



Chapter 17 Appendices

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

Memorandum

To: Solicitor

From: P. Lynn Scarlett //signed
Assistant Secretary - Policy, Management and Budget

Subject: Request for Legal Representation Letters for Audited Financial Statements

At the end of fiscal year 2003, the finance offices in the bureaus and at the Departmental level will prepare financial statements as of and for the fiscal year ending September 30, 2003, and, pursuant to 31 U.S.C. 3515, KPMG LLP will conduct, under contract, an audit of those financial statements. In addition, bureau finance offices have begun preparing quarterly financial statements.

In performing audits of government entities, auditors are required to follow *Government Auditing Standards* issued by the Comptroller General of the United States. For financial statement audits, the *Government Auditing Standards* incorporate the fieldwork and reporting standards of the American Institute of Certified Public Accountants (AICPA) and the *Statements on Auditing Standards* that interpret them. Consistent with AU 337, *Inquiry of a Client's Lawyer Concerning Litigation, Claims, & Assessments*, of the AICPA's *Codification of Statements on Auditing Standards*, and consistent with procedures contained in and OMB Bulletin No. 01-02, *Audit Requirements for Federal Financial Statements*, KPMG LLP has inquired about litigation, claims, and assessments to satisfy itself as to the financial accounting and reporting of such matters the fiscal year financial statements.

The primary purpose of this memorandum is to request your assistance in responding to that inquiry by preparing three legal representation letters; an additional purpose is to request similar information for finance offices to use in preparing the financial statement as of and for the fiscal quarter ending June 30, 2003.

In accordance with Statement of Federal Financial Accounting Standards (SFFAS) Number 5, *Accounting for Liabilities of the Federal Government*, as amended by SFFAS Number 12, and Interpretation Number 2 of SFFAS Numbers 4 and 5, the Department and bureaus report certain information in the financial statements and notes concerning contingent liabilities arising out of litigation, claims, and assessments. We request that you provide KPMG, with a copy to the Office of Financial Management (PFM), with information involving matters with respect to which your Office has been



engaged and to which it has devoted substantive attention on behalf of the Department and the bureaus in the form of legal consultation or representation.

You should furnish: (1) a preliminary response by September 16, 2003, including matters that existed as of August 31, 2003; (2) a first update by October 14, 2003, that includes any additions, changes, and deletions from the preliminary response through October 3, 2003 for matters that existed as of September 30, 2003; and (3) a final update by November 12, 2003, that includes any additions, changes, and deletions from October 4, 2003 through November 5, 2003, for matters that existed as of September 30, 2003. The two updates should not include information that is unchanged from the prior legal representation letter or update.

Include any cases with respect to which your Office has been engaged and to which it has devoted substantive attention on behalf of the Department, its bureaus, offices, officers, and employees in the form of legal consultation or representation, even those cases where you believe the Judgment Fund or some financing source other than the Department's or a bureau's budgetary resources will pay any potential loss. Under accounting principles generally accepted in the United States of America, such amount should be included as liabilities or disclosure items in the Department's and a bureau's financial statements. Please report all new cases, still-pending cases that were reported in the FY 2002 legal representation letters, and those that were reported in the FY 2002 letters but have been closed in FY 2003. Include cases being handled by the DOJ on behalf of the Department. All cases not previously reported should be marked "original." Cases similar in nature should be aggregated where appropriate. It would be helpful if you could list the matters in order of the amount of potential loss, starting with the largest.

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

The Office of the Solicitor's legal representation letters should follow the guidance in OMB Bulletin No. 01-02, Appendix H-2, and they should provide descriptions of legal contingencies on standard forms depending on the type of matter involved – i.e., pending, unasserted, or closed. (See Attachments 1, 2, and 3.) The Office of the Solicitor should complete a separate form for each case or group of related cases, and attach the forms to the three legal representation letters (preliminary and two updates letters). In addition, the Office of the Solicitor should promptly submit advance copies of update forms to the Office of Financial Management (PFM) for cases with changed likelihood of unfavorable outcome, changed estimate of loss, or some other significant developments.

Please provide your data in the attached standard formats, as applicable; these formats are PFM's revisions formats suggested by DOJ. The forms contain complete descriptions of



the required fields listed below. Note that the applicable dollar threshold level for reporting (specified below) should be entered near the top of each form in the designated field. Also, please complete the appropriate field to indicate either an original submission for a particular pending or threatened case or an update, and provide the date. You should include the notation “potential environmental cleanup liability” in field 2 (Nature of Matter) for all matters which may involve possible environmental cleanup liabilities. Also, please combine related cases where appropriate, group cases by bureau, and sequence them in descending order of potential liability. You should place matters for which the amount of potential loss cannot be estimated at the end of the sequence.

A. Pending or Threatened Litigation

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

1. Case Name
2. Nature of Matter (including, where appropriate, a notation for “potential environmental cleanup liability”)
3. Progress of the Case to Date
4. The Government’s Response or Planned Response
5. An Evaluation of the Likelihood of Unfavorable Outcome
6. An Estimate of the Amount or Range of Potential Loss and Expected Source of Funds for Payment
7. The Name and Phone Number of the Agency and DOJ Attorneys Handling the Case
8. The Sequence Number

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

B. Unasserted Claims and Assessments

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

1. Name of Matter
2. Nature of Matter (including, where appropriate, a notation for “potential environmental cleanup liability”)
3. The Government’s Planned Response
4. An Evaluation of the Likelihood of Unfavorable Outcome
5. An Estimate of the Amount or Range of Potential Loss and Expected Source of Funds for Payment
6. The Name and Phone Number of the Agency and DOJ Attorneys Handling the Case (Matter)
7. The Sequence Number



- C. No-Longer-Pending Cases That Were Reported in the Prior Legal Representation Letter
1. Name of Matter
 2. Sequence Number
 3. Resolution of Matter
 4. The Name and Phone Number of the Agency and DOJ Attorneys

For purposes of this request, please include any matter individually involving amounts of \$300,000 or more for BIA, BLM, FWS, BOR, USGS, NPS, OSM, MMS, and Departmental Offices, amounts of \$50,000 or more for the Office of the Special Trustee for American Indians.

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

Quarterly Information Beginning Quarter Ending June 30, 2003

In addition to the three legal representation letters discussed above, finance offices require information about contingent liabilities from litigation, claims, and assessments in their preparation of quarterly financial statements. Unlike the fiscal year-end requirements, this information need not be submitted as part of a formal legal representation letter. For the quarter ending June 30, 2003, please submit quarterly information, on the standard forms, to the Office of Financial Management (PFM) by July 15, 2003. After fiscal year-end information is provided with the legal representation letters, the quarterly reporting requirement will resume for the quarter ending December 31, 2003.

Submission of the Information

You should submit the legal representation letters, with information and updates about contingent liabilities for litigation, claims, and assessments, to Mr. Earl E. Devaney, Inspector General and Mr. Jeff Norris, KPMG LLP, through the Office of Financial Management. (Please submit the quarterly information, discussed above, directly to PFM.) The Inspector General is required to submit copies of the original legal representation letter and updates to the Office of Management and Budget (OMB--Deputy Controller, Office of Federal Financial Management), the Department of the Treasury (Commissioner, Financial Management Service), and the GAO (Managing Director, Finance and Assurance Team).



If you have any questions, please contact R. Schuyler Leshner, Director of Financial Management, on (202) 208-4701.

Attachments (3)



PENDING OR THREATENED LITIGATION

BUREAU/OFFICE: _____

AGENCY'S DOLLAR THRESHOLD LEVEL FOR REPORTING: _____

Original Update Date: _____

1. **Case Name.** *(include Case Citation, Case Number, and other names by which the case or group of cases is commonly known.)*

2. **Nature of Matter.** *(Include a description of the case or cases and amount claimed, if specified. State "Potential environmental cleanup liability" where applicable.)*

3. **Progress of the Case to Date.**

4. **The Government's Response or Planned Response.** *(For example, to contest the case vigorously or to seek an out-of-court settlement.)*

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

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

6. **An Estimate of the Amount of Range of Potential Loss and Expected Source of Funds for Payment** *(if one can be made, for losses considered to be probable or reasonably possible; source of funds is Judgment Fund or agency appropriation.)*

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

8. **The Sequence Number** *(based on the total number of Pending or Threatened cases your agency/component is submitting. Number _____ of _____.*

(total)

Attorney-Client Agency Work Product Privilege

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

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

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

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

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

_____ PROBABLE – (An unfavorable outcome is likely to occur.)

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

5. **An Estimate of the Amount or Range of Potential Loss and Expected Source of Funds for Payment** *(if an estimate can be made, for losses considered to be probable or reasonably possible; source of funds is Judgment Fund or agency appropriation.)*

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

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

Attorney-Client Agency Work Product Privilege



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

BUREAU/OFFICE: _____

AGENCY'S DOLLAR THRESHOLD LEVEL FOR REPORTING: _____

Original

Update

Date: _____

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

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

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

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

Attorney-Client Agency Work Product Privilege