 | 2.0 | 0.2 | 0.2 | 0.2 | 0.2 | 0.2 |
| Subtotal | 47.1 | 70.6 | 58.3 | 60.9 | 81.0 | 75.0 | 70.7 |
| TOTAL - ALL SOURCES | 365.3 | 363.5 | 361.4 | 394.9 | 369.0 | 383.4 | 424.8 |

The FY 2009 Omnibus Appropriation bill provides \$270,431,000 in direct funds for the Civil Division. For FY 2010, the Division requests 1,475 positions (1,059 attorneys), 1,391 FTE, and \$287,758,000 to meet its mission and performance goals.

Issues, Strategies, and Outcomes

With approximately 900 attorneys, the Civil Division expects to handle a workload of 65,113 cases and administrative claims in FY 2010. However, this number belies the true extent of the workload, as the Division is handling approximately 489,000 administrative claims filed with the Army Corps of Engineers seeking damages associated with Hurricane Katrina and 30,000

administrative claims filed with FEMA seeking damages related to Hurricanes Katrina and Rita trailers.¹

External Challenges:

Because the Civil Division's workload is mostly defensive, it cannot control the number of cases filed, the timing of discovery, the size of evidentiary collections, the time span of litigation, or the scheduling of trials. The type, volume, and size of the cases are determined by several exogenous factors:

Military Actions

Natural Disasters

Immigration Enforcement

Challenges to Agency Actions

Statutory Enactments

Whistleblower & Inspector General Referrals

Counterterrorism Measures

National Financial Conditions

Vaccine Program Expansion

Federal Procurement Actions

A short-term solution to an unpredictable workload increase has been to detail attorneys from one Civil component to another, as well as from outside the Civil Division.

Internal Challenges:

The external challenges create the Division's greatest internal challenge: the unpredictable volume and nature of the cases assigned to the Division. Specific internal challenges include:

- The Division's base budget typically does not have sufficient resources for litigation support to adequately respond to litigation involving a massive volume of evidentiary material.
- Critical base resources are eroded by attrition every year. The loss of an experienced attorney means a significant loss of legal and institutional knowledge that is very hard to replace. Recruiting new attorneys at government salaries is a challenge. It takes a long time to obtain the same productivity level after the turnover of experienced talent.
- Limited space in the Main Justice Building has resulted in the need to disperse staff across seven buildings in Washington, D.C. The administrative burden of having staff dispersed to so many locations is increased costs (including staffing) associated with multiple supply rooms, mail rooms, and copy centers that would not be required if the staff was more centralized. The large number of locations also requires that Information Technology support personnel be located remotely. In addition, the Division pays over \$200,000 in annual shuttle bus costs associated with its two most remote locations and over \$2 million for security costs at several locations.

¹ These administrative claims are not included in the Division's total numbers because they are outliers that would significantly skew the data.

Outcomes:

Despite these challenges, the Division has achieved remarkable success in recovering monies lost through fraud and defending the public fisc.² The following are examples of achievements in affirmative and defensive litigation:

- **Eli Lilly** In January 2009, the Civil Division, working with the U.S. Attorney's Office in Philadelphia, prosecuted Eli Lilly and Co. Eli Lilly pled guilty to violating the Food, Drug, and Cosmetic Act for its illegal marketing of the anti-psychotic drug Zyprexa for uses that were not approved by the Food and Drug Administration. The global settlement totaled more than \$1.4 billion, which included a \$515 million criminal fine – the largest fine ever in a health care case as well as the largest fine ever imposed in a criminal prosecution of any kind. Eli Lilly will also pay \$100 million in forfeiture, and up to \$800 million in a civil settlement with the Federal Government and the states.
- **Winstar** The bailout of the savings and loan industry in the 1980s resulted in extensive litigation that continues to this day. The plaintiffs sought \$30 billion in breach of contract damages resulting from the enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989. At present, 110 of the 122 original cases have been fully resolved. The amounts awarded in judgments and settlements thus far have averaged around six cents on the dollar of the amounts claimed.

² See the Performance and Resource Tables on page 22 for more information.

Summary of Program Changes

| Proposed FY 2010 Program Changes GLA Appropriation | | | | |
|---|-------------|------------|------------------------|-------------|
| Item Name | Pos. | FTE | Dollars (\$000) | Page |
| Combating Financial Fraud and Protecting the Federal Fisc | 118 | 28 | \$10,000 | 31 |
| Immigration Litigation | 19 | 9 | \$1,760 | 37 |
| Total GLA Program Increases | 137 | 37 | \$11,760 | |

Combating Financial Fraud and Protecting the Federal Fisc

- Congress recently enacted two financial packages to jumpstart the economy, provide employment opportunities, and upgrade the Nation’s infrastructure – the Troubled Assets Relief Program (TARP) and the Economic Stimulus Plan. The government is spending over \$1.4 trillion on these two plans.
- This exceptional level of funding likely will result in litigation. The anticipated cases in the areas of fraud, contract claims, and bankruptcies are expected to be especially complex.
- The Civil Division budget includes 118 positions (87 attorneys), 28 FTE, and \$10 million (including \$5 million for automated litigation support services) to keep abreast of the litigation that will result from TARP and the Economic Stimulus Plan. The Civil Division’s efforts will protect the public fisc by recovering defrauded funds and representing the government in a plethora of lawsuits seeking unfounded treasury payments.

Immigration Litigation

- The Office of Immigration Litigation’s (OIL) caseload has grown tremendously since 2001 when the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) began increasing enforcement efforts and streamlining immigration initiatives. From 2002 to 2008, OIL’s workload more than tripled in size. Any statutory changes, as well as new DHS or EOIR initiatives, will cause additional growth for OIL in FY 2010.
- In FY 2008, Congress approved a new DHS immigration enforcement initiative, Secure Communities. This initiative represents a new, comprehensive approach for expediting the removal of all criminal aliens held in U.S. prisons and jails. As DHS’s enforcement activities become more aggressive with the implementation of Secure Communities, OIL’s caseload will correspondingly increase.
- The Civil Division budget includes 19 positions (15 attorneys), 9 FTE, and \$1,760,000 for FY 2010 to meet the litigation demands resulting from increasing DHS and EOIR activities.

Decision Unit Justification

Civil Division: Legal Representation Decision Unit

| Legal Representation – TOTAL | Perm. Pos. | FTE | Amount (\$000) |
|---|------------|-----------|-----------------|
| 2008 Enacted with Rescissions | 1,338 | 1,294 | \$250,114 |
| 2009 Enacted | 1,338 | 1,354 | \$270,431 |
| Adjustments to Base & Technical Adjustments | 0 | 0 | \$5,567 |
| 2010 Current Services | 1,338 | 1,354 | \$275,998 |
| 2010 Program Increases | 137 | 37 | \$11,760 |
| 2010 Request | 1,475 | 1,391 | \$287,758 |
| Total Change 2009-2010 | 137 | 37 | \$17,327 |

The Civil Division is composed of six litigating branches and the Office of Management Programs, as described throughout the following pages.

Appellate Staff

Appellate Staff attorneys represent the United States at the highest levels of judicial review. When the government receives an unfavorable decision, the Staff works closely with the Office of the Solicitor General to determine whether to seek further review, including review in the United States Supreme Court. The Appellate Staff docket includes challenges to federal statutes, including the No Child Left Behind Act, the False Claims Act, and the Freedom of Information Act. Its work also concerns federal programs, such as Medicare and Medicaid. Recent Appellate Staff accomplishments include the successful defense of constitutional challenges to the Public Company Accounting Oversight Board, the entity created by Congress in the wake of the Enron scandal to regulate the accounting industry, and constitutional challenges to provisions of the Bankruptcy Reform Law.

The Staff's workload has seen large increases in recent years in the area of counter-terrorism cases involving terrorist surveillance activities, the freezing of terrorist assets, and the designation of foreign terrorist organizations. These responsibilities have increased significantly in regard to the Guantanamo Bay detainee cases. The appeals in habeas cases brought by the Guantanamo detainees are handled by the Appellate Staff, and the direct review detainee petitions are still pending. These cases involve classified materials and present serious issues of law and fact.

The Appellate Staff is also expecting major litigation arising out of the Troubled Assets Relief Program. Statutory and administrative challenges to these ground-breaking programs are likely. In addition, bankruptcy cases involving institutions that receive government funds or guarantees will be extraordinarily complex and challenging. The Staff also expects complex litigation involving fraud claims, bid protests, as well as contract and takings claims. The Appellate Staff will handle the appeals in all of these matters.

Federal Programs

While other branches handle cases that directly involve monetary claims involving the government, most of the Federal Programs Branch's (FP) cases are not monetary. The attorneys annually handle hundreds of defensive cases that are of unparalleled importance because of their far-reaching repercussions for government programs and policies. The Branch defends federal agency officials and actions in challenges to executive orders, federal statutes, and federal regulations. Another handful of cases protect the public fisc by defending government policies and programs that concern the distribution of monetary resources and benefits. Attorneys also handle certain specialized affirmative litigation and assert the interests of the United States in litigation in which the United States is not a named party. The Branch expects many cases as part of the Troubled Assets Relief Program and the Economic Stimulus package.

The diversity of the FP workload can be seen in the following examples. The Branch handles cases involving separation of powers and core Executive prerogatives (such as litigation concerning the Terrorist Surveillance Program and litigation concerning immunity of Senior Executive Branch officials), as well as cases concerning assertion of the state secrets privilege, and challenges to military policy, antiterrorism laws, and national security measures. FP attorneys are charged with handling litigation that impacts the Nation's foreign affairs. The Branch's work recently has included a number of controversial housing-related lawsuits as a result of Hurricane Katrina, a series of cases testing the use of competitive bidding under the Medicare program, and matters involving protection from disclosure of sensitive government information pursuant to the Freedom of Information Act. FP attorneys also defend against challenges to federal programs and activities that allegedly discriminate against individuals with disabilities in violation of the Rehabilitation Act.

Among the numerous cases handled by FP, most notably, the attorneys are defending against hundreds of habeas corpus actions filed in U.S. District Court for the District of Columbia on behalf of 250 Guantanamo Bay detainees. The Supreme Court ruled in *Boumediene v. Bush* that the jurisdiction-stripping provision of the Military Commissions Act was an unconstitutional suspension of the writ of habeas corpus. Since that decision, attorneys have filed factual returns setting forth the factual basis for the detention of approximately 200 detainees. These cases are being handled on an expedited basis. On January 22, 2009, President Obama signed an Executive Order (see excerpt at right) requiring the closure of the detention facilities at Guantanamo Bay Naval Base within one year and the immediate review of the status of all detainees. FP attorneys are assisting in this review.

“It is in the interests of the United States that the executive branch undertake a prompt and thorough review of the factual and legal bases for the continued detention of all individuals currently held at Guantánamo, and of whether their continued detention is in the national security and foreign policy interests of the United States and in the interests of justice.”

-President Obama's Executive Order,
January 22, 2009

Torts Branch

Environmental Torts (ET)

The Environmental Torts section defends the government against claims for monetary damages resulting from death, personal injury, or property damage allegedly caused by environmental or occupational exposure to toxic substances, and occasionally handles other important tort cases. The largest case currently being handled by ET, *Adams v. United States*, involves claims of more than \$800 million stemming from the Department of the Interior's Bureau of Land Management's application of OUST, an herbicide, to wildfire burn areas in Southern Idaho in 2000. Claimant farmers allege that nearby soil become polluted, which damaged their crops. The first trials are scheduled for May 2009.

ET is also representing the United States in a multi-district consolidated group of cases known as *In re: FEMA Trailer Formaldehyde Product Liability Litigation*. Plaintiffs seek to recover damages for personal injuries allegedly resulting from exposure to formaldehyde in temporary emergency housing units (EHUs - travel trailers and mobile homes) provided by FEMA in response to Hurricanes Katrina and Rita. In December 2008, the district court rejected plaintiffs' motion for class certification, which would have covered all persons who resided in approximately 140,000 EHUs issued by FEMA. FEMA has received approximately 30,000 administrative tort claims and



<http://www.fema.gov/hazard/hurricane/2005katrina/slideshow/page3.fema?id=3>

estimates that the total amount at issue would be well in excess of \$1 billion if all of these claimants file suit. The court, having decided that the cases must be dealt with on an individualized basis, has set September 14, 2009 as the date for the first trial, to be followed by subsequent trials beginning on October 26, 2009; December 7, 2009; and January 11, 2010.

Historically, most of the litigation handled by ET has involved military activities – some dating as far back as World War I. This includes the successful defense of more than \$10 billion in asbestos liability suits, principally brought by corporate defendants seeking to shift their liability to the taxpayers, and similar contract suits brought by Agent Orange manufacturers. Currently, ET is defending a \$4 million Agent Orange claim brought by people living near a Vietnam-era military facility that stored the chemical. ET is also defending more than \$4 billion in claims brought by more than 7,000 citizens of the Puerto Rican Island of Vieques who claim that the Navy's former training exercises on the island are responsible for a wide variety of health problems as well as “fear and fright” of potential health consequences.

Federal Tort Claims Act (FTCA)

The FTCA permits filing suit against the United States for injuries allegedly caused by the “negligent or wrongful act of any employee of the government while acting within the scope of

his office or employment.”³ Prior to filing under the FTCA, the claimant must first file an administrative claim against the agency allegedly at fault and permit the agency at least six months to act on the claim.

The FTCA Staff is handling over 400 lawsuits that have been filed as a result of the flooding caused by Hurricane Katrina in New Orleans. Another 489,000 administrative claims are pending with the Army Corps of Engineers. Claimants and plaintiffs seek compensation for personal injury, death, and property damage suffered as a result of the failure of the flood protection system. A trial on liability and damages in the lead case commenced in April 2009, and the other trials on liability are scheduled for summer 2009. If the government were to lose in the liability stage of this litigation, trials addressing the specific damages sought by hundreds of thousands of plaintiffs could start in FY 2010. In light of the unprecedented number of claims and the staggering amount at stake, the damages phase would be an enormous undertaking, consuming vast amounts of time and resources.

The FTCA Staff is also handling high-profile litigation arising from the arrest and detention of 15 individuals on immigration charges in connection with the FBI’s PENTTBOM investigation following the 9/11 terrorist attacks. The issues in the litigation relate to whether excessive force was used, whether certain of the plaintiffs’ medical needs were neglected, and whether the Administration’s detention policies and conditions of confinement went beyond constitutional bounds and/or constituted common law torts. Several individual defendants (represented largely by private counsel at DOJ’s expense) filed motions to dismiss based on qualified immunity, which were granted in part and denied in part. Some issues relating to these defendants are on appeal to the Second Circuit and the Supreme Court. A number of other issues remain pending in district court, where discovery is ongoing. Since the filing of these cases in 2002 and 2004, FTCA Staff attorneys have responded to nearly 600 requests for the production of documents, and since January 2006, they have taken about 110 depositions.

Constitutional and Specialized Torts

The Constitutional Torts, or *Bivens* component, handles cases which involve employees in the executive and legislative branches who are personally sued for actions taken within the scope of their employment. These suits can cover a wide variety of actions and levels of employees, including those involved in law enforcement and national security. They go to the heart of the many missions of the federal public service. Effective representation of federal employees allows public servants to carry out their duties without fear of personal liability for their actions.

The Constitutional Torts staff had several major accomplishments in cases of national importance in 2008. Perhaps most notable was *Moore v. Hartman*, which was a highly complex retaliatory prosecution case that engendered an opinion by the Supreme Court and several separate opinions by the Court of Appeals for the District of Columbia. The district court granted summary judgment dismissing the case on qualified immunity grounds.

Aviation and Admiralty Torts

The Aviation and Admiralty Section handles aviation and maritime accident cases and claims. Clients include the Federal Aviation Administration (FAA), the Army Corps of Engineers, the

³ Federal Tort Claims Act, Pub. L. No. 79-601, § 403, 60 Stat. 812, 843 (1946).

Coast Guard, the Maritime Administration, the Transportation Security Administration, and the Departments of Transportation, Defense, and Commerce.



http://www.faa.gov/about/office_org/headquarters_offices/aba/budgets_brief/

Aviation litigation arises from the government's involvement in such activities as regulation of air commerce, air traffic control, aviation security, weather services, and aeronautical charting. When aircraft accidents occur, the Section handles high-dollar litigation involving the FAA's air traffic control and weather dissemination services, as well as its certification of airports, aircraft, and air personnel. The Section's most recent commercial airline matter was Comair flight 5191's crash on take-off from Lexington's Kentucky Bluegrass Airport in August 2006. The case is not yet fully resolved. The recent Continental crash on final approach to Buffalo Airport is expected to spawn similar litigation.

The Section also represents the government in its role as a shipowner, regulator, and protector of the nation's waterways. Litigation includes collisions involving U.S. vessels, grounding of vessels using U.S. produced charts, and challenges to the

boarding of vessels on the high seas during national security and drug interdiction activities. Affirmative actions seek compensation for the loss of government cargo, damage to locks, dams and natural resources, and the costs associated with maritime pollution cleanups.

In numerous cases, the Section has successfully pursued recovery of oil spill clean-up costs under the Oil Pollution Act of 1990 (OPA). The most recent of those matters involves the tanker COSCO BUSAN, which spilled a significant amount of oil in San Francisco Bay after striking a bridge tower in fog. The Section's affirmative recoveries under OPA total millions of dollars annually.

Commercial Litigation

National Courts

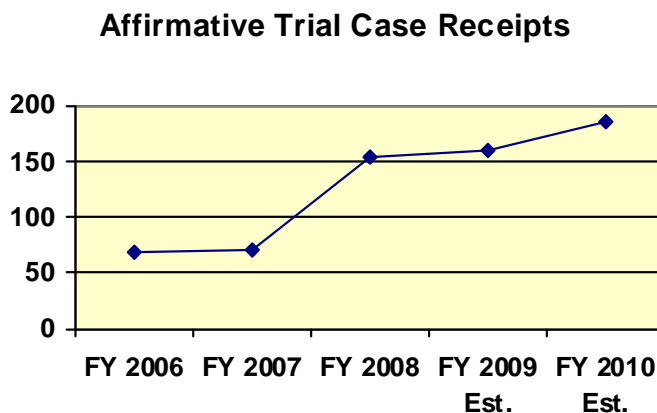
The largest section in the Commercial Litigation Branch is National Courts. These attorneys exclusively handle cases in the Court of Federal Claims, the Court of International Trade, the Court of Appeals for the Federal Circuit, and other fora. This litigation involves a wide and varied range of substantive law, including government procurement and contract disputes, Fifth Amendment takings, international trade, and claims brought by veterans and federal employees. The section routinely manages large, complex cases concerning significant legal issues and billions of taxpayer dollars. An example is the *Winstar* litigation, in which financial institutions sought over \$30 billion in claimed damages resulting from banking reforms enacted in the 1980s. National Courts has limited recoveries in the *Winstar* cases to a mere six cents per dollar

claimed, a result consistent with the average six percent recovery rate of amounts sought in the section's cases.

The most complex litigation currently managed by National Courts stems from the government's commitment to accept and store spent nuclear fuel as required by the Nuclear Waste Policy Act of 1982. To date, utilities have filed 71 cases in the Court of Federal Claims seeking damages that they estimate exceed \$50 billion. This litigation is enormously complex and expensive, costing the Department of Justice approximately \$30 million each year in staffing and litigation support costs, for a total of \$140 million through 2008. More than 10 trials are expected in fiscal years 2009 and 2010, and litigation support services, which include collecting, organizing, and reviewing massive amounts of paper, continue to be critical to the government's defense.

Corporate/Financial

The Corporate/Financial Section handles a wide variety of lawsuits involving claims for money and property. A significant portion of the Section's resources are devoted to representing the government's financial, contractual and regulatory interests in large and complex chapter 11 bankruptcies, including those involving defense contractors, commercial airlines, health care providers, and other major corporations. With the economic downturn, the incidence of these cases has increased significantly (see chart at right).



In a recent case, Winstar Communications, which provided vital telecommunications services to over 30 federal agencies in 13 cities, mostly through contracts with the General

Services Administration (GSA), filed for bankruptcy. In light of this bankruptcy petition, GSA began to switch its customers to other carriers, while the debtor's financial condition presented a constant threat of service interruption. Division bankruptcy negotiations allowed GSA to expedite a seamless transition for all affected agencies.

The Section also handled one of the largest cases ever filed against the government: *Cobell v. Salazar*. Please see page 27 for a description of the successful trial outcome.

Foreign Litigation

The Office of Foreign Litigation attorneys retain and manage foreign counsel to represent the United States in cases filed in foreign courts. Most of these cases are defensive and involve the wide range of international activities in which the United States is involved, including antiterrorism activities abroad, the wars in Iraq and Afghanistan, extensive U.S. military deployments and bases overseas, and commercial transactions or labor disputes arising out of the many U.S. government offices and facilities maintained overseas. The Office also conducts affirmative litigation aimed at fighting cross-border fraud that targets American citizens, such as telemarketing fraud. Affirmative litigation also includes representing the interests of the United

States in foreign cases involving terrorist or other criminal activities directed against the United States, its officers, and its employees.

The diversity of the Office can be seen in its recent litigation activities. In Paris, France, the Office appeared to oppose the parole application of Georges Ibrahim Abdallah, who was convicted of the murder of U.S. military attaché Charles Ray, and the attempted murder of U.S. diplomat Robert Homme. In Italy, it filed briefs before the Italian Court of Cassation asserting sovereign immunity in a case seeking an order requiring the removal of nuclear weapons allegedly stored at the U.S. Air Force base in Aviano, Italy. In February 2009, the court adopted the United States' position, ruling that Italian courts lack jurisdiction to hear the matter.

Intellectual Property

The Branch also handles a wide variety of litigation involving patents, trademarks, copyrights, trade secrets, and other related matters. For example, when patent infringement claims threatened a cessation of BlackBerry service, Intellectual Property attorneys worked to ensure that the government would be exempt from an injunction against use of the service. The most significant defensive suits are brought by major corporations seeking substantial recoveries for the government's use of patented inventions, such as night vision compatible displays used in military aircraft in *Honeywell International v. United States*. Affirmative litigation enforces government-owned patents, trademarks, copyrights, and patent indemnity agreements.

In *Honeywell*, the plaintiff claimed that the military's use of night vision goggles in aircraft cockpits infringed its patent on a system for making the goggles compatible with full color cockpit displays. Honeywell claimed damages which could have totaled an estimated half a billion dollars if the government had been found liable. The suit was both technically complex, involving advanced military hardware, such as night vision goggles and LCD displays, and broad in scope, as the technology has been installed in aircraft platforms in all branches of the military. Three members of the Intellectual Property staff, working in concert with technical experts and two of the government's contractors, argued that Honeywell's patent was not infringed and was invalid. After over five years of litigation, the court agreed with the government's argument that two of the patent's three claims were not infringed, and held that the remaining claim was invalid, resulting in no damages due to Honeywell. Honeywell has filed an appeal to the Court of Appeals for the Federal Circuit.

Fraud

A critical aspect of the affirmative litigation pursued by Commercial Litigation Branch attorneys involves suits to recover losses to the government due to fraud. Since 1986, Branch attorneys and their colleagues in U.S. Attorneys' Offices have recovered \$21.6 billion on behalf of government programs, including federal health care programs, such as Medicare and Medicaid, and programs vital to the country's defense and national security. Since FY 2006, Branch attorneys have secured recoveries averaging \$2.2 billion a year. These efforts provide needed restitution to harmed government programs and deter other fraudulent conduct.

The number and complexity of cases is expected to increase, due in part to recent legislation expanding Medicare benefits and increasing funding to investigative agencies. Rising defense, national security and federal economic stimulus spending, including the Troubled Assets Relief Program, similarly increases the likelihood of additional cases alleging fraud in those areas. The Branch will continue to pursue fraudulent schemes such as those involving housing and mortgage programs, student loans, mineral royalties, as well as various subsidy and grant programs.

In order to defend the government effectively and to avoid hundreds of billions of dollars in adverse judgments and settlements, the Division's base budget has been dedicated primarily to defensive litigation, with only a small portion designated for affirmative FCA litigation by the Branch. Such cases have been funded through external sources such as the Health Care Fraud and Abuse Control Account (HCFAC) and the Three Percent Fund.

The majority of fraud cases are filed initially by private citizens under the *qui tam* provisions of the False Claims Act (FCA). The government then assesses the suit's merits and, where appropriate, intervenes to pursue the government's interests. Of the more than \$21.6 billion recovered under the FCA from 1986 through FY 2008, \$13.7 billion were in *qui tam* actions, and \$7.9 billion was recovered in non *qui tam* matters pursued by the government.

FY 2009 has already seen significant civil federal recoveries. For example, Bayer Healthcare LLC paid \$99 million in connection with allegations that it paid kickbacks to diabetic suppliers. In the area of mortgage fraud, the United States was awarded \$10.7 million from Royal Bank of Canada and \$1.1 million from Dolphin Mortgage Corporation, which was held vicariously liable for an employee who submitted forged documentation in support of applications for Department of Housing and Urban Development-insured loans. Also, APL Limited agreed to pay the United States \$26.3 million to resolve allegations that it overcharged and double-billed the Department of Defense to transport cargo to support U.S. troops in Iraq and Afghanistan.

Consumer Litigation

The Office of Consumer Litigation (OCL) enforces a number of federal consumer protection laws. Most of its enforcement focuses on fraud perpetrated by manufacturers and distributors of misbranded, adulterated, or defective consumer goods. OCL handles civil affirmative cases as well as criminal prosecutions brought under consumer protection statutes. OCL also handles cases of deceptive advertisements and sales through unfair credit practices that extract billions of dollars from consumers. Success in these matters safeguards consumers from dangerous or worthless products and from unfair and deceptive trade practices. Additionally, OCL handles a growing number of health care fraud-related cases, the majority of which are criminal cases.

OCL is actively involved in investigating and prosecuting major prescription drug and device manufacturers and responsible individuals believed to be illegally promoting misbranded and adulterated drugs or devices and distributing their products for unapproved uses. The majority of these criminal investigations emerge from lawsuits filed by whistleblowers alleging fraudulent activity. OCL works with the U.S. Attorneys' Offices on these complex criminal matters.



http://www.fda.gov/fdac/features/2006/106_fdawork.html

Many of the other affirmative cases OCL handles deal with protecting the public from business opportunity scams. For example, OCL prosecuted the principals of American Entertainment Distributors, Inc. (AED), who defrauded consumers across the country of more than \$19 million with a fraudulent scheme involving DVD vending machines. AED is one of a series of prosecutions over the past four years involving fraudulent business opportunities which have led OCL to bring charges against more than 100 individuals, 85 of whom have already been convicted. Typically sentences have been approximately five years in prison, and a total of more than \$100 million in restitution has been ordered in these cases.

OCL also defends legal attacks on consumer protection laws. Such suits include those filed by major drug manufacturers challenging Food and Drug Administration's (FDA) approval of some of the most widely-used, name brand, medications. In *Valeant v. Leavitt*, for instance, the court rejected Valeant's challenge to FDA's approval of a generic version of Valeant's popular topical cream, Efudex. The court upheld FDA's determination that no additional testing was required to establish the bioequivalence of the generic and brand products and declined to enter preliminary injunctive relief against FDA. OCL's defensive cases also include defending consumer protection laws when parties in those suits attack the constitutionality of a federal consumer protection statute.

Office of Immigration Litigation

Established in 1983 to achieve central control over immigration litigation, the Office of Immigration Litigation (OIL) upholds the enforcement actions of the Department of Homeland Security (DHS) and DOJ's Executive Office for Immigration Review (EOIR). With its unique expertise in immigration law, OIL provides the government with the best possible defense in district court cases and challenges to removal orders filed in circuit courts by illegal aliens, many of whom are criminals. As a result of a recent reorganization, District court (trial) and appellate work is now handled by two distinct groups in OIL.

Between FY 2002 and FY 2008, OIL's caseload increased from approximately 7,000 cases to over 23,000 cases. This growth is mainly attributable to heightened immigration enforcement activities pursued by DHS and the increase in the number of EOIR judges responsible for

adjudicating cases that are later challenged in federal circuit courts. Although there was a lag in obtaining a commensurate increase in the OIL budget, resulting in the need to farm out hundreds of appellate cases to other DOJ organizations, OMB requested and Congress appropriated additional resources to address the surge in caseload. In FY 2003, OIL's appropriation approached \$20 million. For FY 2008, Congress appropriated just under \$70 million, inclusive of \$10 million in funds enacted under an emergency designation.

This funding increase had two impacts: first, it helped OIL address the massive growth in cases appealed to the circuit courts. This in turn enabled the government to uphold removal decisions made by EOIR, thereby meeting the need to facilitate the removal of vast numbers of illegal aliens from within our borders. Second, it enabled OIL to address a growing number of trial cases by creating a new section specializing in district court litigation. This change was part of the DOJ's effort to be more responsive to the needs of DHS, which had asked the Department to devote more resources to defending a surge in high-profile cases being filed in the district courts. This new section now handles virtually all immigration class-actions. It also handles appeals of cases that originate in the district courts (as opposed to cases filed to challenge the administrative decisions of EOIR's immigration judges). Together, these two changes have translated into heightened and more effective immigration enforcement.

These gains will be at risk should immigration enforcement resources available to DHS and EOIR increase, absent additional resources for OIL. When illegal aliens petition the courts to review EOIR decisions, the government must be represented in circuit courts. If not, hundreds of enforcement decisions will be overturned and removable aliens will be allowed to extend their illegal stay in the United States. If current trends continue, OIL's caseload is likely to increase to nearly 29,000 cases by FY 2010.

Compensation Programs

Vaccine Injury Compensation Program

Congress enacted the National Childhood Vaccine Injury Act of 1986 (the Act) to avert a crisis affecting the vaccination of children against infectious childhood diseases. There were two primary concerns: 1) individuals injured by vaccines faced an inconsistent, expensive, and unpredictable tort system for compensating claims; and 2) the risk of tort litigation threatened to reduce the number of vaccine manufacturers that could viably meet market demands.

The Act established the Vaccine Injury Compensation Program (VICP or the Program), a no-fault compensation system for persons suffering injury or death allegedly attributable to certain vaccines. Administered by the Department of Health and Human Services (HHS), DOJ, and the Office of Special Masters (OSM) within the Court of Federal Claims, the Program is intended to provide a more expeditious, less costly way for resolving claims. An individual claiming a vaccine-related injury or death must file a petition for compensation with the Court of Federal Claims before pursuing any civil action against a manufacturer or physician. To ensure that compensation is awarded to those whom Congress intended, claims are closely examined for legal and medical sufficiency, with the recognition that eligible claimants should be compensated fairly and expeditiously. Special Masters conduct hearings as necessary to determine whether a petitioner is entitled to compensation and, if so, how much.

The Act created a Vaccine Injury Compensation Trust Fund that is used to pay awards to individuals injured by vaccines, in addition to claimants' attorneys' fees. Trust Fund monies also pay the administrative costs of HHS, OSM, and the Civil Division's VICP staff (the Division's current reimbursement level is 41 FTE and \$7,833,000). The Trust Fund is funded by an excise tax imposed on each purchased dose of a covered vaccine. As of January 31, 2009, the Trust Fund balance was \$2.9 billion. Since the inception of the Program, more than \$1.8 billion in compensation has been awarded to 2,270 claimants who would have otherwise stood little chance of recovery in traditional tort litigation. By protecting the Trust Fund against unmeritorious claims, the Division helps to preserve the Fund for future deserving claimants.

Since FY 2001, the Program has experienced a staggering increase in claims received each year. While this increase can be partly attributed to the addition of new vaccines covered by the Program, the most significant reason is the approximately 5,100 claims asserting that certain vaccines, or a vaccine preservative, thimerosal, can cause autism. These cases comprise the Omnibus Autism Proceeding and account for approximately 85 percent of the Program's caseload. The potential financial exposure has been estimated at \$10 billion, far exceeding the current Trust Fund balance.

An adverse ruling could also be a detriment to public health, by causing some parents to withhold vaccinations from their children for fear that vaccinations may cause autism. The government was awarded an initial win in February 2009, when the court ruled in the first three cases that thimerosal-containing vaccines combined with the measles-mumps-rubella vaccines do not cause autism. However, the impact of these rulings is unclear, as the remaining cases are not bound by them, and an appeal is virtually certain.

“Vaccination of children against deadly, disabling, but preventable infectious diseases has been one of the most spectacularly effective public health initiatives this country has ever undertaken...The Federal government has the responsibility to ensure that all children in need of immunization have access to them and to ensure that all children who are injured by vaccines have access to sufficient compensation for their injuries.”

- H.R. Rep. No. 99-908, 99th Cong., 2d Sess. 7 (1986),
reprinted in 1986 U.S.C.A.N. 6344, 6348.

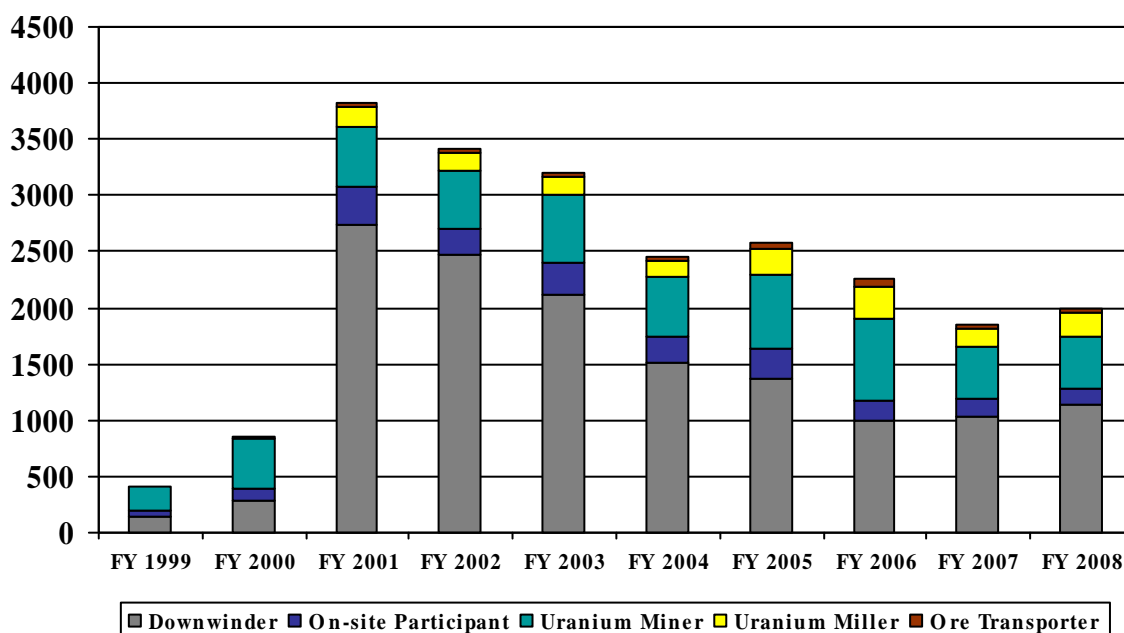
Radiation Exposure Compensation Act

In passing the Radiation Exposure Compensation Act (RECA or the Act) in 1990, Congress offered an apology and monetary compensation to individuals who suffered disease or death as a result of exposure to radiation released during atmospheric nuclear weapons testing in the 1950s and 1960s, and underground uranium mining operations from the 1940s to the 1970s. This program was designed as an alternative to litigation, in that the statutory criteria did not require claimants to establish causation. If claimants meet the criteria specified in the Act, compensation is awarded. RECA provides fixed payments in the following amounts: \$50,000 for individuals who lived “downwind” of the Nevada Test Site; \$75,000 for individuals present at test site locations; and \$100,000 for uranium miners, mill workers, and ore transporters.

Since the Program began receiving claims in 1992, 29,760 claims have been filed and nearly \$1.4 billion has been awarded to 20,694 claimants (as of March 5, 2009). The vast majority of claims are filed by people who live in the Four Corners region – Utah, Colorado, New Mexico,

and Arizona. This area had the greatest concentration of uranium ore, and both the mining and production industries were centered there. The “downwind” regions, counties in Nevada, Utah, and Arizona, account for thousands of claims in connection with the fallout from above-ground nuclear weapons testing.

Total RECA Receipts (including appeals) By Fiscal Year



Since its inception, various groups have sought to pressure Congress and the Executive Branch to expand or otherwise change the scope of the Program. In July 2000, RECA Amendments extended compensation to new categories of beneficiaries, added compensable diseases, expanded both the years and geographic areas covered, and lowered the exposure level that miners must demonstrate to receive compensation. These statutory changes caused an influx of new claim filings and a substantial increase in awards.

Office of Management Programs

The workload of the Civil Division is as broad and diverse as the activities of the 200-plus federal agencies it represents. In addition to its role in defending and enforcing the laws, policies, and programs of the United States, the Division protects the public fisc. Key to ensuring the Division’s continued success in these matters is responsive management capable of providing executive leadership and promoting performance and fiscal responsibility. The Office of Management Programs (OMP) serves this purpose. OMP is comprised of five administrative offices: the Office of Planning, Budget, and Evaluation; the Office of Litigation Support; the Office of Policy and Management Operations; the Office of Administration; and the Office of Management Information.

PERFORMANCE AND RESOURCES TABLE

Decision Unit: Department of Justice – Civil Division – Legal Representation

DOJ Strategic Goal II: Prevent Crime, Enforce Federal Laws and Represent the Rights and Interests of the American People.

Objective 2.7: Vigorously enforce and represent the interests of the United States in all matters over which the Department has jurisdiction.

| WORKLOAD/ RESOURCES | | Final Target | | Actual | | Projected | | Changes | | Requested (Total) | |
|---|--|--------------|----------------------|------------|----------------------|-----------------|----------------------|--|---------------------|-------------------|---------------------|
| | | FY 2008 | | FY 2008 | | FY 2009 Enacted | | Current Services Adjustments and FY 2010 Program Changes | | FY 2010 Request | |
| Workload | 1. Number of cases pending beginning of year | 41,117 | 38,800 | 37,941 | N/A | 43,179 | | | | | |
| | 2. Number of cases received n during the year | 21,859 | 21,151 | 21,629 | N/A | 21,464 | | | | | |
| | 3. Total Workload | 62,976 | 59,951 | 59,570 | N/A | 64,643 | | | | | |
| Total Costs and FTE | | FTE | \$000 | FTE | \$000 | FTE | \$000 | FTE | \$000 | FTE | \$000 |
| (Reimbursable FTE are included, but reimbursable costs are bracketed and not included in the total) | | 1,294 | 250,114 (110,803) | 1,294 | 250,114 (104,060) | 1,354 | 270,431 (114,935) | 37 | 11,760 (-24,474) | 1,391 | 287,758 (90,461) |
| TYPE/ Strategic Objective | PERFORMANCE | FY 2008 | | FY 2008 | | FY 2009 Enacted | | Current Services Adjustments and FY 2010 Program Changes | | FY 2010 Request | |
| Output | 1. Number of cases terminated during the year | 23,066 | 22,010 | 16,202 | 632 | 16,834 | | | | | |
| Civil Division Performance Measures (Excludes VICP and RECA) | | | | | | | | | | | |
| Outcome | 2. Percent of civil cases favorably resolved | 80% | 91% | 80% | N/A | 80% | | | | | |
| | 3. Percent of defensive cases in which at least 85 percent of the claim is defeated | 80% | 90% | 80% | N/A | 80% | | | | | |
| | 4. Percent of affirmative cases in which at least 85 percent of the claim is recovered | 60% | 64% | 60% | N/A | 60% | | | | | |
| | 5. Percent of favorable resolutions in non-monetary trial cases | 80% | 90% | 80% | N/A | 80% | | | | | |
| | 6. Percent of favorable resolutions in non-monetary appellate cases | 85% | 90% | 85% | N/A | 85% | | | | | |
| Efficiency | 7. Ratio of dollars defeated and recovered to dollars obligated for litigation | \$42 | \$37 | \$43 | N/A | \$44 | | | | | |

| | | Final Target | (Projected) Actual | Projected | Changes | Requested (Total) |
|--|---|---------------------|--------------------|-------------------------|--|---------------------|
| TYPE/ Strategic Objective | PERFORMANCE | FY 2008 | FY 2008 | FY 2009 Requirements | Current Services Adjustments and FY 2010 Program Changes | FY 2010 Request |
| Vaccine Injury Compensation Program | | | | | | |
| Output | 8. Percentage of cases where the deadline for filing the government's response to Petitioner's complaint (the Rule (4b) report) is met once the case has been deemed complete | 86% | 95% | 86% | N/A | 86% |
| | 9. Median time to process an award for damages (in days) | 475 | 445 | 465 | N/A | TBD |
| Outcome | 10. Percentage of cases in which Judgment awarding compensation is rejected and an election to pursue a civil action is filed | 0% | 0% | 0% | N/A | 0% |
| | 11. Average claim processing time (in days) | 1,433 | 1,280 | 1,653 | N/A | 1,300 |
| Efficiency | 12. Percentage of cases in which settlements are completed within the court-ordered 15 weeks | 92% | 100% | 92% | N/A | 92% |
| Radiation Exposure Compensation Program | | | | | | |
| Output | 13. Reduce backlog of pending claims by 60% by FY 2011 | (23%) 619 claims | (0%) 618 claims | (2%) 606 claims | N/A | (33%) 404 claims |
| | 14. Reduce average claim processing time to 200 days by FY 2011 | 258 | 156 | 239 | N/A | 219 |
| | 15. Percentage of claims paid within six weeks of Program receipt of acceptance form | 80% | 89% | 85% | N/A | 90% |
| | 16. Percentage of claims appeals adjudicated within 90 days of filing administrative appeal | 90% | 100% | 92% | N/A | 95% |
| Efficiency | 17. Percentage of claims adjudicated within 12 months or less (RECA) | 71% | 93% | 75% | N/A | 80% |

DATA DEFINITION, VALIDATION, VERIFICATION, AND LIMITATIONS

DATA DEFINITION, VALIDATION, VERIFICATION, AND LIMITATIONS

- **All Workload and Performance Indicators:** The data source for all indicators is CASES, the Civil Division's fully automated case management system. Quality assurance efforts include: regular interviews with attorneys to review data listings for each case; input screens programmed to preclude the entry of incorrect data; exception reports which list data that are questionable or inconsistent; attorney manager review of numerous monthly reports for data completeness and accuracy; and verification of representative data samples by an independent contractor. Despite these measures, some data limitations do exist. Most significantly, incomplete data can cause the system to under-report case terminations and attorney time. Some performance successes can be attributed to litigation where the United States Attorneys' Offices were involved.
- **Performance Indicators 2, 5, and 6:** Favorable resolutions include court judgments in favor of the government, as well as settlements.
- **All Workload and Performance Indicators:** All workload actuals and workload estimates exclude approximately 489,000 Hurricane Katrina administrative claims and 30,000 FEMA: Hurricane Katrina/Rita Trailer-related administrative claims. These claims have been removed to avoid skewing the data.

ISSUES AFFECTING SELECTION OF FY 2009 AND FY 2010 ESTIMATES

- **Performance Indicator 1:** The drop in cases terminated in 2009 and 2010 is actually a return to normal given the anomaly of thousands of Vieques administrative claims terminated in 2008.
- **Performance Indicators 2 and 3:** Vaccine Injury Compensation Program cases are excluded from these measures.

PERFORMANCE MEASURE TABLE

Decision Unit: Department of Justice – Civil Division – Legal Representation

| Performance Report and Performance Plan Targets | | FY 2001 | FY 2002 | FY 2003 | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 | | FY 2009 | FY 2010 |
|---|---|---------|---------|---------|---------|---------|---------|---------|---------|--------|---------|---------|
| | | Actual | Actual | Actual | Actual | Actual | Actual | Actual | Actual | Target | Actual | Target |
| Output | 1. Number of cases terminated during the year | 9,902 | 12,231 | 12,154 | 15,101 | 15,727 | 13,585 | 15,615 | 23,066 | 22,010 | 16,202 | 16,834 |
| Civil Division Performance Measures (Excludes VICP and RECA) | | | | | | | | | | | | |
| Outcome | 2. Percent of civil cases favorably resolved | 93% | 93% | 94% | 93% | 90% | 93% | 89% | 80% | 91% | 80% | 80% |
| | 3. Percent of defensive cases in which at least 85 percent of the claim is defeated | 84% | 86% | 89% | 90% | 90% | 91% | 91% | 80% | 90% | 80% | 80% |
| | 4. Percent of affirmative cases in which at least 85 percent of the claim is recovered | 66% | 64% | 66% | 65% | 72% | 72% | 68% | 60% | 64% | 60% | 60% |
| | 5. Percent of favorable resolutions in non-monetary trial cases | 80% | 85% | 86% | 84% | 89% | 92% | 78% | 80% | 90% | 80% | 80% |
| | 6. Percent of favorable resolutions in non-monetary appellate cases | 89% | 89% | 92% | 93% | 91% | 87% | 87% | 85% | 90% | 85% | 85% |
| Efficiency | 7. Ratio of dollars defeated and recovered to dollars obligated for litigation | \$72 | \$79 | \$64 | \$67 | \$60 | \$60 | \$49 | \$42 | \$37 | \$43 | \$44 |
| Vaccine Injury Compensation Program | | | | | | | | | | | | |
| Outcome | 8. Percentage of cases where the deadline for filing the government's response to petitioner's complaint (the Rule (4b) report) is met once the case has been deemed complete | N/A | N/A | N/A | 75% | 84% | 82% | 83% | 86% | 95% | 86% | 86% |
| | 9. Median time to process an award for damages (in days) | N/A | 533 | 564.5 | 529.5 | 484 | 335 | 483 | 475 | 445 | 465 | TBD |
| | 10. Percentage of cases in which judgment awarding compensation is rejected and an election to pursue a civil action is filed | N/A | 0% | 1.5% | 0% | 0% | 0% | 0% | 0% | 0% | 0% | 0% |

PERFORMANCE MEASURE TABLE (CONTINUED)

| Performance Report and Performance Plan Targets | | FY 2001 | FY 2002 | FY 2003 | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 | | FY 2009 | FY 2010 |
|---|--|---------|---------|---------|---------|---------|--------------|--------------|--------------|-------------|-------------|--------------|
| | | Actual | Actual | Actual | Actual | Actual | Actual | Actual | Actual | Target | Actual | Target |
| | 11. Average claim processing time (in days) | N/A | 995 | 1,021 | 738 | 894 | 834 | 1,337 | 1,433 | 1,280 | 1,653 | 1,300 |
| Efficiency | 12. Percentage of cases in which settlements are completed within the court-ordered 15 weeks | N/A | 80% | 92% | 80% | 95% | 98% | 96% | 92% | 100% | 92% | 92% |
| Radiation Exposure Compensation Program | | | | | | | | | | | | |
| Efficiency | 13. Reduce backlog of pending claims by 60% by FY 2011 | N/A | N/A | N/A | N/A | 2,021 | .5% 2,032 | (60%) 807 | (23%) 619 | (0%) 618 | (2%) 606 | (33%) 404 |
| | 14. Reduce average claim processing time to 200 days by FY 2011 | N/A | N/A | N/A | N/A | 316 | 339 | 298 | 258 | 156 | 239 | 219 |
| | 15. Percentage of claims paid within six weeks of Program receipt of acceptance form | N/A | N/A | 37% | 51% | 63% | 71% | 91% | 80% | 89% | 85% | 90% |
| | 17. Percentage of claims appeals adjudicated within 90 days of filing administrative appeal | N/A | N/A | N/A | 77% | 84% | 100% | 97% | 90% | 100% | 92% | 95% |
| | 18. Percentage of claims adjudicated within 12 months or less (RECA) | 88% | 64% | 74% | 55% | 71% | 66% | 71% | 71% | 93% | 75% | 80% |

Performance, Resources, and Strategies

Performance Plan and Report for Outcomes

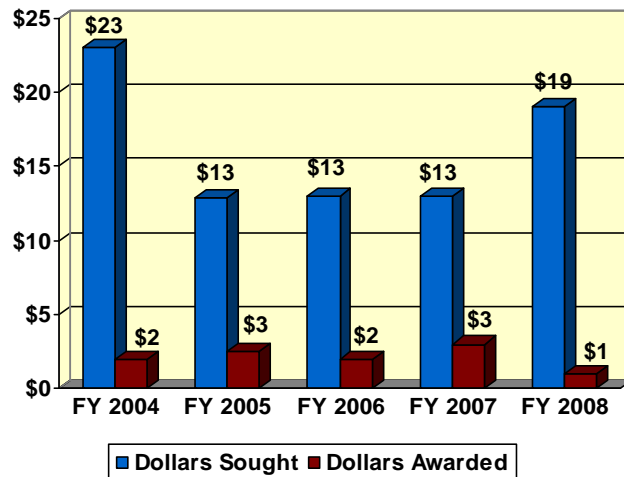
The data presented in the Performance and Resources Table demonstrate the Civil Division's consistent success in meeting performance targets in support of the Department's Strategic Objective 2.7 to "vigorously enforce and represent the interests of the United States in all matters over which the Department has jurisdiction." The following cases highlight how Civil has recently worked to protect the public fisc, defend U.S. policies, and enforce civil statutes.

Between FY 2004 and FY 2008, more than \$70 billion was saved as a result of the Civil Division's successful defense against unmeritorious claims. In FY 2008 alone, the Division defeated \$18 billion in unmeritorious claims. Significant victories include the following:

- **Cobell** *Cobell v. Salazar* is a multi-billion dollar class action filed against the Departments of the Interior and Treasury. Plaintiffs – approximately 300,000 Native Americans – seek a full accounting of their Individual Indian Trust accounts. On January 30, 2008, after a trial, the D.C. District Court found that an accounting is impossible to perform. On August 7, 2008, after a second trial, the court ordered the government to pay \$455.6 million to plaintiffs as a remedy in the absence of an accounting. This amount is a small fraction of the \$47 billion sought by plaintiffs. The district court certified its order for immediate interlocutory appeal and the D.C. Circuit agreed to consider it. Briefing concluded in April 2009, and oral argument will be scheduled sometime thereafter.

- **Regulatory Takings** In February 2009, the Court of Federal Claims dismissed a \$15 billion regulatory takings claim in *Energy Security of America Corp. v. United States*. The plaintiffs were owners of patents relating to a process for the gasification of coal and alleged that the process would reduce coal plant emissions and allow the production of clean burning synthetic gasoline. They argued that the Department of Energy, by financing the development of competing technologies, rendered their patents worthless. The court granted the government's motion to dismiss for lack of subject matter jurisdiction and failure to state a claim.

Defensive Cases Closed
(\$ in Billions)



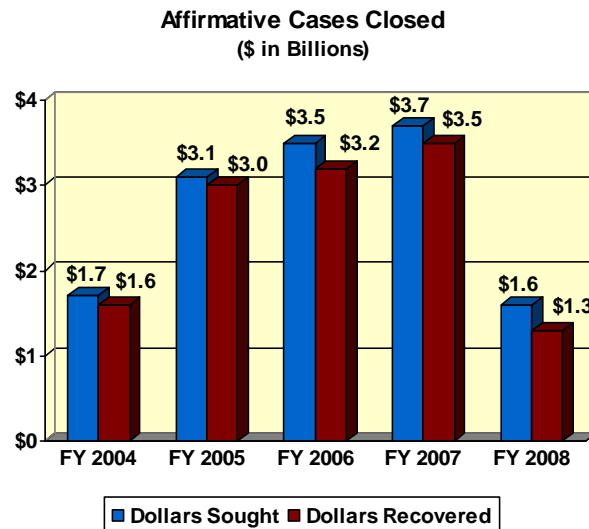
- **Spent Nuclear Fuel** The Division successfully limited an excessive damage claim in *Boston Edison Co. and Entergy Nuclear Generation Co. v. United States*. The plaintiff nuclear utility held a contract with the Department of Energy for the disposal of its spent

nuclear fuel beginning in January 1998. The utility then sold its nuclear reactors and sued the United States alleging that the sales price for the plant was reduced because of Energy’s partial breach of contract. The utility had claimed damages of \$123 million, but was awarded only \$40 million after a trial.

Over the last five years, the Division has also made significant affirmative recoveries totaling \$12.6 billion. Most were the result of procurement and *qui tam* health care fraud matters. The following cases are particularly noteworthy:

- **Health Care Fraud** In February 2008, Merck & Company agreed to pay more than \$650 million to resolve allegations that it failed to pay proper rebates to Medicaid and offered deep discounts for Zocor and Vioxx if hospitals used large quantities of those drugs in place of competitors’ brands. The government will receive more than \$360 million of this settlement. In August 2008, Amerigroup Corporation agreed to pay \$225 million to resolve federal and state Medicaid fraud claims. Amerigroup was paid by the United States and the state of Illinois to operate a Medicaid managed care health plan to provide health care to low income people. It was required by law to enroll all eligible beneficiaries. The United States and Illinois brought claims against the company alleging that it violated this requirement and avoided enrolling unhealthy patients, as well as pregnant women, who were more costly to treat and would have eroded Amerigroup’s profit margin.

- **Procurement Fraud** In August 2008, Pratt & Whitney agreed to pay the United States over \$52 million to resolve False Claims Act allegations that it knowingly sold defective turbine blade replacements for jet engines used in military aircraft. The engines power the large fleet of F-15 and F-16 fighter aircraft used primarily by the U.S. Air Force. A defect in the turbine blades caused the crash of an F-16 fighter aircraft in June 2003; the pilot ejected safely.



- **Mortgage Fraud** National City Mortgage Inc. agreed to pay the United States \$4.6 million to settle allegations concerning federally insured loans for mortgages submitted to the Department of Housing and Urban Development (HUD). National City has “direct endorsement” authority to underwrite HUD-insured mortgage loans and submit them to HUD for insurance endorsement. HUD regulations require that the lender make certain certifications to the Federal Housing Administration when it is submitting loan applications for insurance coverage more than 60 days from the loan closing. One such requirement is that the loan payment is not more than 30 days past due when submitted

for insurance coverage. The government alleges that National City improperly submitted 58 loans for insurance coverage that were not current.

The following cases are representative of the non-monetary suits handled by Division attorneys on a daily basis:

- **Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF)** In *Akins v. United States*, the developer of a device for accelerating the firing rate of a semi-automatic weapon sued ATF when it concluded that this device qualified as a machine gun after initially finding that it did not. A district court entered summary judgment in favor of ATF finding that ATF “adopted its new position . . . based on its experience and a reasoned analysis.”
- **Telephone Consumer Protection Act** This Act prohibits unsolicited commercial facsimile transmissions. In *Holtzman v. Caplice*, the defendant filed a motion to dismiss, arguing that the Act violated his First Amendment right to free speech and imposed excessive fines in violation of the Fifth Amendment. The district court denied the motion to dismiss and upheld the Act’s provisions as directly advancing a substantial government interest.
- **Challenge to U.S. Nuclear Weapons in Italy** Plaintiffs in this case, including an Italian anti-nuclear weapon organization, filed an action seeking a mandatory injunction requiring the United States to remove all nuclear weapons, if any, from its base in Aviano, Italy. The United States obtained a stay on all proceedings pending a determination by Italy’s Supreme Court of Cassation on whether or not Italian courts have jurisdiction to hear such a challenge. The United States disputed the Italian courts’ jurisdiction, asserting sovereign immunity under customary international law, as well as the rights and obligations of the United States and Italy under various treaties, including the NATO treaty. In February 2009, the Court adopted the United States’ position, ruling that Italian courts lack jurisdiction to hear the matter.
- **Public Company Accounting Oversight Board** In the wake of the Enron scandal, Congress created this Board to regulate the accounting industry. A lawsuit challenged the constitutionality of the Board under the Appointments Clause and separation of powers principles. The D.C. Circuit rejected these challenges.
- **Specialized Torts - Bivens** On May 6, 2008, the court granted the federal defendant’s motion to dismiss in *Sutherland v. Mizer*. These actions were brought by a plaintiff who alleged that he was wrongfully persecuted for two murders and an attempted murder. The federal defendants included two Federal Bureau of Investigation (FBI) Special Agents and the United States. The plaintiff alleged that he was prosecuted in retaliation for his refusal to serve as a confidential informant for the FBI. He alleged that his rights under federal constitutional and state law were violated. The court held that the Special Agents were entitled to qualified immunity with respect to the constitutional claims, and that the plaintiff failed to state any claims under the Federal Tort Claims Act.

- **Pharmaceutical Safety** In *CareToLive v. von Eschenbach*, the cancer advocacy group CareToLive brought claims against an individual FDA official and an outside researcher who served as a Special Government Employee on an FDA advisory committee. CareToLive is comprised of prostate cancer patients and investors in a company with a pending FDA application seeking approval of a new prostate cancer treatment. FDA had requested more data rather than approving the drug, leading to the suit. On November 21, 2007, the court dismissed official-capacity claims against various officials for lack of subject matter jurisdiction. CareToLive also brought individual-capacity claims alleging various conspiracies to deny prostate cancer patients their rights. On December 4, 2007, the court dismissed these claims on the merits and in August 2008, the Sixth Circuit Court of Appeals affirmed the dismissal.
- **Immigration** On May 27, 2008, the Ninth Circuit Court of Appeals, in a published decision in *Ortiz-Magana v. Mukasey*, upheld the Board of Immigration Appeals' finding that an alien was removable as an aggravated felon for his conviction for assault with a deadly weapon, even though he was only convicted as an aider or abettor in the act. Rejecting his argument, the court held that aliens are removable for a crime of violence whether or not they are convicted as an aider, abettor or principal.

Strategies to Accomplish Outcomes

The Civil Division has achieved extraordinary success despite internal and external challenges. This is due in large part to the use of the following innovative strategies:

- Retain cases that require coordination at the seat of government or subject matter expertise possessed by the Civil Division, as well as cases assigned to national and foreign courts.
- Improve information dissemination between the Civil Division and the United States Attorneys to promote and maintain uniform litigation positions.
- Work with client agencies, as well as law enforcement entities, such as the FBI, to ensure the best possible representation of the government's interests.
- Recruit a high-caliber legal staff with expertise that will best promote successful litigation. Structure support staff to take full advantage of new technologies that promote efficiency and productivity.
- Maximize resources by improving cash management and utilizing authority to obtain reimbursements. Develop new alternative funding sources.
- Invest in new technologies and litigation support services such as ALS to maximize productivity, meet court mandates, and prevail on behalf of the government.

Program Increase

Item Name: **Combating Financial Fraud and Protecting the Federal Fisc**

Budget Decision Unit: Legal Representation

Strategic Goal & Objective: Goal 2, Objective 2.7

Organizational Program: Commercial Litigation, Federal Programs, Appellate Branches

Program Increase: Positions 118 Attorney 87 FTE 28 Dollars \$10,000,000

Description of Item

The Civil Division will play a crucial role in the Federal Financial Rescue effort. Congress enacted two pieces of legislation to jumpstart the economy, provide employment opportunities, and reinforce infrastructure. The first was enacted on October 3, 2008 as part of the Emergency Economic Stabilization Act of 2008. This legislation created an Office of Financial Stability within the Department of the Treasury to establish and manage the Troubled Assets Relief Program (TARP). TARP's goal is to stabilize the financial sector by purchasing up to \$700 billion in "troubled" assets from financial institutions. The second, the American Recovery and Reinvestment Act of 2009 (Economic Stimulus), was enacted on February 17, 2009, to stimulate the economy at a cost of approximately \$787 billion.

These exceptional programs will potentially result in massive litigation, including many claims that are wildly exaggerated. Should the government be unable to assert its position, it could sustain losses to the federal fisc *in addition to* the direct costs of these programs. Of equal, if not more, concern is the likelihood that some of the outlays associated with the programs are subject to fraud, waste, and abuse. As such activity is identified, litigation will be pursued to recoup the government's losses.

Without representation of the government's interests in the implementation of these sweeping new programs, the deficit is sure to increase beyond the financial investments intended by the laws themselves. The budget includes 118 positions (including 87 attorneys), 28 FTE, and \$10 million (including \$5 million for automated litigation support services). While the government's financial packages are unprecedented, the Civil Division has had substantial experience in representing the United States in similar litigation. In previous matters, the Civil Division has saved the taxpayers many billions of dollars over the government's investment in litigation.

Justification

Civil Division attorneys will serve in a variety of roles given the different types of litigation that are expected.

Fraud

In order to pursue unscrupulous lenders and others who have defrauded the government – and thereby both protect the integrity of federal programs and recover the funds needed to make the programs work – the Section will need adequate resources to pursue such matters. It has been the Department's experience that augmentation of agency Inspector General (IG) resources translates into additional referrals to DOJ. Accordingly, the Fraud Section is expecting a sharp increase in referrals from the following sources:

- Department of the Treasury Special Inspector General

Congress created this Special IG specifically for TARP and appropriated \$50 million to staff the office. The Special IG’s duty is “to conduct, supervise, and coordinate audits and investigations of the purchase, management, and sale of assets by the Secretary of the Treasury.”⁴ The Civil Division is already coordinating with the Special IG to ensure timely referral of potential cases, and to provide appropriate advice and training. The first referrals are expected by the end of this fiscal year.

*“(g) Funding.—
 (1) Of the amounts made available to the Secretary of the Treasury under section 118, \$50,000,000 shall be available to the Special Inspector General to carry out this section.
 (2) The amount available under paragraph (1) shall remain available until expended.”*

- Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343, § 121.

- Other Federal Agency Inspectors General

The Economic Stimulus provides an additional \$252 million for Inspectors General at various federal agencies, including the Department of Health and Human Services (HHS). The IG at HHS is expected to refer additional cases as he investigates health care fraud. An increase in referrals from other agencies is expected as well.

- FBI Agents

Recent and continuing efforts to investigate and prosecute mortgage lending fraud, as exemplified by the FBI’s Operation Malicious Mortgage, are likely to uncover substantial and increased fraud on the Federal Housing Administration (FHA), Veterans Administration and Farmers Home Administration government-backed mortgage programs. Moreover, in light of the current state of the mortgage lending market and the recently authorized stimulus package, FHA lending is expected to increase significantly, raising the potential for fraud. The number of these cases is expected to at least double in each fiscal year for the next three fiscal years, creating the need for additional attorneys to work on these matters. These matters are often resource-intensive because defendants frequently choose to litigate rather than settle these cases.

- *Qui Tam* Filings

To the extent that there might be compliance issues with respect to the restrictions imposed by the TARP legislation, it is possible that the Division will receive matters filed by whistleblowers. A bill has been introduced in the Senate (S. 386) proposing various amendments to the False Claims Act that would enhance the ability of DOJ to pursue fraud involving the TARP program.

Contract Claims

Possible bid protests and takings litigation is expected. In addition, the Treasury and banking agencies may enter into agreements with banking institutions that may result in numerous

⁴ Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343, § 121.

contract claims. These would pose the possibility of complex and high-stakes litigation, with billions of dollars likely at issue.

Bankruptcy

Chapter 11 bankruptcy filings have already increased dramatically over the last five months and this trend is expected to continue. If institutions that receive government funds or guarantees file for bankruptcy, additional litigation will ensue. Troubled assets acquired with TARP funds that must be liquidated or otherwise generate disputes will also engender major litigation involving the government. Institutions which, in addition, may already have existing regulatory, loan, and contract relationships with the government may also come into play. This will also pose unique challenges associated with the existence of multiple federal agency interests, complex asset valuation disputes, and sophisticated feasibility issues regarding any proposed reorganization plans. These challenges will be compounded dramatically if GM or Chrysler or other automobile-related entities file, especially if the United States agrees to provide debtor-in-possession financing.

Statutory Challenges and Appeals

Statutory and administrative challenges are likely. The existing regulatory and contractual interests of multiple federal agencies must be protected. Even a slight statutory change could involve billions of dollars. In addition, appeals to any and all of the above types of cases are likely.

Automated Litigation Support (ALS)

Of the \$10 million request for this financial litigation, \$5 million is for ALS. This money will be used to develop the ALS infrastructure required to support the above litigation. The infrastructure will support an array of services, including document collection and review, and the creation of databases. This is essential for the number of complex cases the Division anticipates.

TARP and the Economic Stimulus are also likely to result in a cascade of fraud cases, as the government investigates the provenance of the toxic assets, and as stimulus funds are contracted out. The Civil Division has vast experience in providing ALS to such fraud cases. For example, the Pharma family of cases involves the marketing and billing practices for numerous drugs by pharmaceutical companies. Full scale support for these cases includes the retention of large consulting contractors and the development of databases designed to pinpoint patterns of fraud and support attorneys in their efforts to uncover wrongdoing. With respect to defensive cases, the Civil Division faced a similar situation in the *Winstar* cases, which involved accounting changes at numerous savings and loan institutions as a result of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). These cases could not have been litigated without ALS. At its peak, this family of litigation was comprised of 130 cases involving 400 financial institutions, many of which were represented by well-funded law firms that had access to litigation support services far in excess of the government's ALS. Cases concerning the implementation of TARP could dwarf the size of the *Winstar* litigation.

Impact on Performance

The extent of this litigation remains largely unknown. However, as described above, the Civil Division has two past experiences from which to draw guidance. The first is the bailout of the savings and loan industry in the 1980s, which resulted in extensive defensive litigation that

continues to this day. Plaintiffs sought over \$30 billion in contract breach damages resulting from the enactment of FIRREA. The amounts awarded in judgments and settlements thus far have averaged six cents on the dollar of the amounts claimed. The second is the enactment of the Health Insurance Portability and Accountability Act, which created resources for both Inspectors General and litigation. The HHS IG referred, and continues to refer, health care fraud cases to the Civil Division. Between the whistleblower cases and the HHS IG, health care fraud recoveries have exceeded \$5 billion.

These two examples highlight the Civil Division's success in high-stakes, complex, and lengthy litigation. The Civil Division's efforts will not only protect American investors and markets, but they are also likely to have a high rate of return on the government's initial investment of resources.

Funding – Combating Financial Fraud and Protecting the Federal Fisc

Base Funding

| FY 2008 Enacted | | | | FY 2009 Enacted | | | | FY 2010 Current Services | | | |
|-----------------|------|-----|---------|-----------------|------|-----|---------|--------------------------|------|-----|---------|
| Pos | Atty | FTE | \$(000) | Pos | Atty | FTE | \$(000) | Pos | Atty | FTE | \$(000) |
| 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

Personnel Increase Cost Summary

| Type of Position | Modular Cost per Position | Number of Positions Requested | FY 2010 Request (\$000) | FY 2011 Net Annualization (change from 2010) (\$000) |
|------------------------|---------------------------|-------------------------------|-------------------------|--|
| Attorney | \$46,759 | 87 | \$4,068 | \$13,721 |
| Paralegal | \$28,231 | 13 | 367 | 879 |
| Clerical | \$29,889 | 18 | 538 | 951 |
| Total Personnel | | 118 | 4,973 | 15,551 |

Non-Personnel Increase Cost Summary

| Non-Personnel Item | Unit Cost | Quantity | FY 2010 Request (\$000) | FY 2011 Net Annualization (Change from 2010) (\$000) |
|------------------------------|-----------|----------|-------------------------|--|
| Automated Litigation Support | | | \$5,027 | \$50 |
| Total Non-Personnel | | | 5,027 | 50 |

Total Request for this Item

| | Pos | Atty | FTE | Personnel (\$000) | Non-Personnel (\$000) | Total (\$000) |
|--------------------|------------|-----------|-----------|-------------------|-----------------------|-----------------|
| Current Services | 0 | 0 | 0 | 0 | 0 | 0 |
| Increases | 118 | 87 | 28 | \$4,973 | \$5,027 | \$10,000 |
| Grand Total | 118 | 87 | 28 | \$4,973 | \$5,027 | \$10,000 |

Program Increase

Item Name: **Immigration Litigation**

Budget Decision Unit: Legal Representation

Strategic Goal & Objective: Goal 2; Objective 2.5

Organizational Program: Office of Immigration Litigation

Program Increase: Positions 19 Attorney 15 FTE 9 Dollars \$1,760,000

Description of Item

During the past 10 years, illegal immigration has become a preeminent concern for the U.S. government and the public. Enforcement begins with the Department of Homeland Security's (DHS) Immigration and Custom Enforcement (ICE) agents who detain illegal aliens and initiate legal proceedings for removal. After apprehension, the alien is entitled to a hearing before an immigration judge in one of 52 nationwide immigration courts managed by DOJ's Executive Office for Immigration Review (EOIR). Upon receiving an adverse ruling from the immigration judge, the alien may petition EOIR's Board of Immigration Appeals (BIA) to review the case. If the alien again receives an unfavorable decision, he may file an appeal in one of the 13 federal circuit courts of appeals. The Office of Immigration Litigation (OIL) within DOJ's Civil Division handles all circuit appeals to ensure that the government's position in immigration enforcement cases is uniform and consistent.

OIL's caseload growth is unyielding year to year. From 2002 to 2008, OIL's workload more than tripled in size due to DHS enforcement efforts and EOIR's streamlining initiatives. Statutory changes, as well as new DHS or EOIR initiatives, will certainly cause continued caseload growth for OIL. For example, DHS began to implement a new initiative, Secure Communities, in FY 2008 which will most likely cause a 25 percent increase in OIL's caseload. Therefore, the Civil Division requests an additional 19 positions (15 attorneys), 9 FTE, and \$1,760,000 for FY 2010. These resources are necessary to ensure OIL's ability to continue its successful and unified defense of the laws governing immigration policy and enforcement in court.

Justification

DHS's Office of Immigration Statistics estimated that as of January 2008, there were 11.6 million illegal aliens living in the United States. The majority of OIL's attorney time is devoted to responding to thousands of review petitions filed in circuit courts that seek to overturn removal decisions issued by DHS and EOIR each year. However, there is also an increasing amount of litigation in the district courts. These cases take the form of challenges to benefits denials (and delays in benefits adjudications), as well as challenges made by aliens being detained by ICE, both during the removal proceedings and pending execution of removal orders. All together, these district court challenges add several thousand cases to OIL's caseload, in addition to the already thousands of removal petitions received each year.

OIL's workload is now so large that immigration cases comprise approximately one-third of the total cases handled annually by the entire Civil Division. Moreover, by the end of FY 2008, immigration cases comprised over 40 percent of the docket of the Second Circuit Court of

Appeals and over one-third of the docket of the Ninth Circuit Court of Appeals. Vigorous defense of these cases is critical to national security and the safety of our communities.

DHS enforcement efforts and resources have steadily increased since FY 2001. In response, OIL's caseload has grown significantly, from approximately 7,000 cases in FY 2002 to well over 23,000 cases in FY 2008. OIL must be prepared for the possibility of increased enforcement activities by DHS in the future. If the FY 2010 President's Budget is enacted, DHS plans to spend \$1.4 billion on ICE's efforts to identify and deport illegal aliens who have committed crimes.

This additional funding will support DHS' new immigration enforcement initiative, Secure Communities, approved by Congress in FY 2008. This initiative represents a new comprehensive approach to identify, prioritize, process, detain, and remove all criminal aliens held in U.S. prisons and jails. Specifically, Secure Communities calls for more efficient removal efforts, through the utilization of on-site hearings and video-conferencing. Any such streamlining of DHS' enforcement activities will result in a corresponding impact on EOIR and OIL. Based on the historical association between increases in DHS enforcement resources and OIL's workload, the Civil Division anticipates that this initiative could result in thousands more removal petitions. Statutory changes must also be anticipated, as immigration reforms and policies are frequently passed by Congress. Any changes in immigration laws, including any future efforts at comprehensive immigration reform, could lead to an additional increase in the number of aliens challenging their removal orders, as well as a commensurate increase in related litigation, such as challenges to benefits denials by Citizenship and Immigration Services.

Impact on Performance

OIL's workload is expected to increase to nearly 29,000 cases by FY 2010. In order for increased efforts by DHS and EOIR to be fully realized, OIL must fulfill its role in defending the nation's immigration laws at the highest level of judicial review. The budget includes an increase of 19 positions (15 attorneys), 9 FTE, and \$1,760,000 for FY 2010. This funding is necessary to provide the additional support OIL will require to continue to fulfill its role in the larger system of immigration enforcement and border protection.

Funding - Immigration Litigation

Base Funding

| FY 2008 Enacted | | | | FY 2009 Enacted | | | | FY 2010 Current Services | | | |
|-----------------|------|-----|----------|-----------------|------|-----|----------|--------------------------|------|-----|----------|
| Pos | Atty | FTE | \$(000) | Pos | Atty | FTE | \$(000) | Pos | Atty | FTE | \$(000) |
| 448 | 361 | 360 | \$69,107 | 448 | 361 | 429 | \$83,664 | 448 | 361 | 429 | \$85,154 |

Personnel Increase Cost Summary

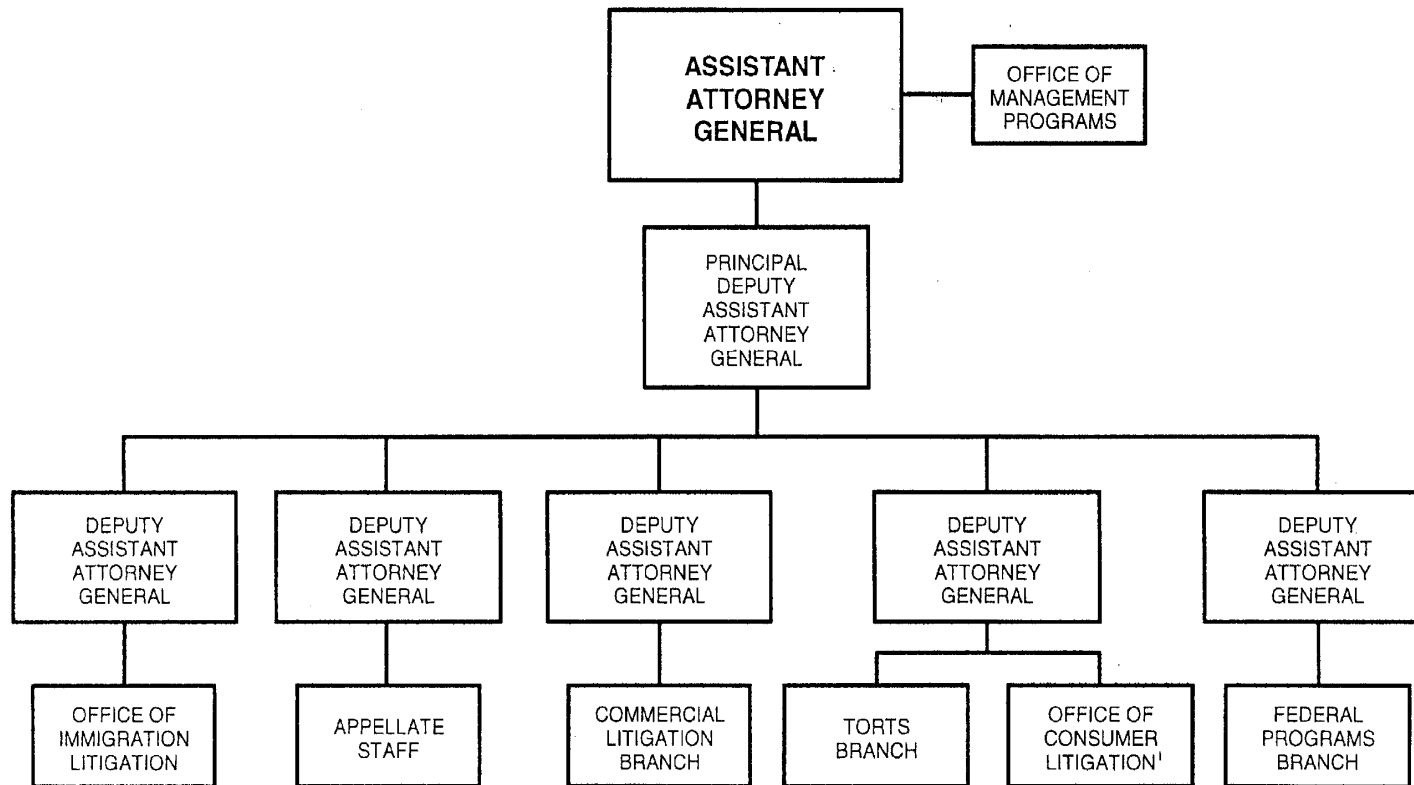
| Type of Position | Modular Cost per Position | Number of Positions Requested | FY 2010 Request (\$000) | FY 2011 Net Annualization (change from 2010) (\$000) |
|------------------------|---------------------------|-------------------------------|-------------------------|--|
| Attorney | \$103,404 | 15 | \$1,550 | \$1,517 |
| Paralegal | \$54,217 | 2 | 108 | 84 |
| Clerical | \$51,050 | 2 | 102 | 63 |
| Total Personnel | | 19 | 1,760 | 1,664 |


Total Request for this Item

| | Pos | Atty | FTE | Personnel (\$000) | Non-Personnel (\$000) | Total (\$000) |
|--------------------|------------|------------|------------|-------------------|-----------------------|-----------------|
| Current Services | 448 | 361 | 429 | \$84,081 | \$1,073 | \$85,154 |
| Increases | 19 | 15 | 9 | \$1,760 | ... | \$1,760 |
| Grand Total | 467 | 376 | 438 | \$85,841 | \$1,073 | \$86,914 |

A: Organizational Chart

CIVIL DIVISION



Approved by:  Date: August 5, 2004
JOHN ASHCROFT
Attorney General

B: Summary of Requirements

Summary of Requirements
Civil Division
Salaries and Expenses
(Dollars in Thousands)

| | 2010 Request | | |
|---|--------------|--------------|----------------|
| | Perm. Pos. | FTE | Amount |
| 2008 Enacted (with Rescissions, direct only) | 1,338 | 1,253 | \$250,114 |
| 2009 Enacted (with Rescissions, direct only) | 1,338 | 1,313 | 270,431 |
| Adjustments to Base | | | |
| Increases: | | | |
| 2010 Pay Raise (2 percent) | 0 | 0 | 2,641 |
| Annualization of 2009 Pay Raise (3.9 percent) | 0 | 0 | 1,439 |
| Retirement | 0 | 0 | 125 |
| Employment Compensation Fund | 0 | 0 | (5) |
| Health Insurance | 0 | 0 | 253 |
| DHS Security Charges | 0 | 0 | (26) |
| Moves (Lease Expirations) | 0 | 0 | 1,000 |
| Postage | 0 | 0 | 6 |
| Government Printing Office (GPO) | 0 | 0 | 43 |
| WCF Rate Increases | 0 | 0 | 82 |
| International Cooperative Administrative Support Services (ICASS) | 0 | 0 | 6 |
| Post Allowance - Cost of Living Allowance (COLA) | 0 | 0 | 3 |
| Subtotal Increases | 0 | 0 | 5,567 |
| 2010 Current Services | 1,338 | 1,313 | 275,998 |
| Program Changes | | | |
| Increases: | | | |
| Federal Financial Rescue | 118 | 28 | 10,000 |
| Immigration Litigation | 19 | 9 | 1,760 |
| Subtotal Increases | 137 | 37 | 11,760 |
| 2010 Total Request | 1,475 | 1,350 | 287,758 |
| 2009 - 2010 Total Change | 137 | 37 | 17,327 |

Summary of Requirements
 Civil Division
 Salaries and Expenses
 (Dollars in Thousands)

| Estimates by budget activity | 2008 Appropriation Enacted w/Rescissions and Supplementals | | | 2009 Enacted | | | 2010 Adjustments to Base and Technical Adjustments | | | 2010 Current Services | | | 2010 Increases | | | 2010 Offsets | | | 2010 Request | | |
|------------------------------|---|--------------|----------------|--------------|--------------|----------------|---|----------|--------------|-----------------------|--------------|----------------|----------------|-----------|---------------|--------------|----------|----------|--------------|--------------|----------------|
| | Pos. | FTE | Amount | Pos. | FTE | Amount | Pos. | FTE | Amount | Pos. | FTE | Amount | Pos. | FTE | Amount | Pos. | FTE | Amount | Pos. | FTE | Amount |
| Legal Representation | 1,338 | 1,253 | \$250,114 | 1,338 | 1,313 | \$270,431 | 0 | 0 | \$5,567 | 1,338 | 1,313 | \$275,998 | 137 | 37 | 11,760 | 0 | 0 | 0 | 1,475 | 1,350 | \$287,758 |
| Total | 1,338 | 1,253 | 250,114 | 1,338 | 1,313 | 270,431 | 0 | 0 | 5,567 | 1,338 | 1,313 | 275,998 | 137 | 37 | 11,760 | 0 | 0 | 0 | 1,475 | 1,350 | 287,758 |
| Reimbursable FTE | | 41 | | | 41 | | | 0 | | 41 | | | | 0 | | | 0 | | | 41 | |
| Total FTE | | 1,294 | | | 1,354 | | | 0 | | 1,354 | | | | 37 | | | 0 | | | 1,391 | |
| Other FTE: | | | | | | | | | | | | | | | | | | | | | |
| Overtime | | 8 | | | 8 | | | 0 | | 8 | | | | 0 | | | 0 | | | 8 | |
| Total Comp. FTE | | 1,302 | | | 1,362 | | | 0 | | 1,362 | | | | 37 | | | 0 | | | 1,399 | |

C: Program Increases/Offsets By Decision Unit

2010 Program Increases/Offsets By Decision Unit

Civil Division

(Dollars in Thousands)

| Program Increases | Legal Representation | | | | Total Increases |
|--------------------------------|-----------------------------|-------------------|------------|---------------|------------------------|
| | Pos. | Agt./Atty. | FTE | Amount | |
| Federal Financial Rescue | 118 | 87 | 28 | \$10,000 | \$10,000 |
| Immigration Litigation | 19 | 15 | 9 | 1,760 | 1,760 |
| Total Program Increases | 137 | 102 | 37 | 11,760 | 11,760 |

D: Resources by DOJ Strategic Goal and Strategic Objective

Resources by Department of Justice Strategic Goal/Objective
Civil Division
(Dollars in Thousands)

| Strategic Goal and Strategic Objective | 2008 Appropriation Enacted w/Rescissions and Supplementals | | 2009 Enacted | | 2010 Current Services | | 2010 | | | | 2010 Request | |
|---|---|-------------------------|-----------------------------|-------------------------|--------------------------------|----------------------------|--------------------------------|----------------------------|--------------------------------|----------------------------|-----------------------------------|----------------------------|
| | Direct, Reimb. Other FTE | Direct Amount \$000s | Direct, Reimb. Other FTE | Direct Amount \$000s | Direct, Reimb. Other FTE | Direct Amount \$000s | Increases | | Offsets | | Direct, Reimb. Other FTE | Direct Amount \$000s |
| | | | | | | | Direct, Reimb. Other FTE | Direct Amount \$000s | Direct, Reimb. Other FTE | Direct Amount \$000s | | |
| Goal 2: Prevent Crime, Enforce Federal Laws and Represent the Rights and Interests of the American People 2.7 Vigorously enforce and represent the interests of the United States in all matters over which the Department has jurisdiction | 1,294 | \$250,114 | 1,354 | \$270,431 | 1,354 | \$275,998 | 37 | 11,760 | 0 | 0 | 1,391 | \$287,758 |
| Subtotal, Goal 2 | 1,294 | 250,114 | 1,354 | 270,431 | 1,354 | 275,998 | 37 | 11,760 | 0 | 0 | 1,391 | 287,758 |
| GRAND TOTAL | 1,294 | 250,114 | 1,354 | 270,431 | 1,354 | 275,998 | 37 | 11,760 | 0 | 0 | 1,391 | 287,758 |

E. Justification for Base Adjustments

Justification for Base Adjustments Civil Division

Increases

2010 pay raise. This request provides for a proposed 2.0 percent pay raise to be effective in January of 2010 (This percentage is likely to change as the budget formulation process progresses). This increase includes locality pay adjustments as well as the general pay raise. The amount requested, \$2,641,000, represents the pay amounts for 3/4 of the fiscal year plus appropriate benefits (\$2,113,000 for pay and \$528,000 for benefits).

Annualization of 2009 pay raise. This pay annualization represents first quarter amounts (October through December) of the 2009 pay increase of 3.9 percent included in the 2009 President's Budget. The amount requested of \$1,439,000 represents the pay amounts for 1/4 of the fiscal year plus appropriate benefits (\$1,151,000 for pay and \$288,000 for benefits).

Retirement. Agency retirement contributions increase as employees under CSRS retire and are replaced by FERS employees. Based on U.S. Department of Justice Agency estimates, we project that the DOJ workforce will convert from CSRS to FERS at a rate of 3 percent per year. The requested increase of \$125,000 is necessary to meet our increased retirement obligations as a result of this conversion.

Employees Compensation Fund: The \$5,000 decrease reflects payments to the Department of Labor for injury benefits paid in the past year under the Federal Employee Compensation Act. This estimate is based on the first quarter of prior year billing and current year estimates.

Health Insurance: Effective January 2008, this component's contribution to Federal employees' health insurance premiums increased by 3.5 percent. Applied against the 2009 estimate of \$7,307,000, the additional amount required is \$253,000.

DHS Security Charges. The Department of Homeland Security (DHS) will continue to charge Basic Security and Building Specific Security. The requested decrease of \$26,000 is required to meet our commitment to DHS. Cost estimates were developed by DHS.

Moves (Lease Expirations). GSA requires all agencies to pay relocation costs associated with lease expirations. This request provides for the costs associated with new office relocations caused by the expiration of leases in FY 2010. Funding of \$1,000,000 is required for this account.

Postage: Effective May 11, 2009, the Postage Service implemented a rate increase of 4.8 percent. Funding of \$6,000 is required for this account.

Government Printing Office (GPO): GOP provides an estimated rate increase of 4 percent. Funding of \$43,000 is required for this account.

WCF Rate Increases. Components in the DC metropolitan area use and rely on the Department's Working Capital Fund (WCF) for support services including telecommunications services, computer services, finance services, and internet services. The WCF continues to invest in the infrastructure supporting the telecommunications services, computer services and internet services. Concurrently, several security initiatives are being implemented and additional resources are being directed to financial management in an effort to maintain a clean audit status. Funding of \$82,000 is required for this account.

International Cooperative Administrative Support Services (ICASS). Under the ICASS, an annual charge is made by the Department of State for administrative support based on the overseas staff of each federal agency. This request is based on the initial billing for post invoices and other ICASS costs. Funding of \$6,000 is required for this account.

Post Allowance - Cost of Living Allowance (COLA). For employees stationed abroad, components are obligated to pay for their COLA. COLA is intended to reimburse certain excess costs and to compensate the employee for serving at a post where the cost of living, excluding the cost of quarters and the cost of education for eligible family members, is substantially higher than in the Washington, D.C. area. \$3,000 reflects the increase in cost to support existing staffing levels.

F: Crosswalk of 2008 Availability

Crosswalk of 2008 Availability

Civil Division

Salaries and Expenses

(Dollars in Thousands)

| Decision Unit | 2008 Enacted Without Rescissions | | | Reprogrammings / Transfers | | | Reallocations | | | Carryover/ Recoveries | | | 2008 Availability | | |
|-----------------------|----------------------------------|--------------|----------------|----------------------------|----------|-----------------|---------------|----------|--------------|-----------------------|----------|--------------|-------------------|--------------|----------------|
| | Pos. | FTE | Amount | Pos. | FTE | Amount | Pos. | FTE | Amount | Pos. | FTE | Amount | Pos. | FTE | Amount |
| Legal Representation | 1,338 | 1,253 | \$250,114 | 0 | 0 | (10,200) | 0 | 0 | \$3,701 | 0 | 0 | \$2,380 | 1,338 | 1,253 | \$245,995 |
| TOTAL | 1,338 | 1,253 | 250,114 | 0 | 0 | (10,200) | 0 | 0 | 3,701 | 0 | 0 | 2,380 | 1,338 | 1,253 | 245,995 |
| Reimbursable FTE | | 41 | | | | | | | | | | | | 41 | |
| Total FTE | | 1,294 | | | 0 | | | 0 | | | 0 | | | 1,294 | |
| Other FTE | | | | | | | | | | | | | | | |
| Overtime | | 8 | | | 0 | | | 0 | | | 0 | | | 8 | |
| Total Compensable FTE | | 1,302 | | | 0 | | | 0 | | | 0 | | | 1,302 | |

Reprogrammings. A reprogramming to Antitrust Division of \$4,200,000 was approved by Congress in May 2008.

Transfers. The Civil Division transferred \$6,000,000 of unobligated balances to the GLA Automated Litigation Support (ALS) account authorized by P.L. 110-161.

Reallocations. The Division received \$4,200,000 from the GLA ALS account. Reallocations of \$499,000 were made to other components.

Carryover/Recoveries. Funds were carried over into FY 2008 from the GLA ALS account and other miscellaneous no year accounts.

G: Crosswalk of 2009 Availability

Crosswalk of 2009 Availability

Civil Division
Salaries and Expenses
(Dollars in Thousands)

| Decision Unit | 2009 Enacted | | | Reprogrammings / Transfers | | | Carryover/ Recoveries | | | 2009 Availability | | |
|-----------------------|--------------|--------------|----------------|----------------------------|----------|----------|-----------------------|----------|------------|-------------------|--------------|----------------|
| | Pos. | FTE | Amount | Pos. | FTE | Amount | Pos. | FTE | Amount | Pos. | FTE | Amount |
| Legal Representation | 1,338 | 1,313 | \$270,431 | 0 | 0 | 0 | 0 | 0 | \$382 | 1,338 | 1,313 | \$270,813 |
| TOTAL | 1,338 | 1,313 | 270,431 | 0 | 0 | 0 | 0 | 0 | 382 | 1,338 | 1,313 | 270,813 |
| Reimbursable FTE | | 41 | | | | | | | | | 41 | |
| Total FTE | | 1,354 | | | 0 | | | 0 | | | 1,354 | |
| Other FTE | | | | | | | | | | | | |
| Overtime | | 8 | | | 0 | | | 0 | | | 8 | |
| Total Compensable FTE | | 1,362 | | | 0 | | | 0 | | | 1,362 | |

Carryover/Recoveries. Funds were carried over into FY 2009 from the GLA VCRP and other miscellaneous no year accounts.

H: Summary of Reimbursable Resources

Summary of Reimbursable Resources

Civil Division
Salaries and Expenses
(Dollars in Thousands)

| Collections by Source | 2008 Enacted | | | 2009 Planned | | | 2010 Request | | | Increase/Decrease | | |
|---|--------------|-----------|----------------|--------------|-----------|----------------|--------------|-----------|---------------|-------------------|----------|-----------------|
| | Pos. | FTE | Amount | Pos. | FTE | Amount | Pos. | FTE | Amount | Pos. | FTE | Amount |
| Office of Debt Collection (Request) | 0 | 0 | \$12,516 | 0 | 0 | \$21,801 | 0 | 0 | \$27,202 | 0 | 0 | \$5,401 |
| Department of Defense | 0 | 0 | 50 | 0 | 0 | 50 | 0 | 0 | 50 | 0 | 0 | 0 |
| Department of the Navy | 0 | 0 | 1,162 | 0 | 0 | 1,180 | 0 | 0 | 1,000 | 0 | 0 | (180) |
| Department of the Air Force | 0 | 0 | 4,456 | 0 | 0 | 3,830 | 0 | 0 | 3,800 | 0 | 0 | (30) |
| Department of the Army | 0 | 0 | 1,025 | 0 | 0 | 1,100 | 0 | 0 | 500 | 0 | 0 | (600) |
| Corps of Engineers | 0 | 0 | 22,253 | 0 | 0 | 23,000 | 0 | 0 | 18,000 | 0 | 0 | (5,000) |
| Department of Treasury | 0 | 0 | 11,445 | 0 | 0 | 6,700 | 0 | 0 | 4,240 | 0 | 0 | (2,460) |
| Department of Energy | 0 | 0 | 12,998 | 0 | 0 | 8,015 | 0 | 0 | 6,000 | 0 | 0 | (2,015) |
| Department of Treasury, Vaccine Injury Compensation | 0 | 41 | 6,833 | 0 | 41 | 7,833 | 0 | 41 | 9,333 | 0 | 0 | 1,500 |
| Department of Agriculture | 0 | 0 | 1,100 | 0 | 0 | 387 | 0 | 0 | 0 | 0 | 0 | (387) |
| Department of Interior | 0 | 0 | 7,177 | 0 | 0 | 5,649 | 0 | 0 | 710 | 0 | 0 | (4,939) |
| Department of Veterans Administration | 0 | 0 | 486 | 0 | 0 | 500 | 0 | 0 | 500 | 0 | 0 | 0 |
| Department of Veterans Affairs | 0 | 0 | 950 | 0 | 0 | 1,000 | 0 | 0 | 1,000 | 0 | 0 | 0 |
| Department of Labor | 0 | 0 | 214 | 0 | 0 | 174 | 0 | 0 | 185 | 0 | 0 | 11 |
| Department of Homeland Security | 0 | 0 | 2,556 | 0 | 0 | 14,500 | 0 | 0 | 0 | 0 | 0 | (14,500) |
| U S Coast Guard | 0 | 0 | 0 | 0 | 0 | 250 | 0 | 0 | 150 | 0 | 0 | (100) |
| NASA | 0 | 0 | 0 | 0 | 0 | 1,189 | 0 | 0 | 0 | 0 | 0 | (1,189) |
| Health Care Fraud and Abuse Account | 0 | 0 | 15,979 | 0 | 0 | 16,069 | 0 | 0 | 16,079 | 0 | 0 | 10 |
| General Services Administration | 0 | 0 | 7 | 0 | 0 | 27 | 0 | 0 | 27 | 0 | 0 | 0 |
| Federal Trade Commission | 0 | 0 | 7 | 0 | 0 | 50 | 0 | 0 | 50 | 0 | 0 | 0 |
| Architect of the Capitol | 0 | 0 | 47 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Mansfield Foundation | 0 | 0 | 282 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Office of the Attorney General | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Antitrust Division | 0 | 0 | 190 | 0 | 0 | 191 | 0 | 0 | 195 | 0 | 0 | 4 |
| Federal Bureau of Investigation | 0 | 0 | 1,700 | 0 | 0 | 1,200 | 0 | 0 | 1,200 | 0 | 0 | 0 |
| U S Attorneys | 0 | 0 | 50 | 0 | 0 | 50 | 0 | 0 | 50 | 0 | 0 | 0 |
| Tax Division | 0 | 0 | 367 | 0 | 0 | 75 | 0 | 0 | 75 | 0 | 0 | 0 |
| National Labor Relations Board | 0 | 0 | 25 | 0 | 0 | 25 | 0 | 0 | 25 | 0 | 0 | 0 |
| Comptroller of the Currency | 0 | 0 | 62 | 0 | 0 | 50 | 0 | 0 | 50 | 0 | 0 | 0 |
| Office of Legal Policy | 0 | 0 | 88 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Office of Attorney Personnel | 0 | 0 | 34 | 0 | 0 | 40 | 0 | 0 | 40 | 0 | 0 | 0 |
| Budgetary Resources: | 0 | 41 | 104,060 | 0 | 41 | 114,935 | 0 | 41 | 90,461 | 0 | 0 | (24,474) |

I: Detail of Permanent Positions by Category

Detail of Permanent Positions by Category
Civil Division
Salaries and Expenses

| Category | 2008 Enacted w/Rescissions and Supplementals | 2009 Enacted | ATBs | 2010 Request | | | |
|--|--|------------------|----------|----------------------|----------------------|----------------------|---------------------|
| | Total Authorized | Total Authorized | | Program Increases | Program Decreases | Total Pr. Changes | Total Authorized |
| Attorneys (905) | 957 | 957 | 0 | 102 | 0 | 102 | 1,059 |
| Paralegals / Other Law (900-998) | 141 | 141 | 0 | 15 | 0 | 15 | 156 |
| Clerical and Office Services (300-399) | 240 | 240 | 0 | 20 | 0 | 20 | 260 |
| Total | 1,338 | 1,338 | 0 | 137 | 0 | 137 | 1,475 |
| Headquarters (Washington, D.C.) | 1,319 | 1,319 | 0 | 137 | 0 | 137 | 1,456 |
| U.S. Field | 18 | 18 | 0 | 0 | 0 | 0 | 18 |
| Foreign Field | 1 | 1 | 0 | 0 | 0 | 0 | 1 |
| Total | 1,338 | 1,338 | 0 | 137 | 0 | 137 | 1,475 |

J: Financial Analysis of Program Changes

Financial Analysis of Program Changes

Civil Division

Salaries and Expenses

(Dollars in Thousands)

| Grades: | Federal Financial Rescue | | Immigration Litigation | | Program Changes | |
|--|--------------------------|---------------|------------------------|--------------|-----------------|---------------|
| | Pos. | Amount | Pos. | Amount | Pos. | Amount |
| GS-14 | 87 | \$10,331 | 15 | \$1,781 | 102 | \$12,112 |
| GS-9 | 13 | 668 | 2 | 103 | 15 | 771 |
| GS-7 | 18 | 757 | 2 | 84 | 20 | 841 |
| Total positions & annual amount | 118 | 11,756 | 19 | 1,968 | 137 | 13,724 |
| Lapse (-) | (90) | (9,752) | (10) | (989) | (100) | (10,741) |
| Other personnel compensation | 0 | 5 | 0 | 2 | 0 | 7 |
| Total FTE & personnel compensation | 28 | 2,009 | 9 | 981 | 37 | 2,990 |
| Personnel benefits | | 545 | | 264 | | 809 |
| Travel and transportation of persons | | 79 | | 40 | | 119 |
| Transportation of things | | 16 | | 8 | | 24 |
| Communication, rents, and utilities | | 51 | | 32 | | 83 |
| Printing | | 25 | | 11 | | 36 |
| Other services | | 6,039 | | 207 | | 6,246 |
| Purchases of goods & services from Government accounts | | 603 | | 108 | | 711 |
| Medical Care | | 1 | | 1 | | 2 |
| Supplies and materials | | 28 | | 14 | | 42 |
| Equipment | | 604 | | 94 | | 698 |
| Total, 2010 program changes requested | 28 | 10,000 | 9 | 1,760 | 37 | 11,760 |

K: Summary of Requirements by Grade

Summary of Requirements by Grade

Civil Division
Salaries and Expenses

| Grades and Salary Ranges | 2008 Enacted w/Rescissions and Supplementals | | 2009 Enacted | | 2010 Request | | Increase/Decrease | |
|--------------------------------------|--|------------------|--------------|------------------|--------------|------------------|-------------------|--------|
| | Pos. | Amount | Pos. | Amount | Pos. | Amount | Pos. | Amount |
| Executive Level IV, \$149,000 | 1 | | 1 | | 1 | | 0 | |
| SES, \$114,468 - \$172,200 | 37 | | 38 | | 38 | | 0 | |
| GS-15, \$115,317 - 149,000 | 613 | | 612 | | 612 | | 0 | |
| GS-14, \$98,033 - 127,442 | 149 | | 149 | | 251 | | 102 | |
| GS-13, \$82,961 - 107,854 | 131 | | 131 | | 131 | | 0 | |
| GS-12, \$69,764 - 90,698 | 65 | | 65 | | 65 | | 0 | |
| GS-11, \$58,206 - 75,669 | 86 | | 86 | | 86 | | 0 | |
| GS-10, \$52,979 - 68,875 | 7 | | 7 | | 7 | | 0 | |
| GS-9, \$48,108 - 62,546 | 77 | | 77 | | 92 | | 15 | |
| GS-8, \$43,557 - 56,624 | 31 | | 31 | | 31 | | 0 | |
| GS-7, \$39,330 - 51,124 | 101 | | 101 | | 121 | | 20 | |
| GS-6, \$35,392 - 46,011 | 11 | | 11 | | 11 | | 0 | |
| GS-5, \$31,751 - 41,271 | 27 | | 27 | | 27 | | 0 | |
| GS-4, \$28,379 - 36,898 | 1 | | 1 | | 1 | | 0 | |
| GS-3, \$25,279 - 32,863 | 1 | | 1 | | 1 | | 0 | |
| GS-2, \$23,169 - 29,153 | 0 | | 0 | | 0 | | 0 | |
| GS-1, \$20,607 - 25,779 | 0 | | 0 | | 0 | | 0 | |
| Total, appropriated positions | 1,338 | | 1,338 | | 1,475 | | 137 | |
| Average SES Salary | | \$168,946 | | \$174,525 | | \$178,016 | | |
| Average GS Salary | | \$108,097 | | \$109,686 | | \$111,880 | | |
| Average GS Grade | | 14 | | 14 | | 14 | | |

L: Summary of Requirements by Object Class

Summary of Requirements by Object Class

Civil Division
Salaries and Expenses
(Dollars in Thousands)

| Object Classes | 2008 Actuals | | 2009 Enacted | | 2010 Request | | Increase/Decrease | |
|--|--------------|----------------|--------------|----------------|--------------|----------------|-------------------|---------------|
| | FTE | Amount | FTE | Amount | FTE | Amount | FTE | Amount |
| 11.1 Direct FTE & personnel compensation | 1,076 | \$105,982 | 1,245 | \$132,511 | 1,282 | \$138,650 | 37 | \$6,139 |
| 11.3 Other than full-time permanent | 79 | 6,472 | 68 | 5,029 | 68 | 5,137 | 0 | 108 |
| 11.5 Total, Other personnel compensation | 6 | 2,032 | 8 | 2,466 | 8 | 2,473 | 0 | 7 |
| <i>Overtime</i> | 6 | 467 | 8 | 495 | 8 | 497 | 0 | 2 |
| <i>Other Compensation</i> | 0 | 1,565 | 0 | 1,971 | 0 | 1,976 | 0 | 5 |
| 11.8 Special personal services payments | 0 | 126 | 0 | 106 | 0 | 106 | 0 | 0 |
| Total | 1,161 | 114,612 | 1,321 | 140,112 | 1,358 | 146,366 | 37 | 6,254 |
| Other Object Classes: | | | | | | | | |
| 12.0 Personnel benefits | | 28,302 | | 36,175 | | 38,173 | | 1,998 |
| 13.0 Benefits to former personnel | | 0 | | 14 | | 14 | | 0 |
| 21.0 Travel and transportation of persons | | 4,607 | | 5,543 | | 5,662 | | 119 |
| 22.0 Transportation of things | | 1,085 | | 918 | | 942 | | 24 |
| 23.1 GSA rent | | 27,729 | | 29,437 | | 30,437 | | 1,000 |
| 23.2 Moving/Lease Expirations/Contract Parking | | 485 | | 732 | | 732 | | 0 |
| 23.3 Comm., util., & other misc. charges | | 1,149 | | 2,902 | | 2,991 | | 89 |
| 24.0 Printing and reproduction | | 1,806 | | 2,166 | | 2,245 | | 79 |
| 25.1 Advisory and assistance services | | 1,896 | | 1,945 | | 1,945 | | 0 |
| 25.2 Other services | | 47,316 | | 36,794 | | 42,723 | | 5,929 |
| 25.3 Purchases of goods & services from Government accounts (Antennas, DHS Sec. Etc..) | | 8,253 | | 9,039 | | 9,750 | | 711 |
| 25.4 Operation and maintenance of facilities | | 6 | | 4 | | 4 | | 0 |
| 25.6 Medical Care | | 78 | | 87 | | 89 | | 2 |
| 25.7 Operation and maintenance of equipment | | 544 | | 450 | | 450 | | 0 |
| 26.0 Supplies and materials | | 1,709 | | 1,872 | | 1,914 | | 42 |
| 31.0 Equipment | | 4,835 | | 2,623 | | 3,321 | | 698 |
| 42.0 Insurance Claims and Indemnities | | 10 | | 0 | | 0 | | 0 |
| Total obligations | | 244,422 | | 270,813 | | 287,758 | | 16,945 |
| Unobligated balance, start of year | | 2,379 | | 382 | | 0 | | |
| Transfers to other accounts | | 10,200 | | 0 | | 0 | | |
| Reallocations | | 3,701 | | 0 | | 0 | | |
| Transfers from other accounts | | 0 | | 0 | | 0 | | |
| Recoveries | | 1 | | 0 | | 0 | | |
| Unobligated balance, expiring | | 1,191 | | 0 | | 0 | | |
| Unobligated balance, end of year | | 382 | | 0 | | 0 | | |
| Total DIRECT requirements | | 250,114 | | 270,431 | | 287,758 | | |
| Reimbursable FTE: | | | | | | | | |
| Full-time permanent | 41 | 0 | 41 | 0 | 41 | 0 | 0 | 0 |
| 23.1 GSA rent (Reimbursable) | | 2,790 | | 2,260 | | 2,260 | | 0 |
| 25.3 DHS Security (Reimbursable) | | 37 | | 40 | | 41 | | 1 |