

# Civil Division Fiscal Year 2012 Budget Request



February 2011

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## 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, the Division 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.<sup>1</sup>

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

- **Cases that involve the potential for astronomical monetary losses to the United States:**
  - Of the approximately 50,000 cases the Division handles each year, the vast majority involve suing the Government for billions of dollars. By thwarting exaggerated or unwarranted claims against the U.S. treasury, the Civil Division helps lower the Federal debt and reduce the associated economic consequences.
  - Under the False Claims Act, Civil Division attorneys generate much needed revenue by recovering billions of dollars lost each year through fraud and abuse on behalf of Government agencies, entitlement programs, and the general fund. False claims actions filed against perpetrators of health care and mortgage fraud, amongst others, involve hundreds of millions, if not billions, of dollars recovered annually.
- **Cases that involve national statutes:**
  - Each year the Division handles hundreds of cases that are of unparalleled importance because of their far-reaching repercussions for Federal programs and policies. For example, the Government has filed an appeal challenging the district court's decision to strike down the Defense of Marriage Act in July 2010.
- **Cases that involve immigration and its law enforcement initiatives:**
  - The Division defends against thousands of appeals to immigration enforcement decisions and represents the United States in a wide range of immigration-related litigation involving Federal statutes and the actions of Federal law enforcers.

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<sup>1</sup> Electronic copies of the Department of Justice's Congressional Budget Justifications and Capital Asset Plan and Business Case exhibits can be viewed or downloaded from the Internet using the address: <<http://www.usdoj.gov/jmd/2012justification/>>.

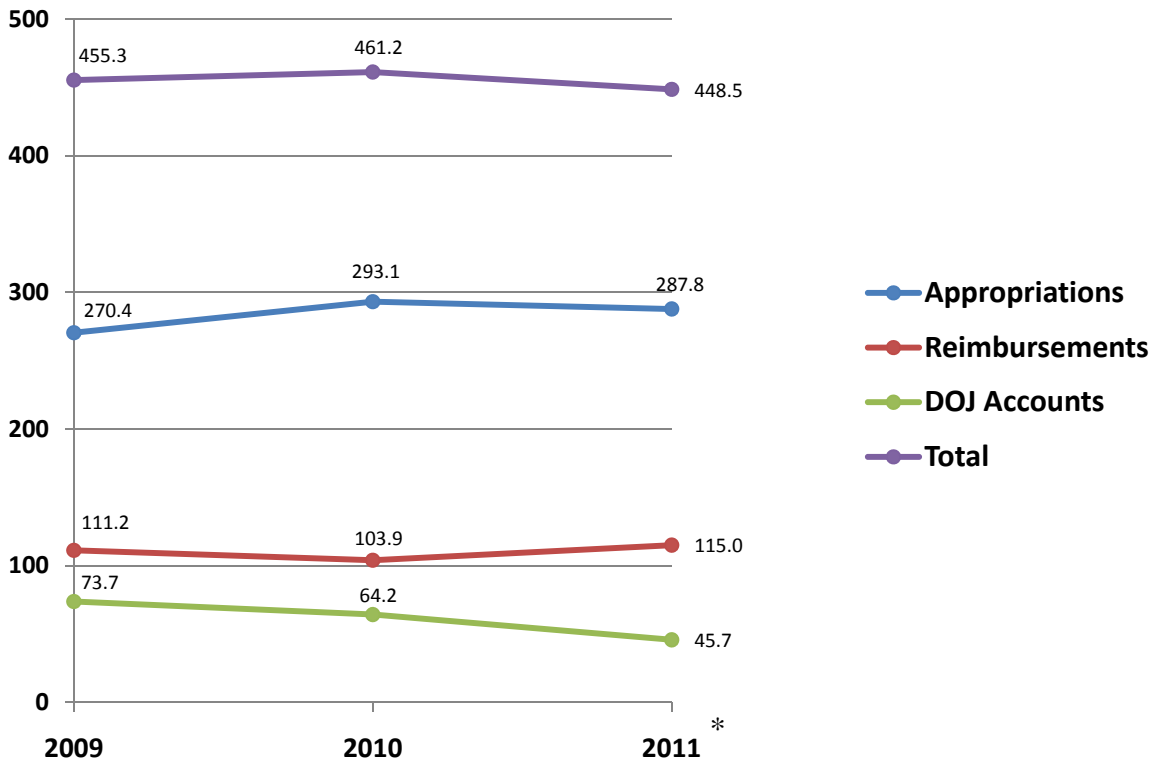
The Civil Division seeks to successfully resolve its cases in a timely manner, when possible. While much of the Division’s workload involves cases resolved through trial, nearly half are resolved through settlements and voluntary dismissals. It also administers two streamlined compensation programs. The first is the Vaccine Injury Compensation Program, which relies upon Special Masters to resolve its cases. The second is the Radiation Exposure Compensation Program, which resolves its claims through administrative adjudications. In the past, the Division also handled the September 11<sup>th</sup> Victim Compensation Fund.

### Full Program Costs:

Funds for the Legal Representation Decision Unit, the Civil Division’s only decision unit, are devoted to, almost entirely, front-line litigation in observance of the management initiatives contained in the DOJ Strategic Plan (2007-2012). Of the Division’s 1,475 authorized positions, the vast majority are assigned to the six litigating branches.

For FY 2011, \$448,500,000 is available to the Division, exclusive of the RECA Trust Fund (see Civil Division’s RECA Trust Fund Budget). The enacted level Continuing Resolution includes 1,475 positions (1,059 attorneys) and 1,391 FTE. The chart below displays the Division’s historical funding information, including appropriations and reimbursements. Total expected availability in FY 2011 is down \$6,800,000 from FY 2009.

**Civil Division’s Funding Sources (In Millions)**



\*FY 2011 figures assume a Full-Year Continuing Resolution at the FY 2010 enacted level

The FY 2012 request includes 1,488 positions (1,068 attorneys), 1,625 FTE, and \$310,112,000 to perform the Division's core responsibilities and continue funding for positions that Congress approved in FY 2010.

### **Workload:**

The Civil Division expects to handle almost 50,000 cases in FY 2012. This number belies the true extent of the workload, as the Division is also handling nearly 500,000 administrative claims filed with the Army Corps of Engineers seeking damages associated with Hurricane Katrina. In addition, this total does not include thousands of cases and approximately 100,000 administrative claims filed with the Federal Emergency Management Agency seeking damages related to formaldehyde exposure from trailers supplied in response to Hurricanes Katrina and Rita.

### **External Challenges:**

Because nearly 90 percent of the workload is defensive, the Division 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 many exogenous factors, including military actions, natural disasters, and whistleblower referrals. New legislation regarding immigration reform, for instance, could greatly affect the Division's workload, as could an oil spill such as the one following the explosion of the Deepwater Horizon oil rig.

### **Internal Challenges:**

#### **Skill Mix of Human Capital**

The Civil Division is changing its mix of resources as it reduces the number of contract personnel relative to Government personnel. Since the start of FY 2011, the Division has cut or plans to cut 270 contract support positions, a 41 percent reduction. Contract positions, such as litigation support paralegals, consultants, and IT professionals, have been severely curtailed and a growing percentage of the Division's spending is devoted to personnel and associated overhead costs.

#### **Electronic Discovery**

The effective management and use of electronic discovery (E-Discovery) is a top priority for the Department. From FY 2009 to FY 2010, the Division experienced an unprecedented 300 percent increase in the amount of electronic information received, straining base resources dedicated to discovery activities. Of deep concern is the fact that the litigation landscape has shifted drastically with changes in law and the explosion of technology. The reality is that evidence is no longer in paper form; it is found in e-mail, websites, databases, phones, and computer back-up tapes. Specialized tools are needed, as cheaper discovery options are prohibited or useless in many instances. The result is that parties must engage in expensive technological exercises or suffer the expensive legal and financial ramifications for failing to comply.

## **Environmental Accountability:**

The Division is actively working toward meeting all Administration and Department guidelines for improving environmental and energy performance. As outlined in the Department's Power Management Policy Recommendations and Executive Order 134234, the Division is moving toward full compliance with efforts to achieve reductions in greenhouse gas emissions, acquire green products and services, and establish cost-effective waste prevention and recycling programs.<sup>2</sup>

The Division is in the process of implementing an organizational environmental system by the end of FY 2011 in accordance with the schedule established by the Department. Some examples of the Division's environmentally sound practices include:

- using the conference call and teleconferencing options to reduce travel;
- expanding the recycling program in each of its buildings;
- installing motion detector light controls in restrooms and parking garages;
- re-lamping office spaces with 25 watt "green" lighting; and
- reducing overtime use of heating and air conditioning.

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<sup>2</sup> "Instructions for Implementing Executive Order 134234."  
<[http://www.whitehouse.gov/sites/default/files/omb/assets/procurement\\_green/eo13423\\_instructions.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/procurement_green/eo13423_instructions.pdf)>.

# Summary of Program Changes

Proposed FY 2012 Program Changes GLA Appropriation				
Item Name	Pos.	FTE	Dollars (\$000)	Page
Administrative Efficiencies	0	0	(\$264)	27
Technology Refresh	0	0	(\$120)	27
<b>Total GLA Program Change</b>	<b>0</b>	<b>0</b>	<b>(\$384)</b>	





## Decision Unit Justification

### Civil Division: Legal Representation Decision Unit

<b>Legal Representation – TOTAL</b>	<b>Perm. Pos.</b>	<b>FTE</b>	<b>Amount (\$000)</b>
2010 Enacted with Rescissions	1,475	1,350	\$287,758
2010 Supplemental	13	12	\$5,312
2010 Enacted w/Rescissions and Supplementals	1,488	1,362	\$293,070
2011 Full-Year Continuing Resolution	1,475	1,350	\$287,758
Adjustments to Base and Technical Adjustments	13	113	\$22,738
2012 Current Services	1,488	1,463	\$310,496
2012 Program Decreases	0	0	(\$384)
2012 Request	1,488	1,463	\$310,112
<b>Total Change 2010-2012</b>	<b>0</b>	<b>101</b>	<b>\$17,042</b>

<b>Legal Representation – Information Technology Breakout</b>	<b>Perm. Pos.</b>	<b>FTE</b>	<b>Amount (\$000)</b>
2010 Enacted with Rescissions	24	24	\$18,519
2010 Supplemental	0	0	0
2010 Enacted w/Rescissions and Supplementals	24	24	\$18,519
2011 Full-Year Continuing Resolution	24	24	\$17,800
Adjustments to Base and Technical Adjustments	0	0	(\$223)
2012 Current Services	24	24	\$17,577
2012 Request	24	24	\$17,577
<b>Total Change 2010-2012</b>	<b>0</b>	<b>0</b>	<b>(\$942)</b>

The Civil Division handles thousands of lawsuits that are filed against the United States each year. The Division saves the treasury billions of dollars by defeating unmeritorious claims. It 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 the Division's affirmative litigation efforts. In FY 2010, the Division defeated \$14 billion and recovered \$3.7 billion in cases that were closed.

Additionally, many of the Division's 50,000 cases are filed as a result of Government or state policies and laws, domestic and foreign operations, and involvement in commercial activities, as well as law enforcement initiatives, military actions, and counterterrorism efforts. In FY 2010, the Division favorably resolved 93 percent of its non-monetary cases.

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

## **APPELLATE STAFF**

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Appellate Staff attorneys represent the United States at the highest levels of judicial review. The docket includes constitutional challenges to Federal and state statutes and actions, such as the Defense of Marriage Act and the Iraq War. In recent years, the Staff's workload has increased in the area of counter-terrorism cases involving terrorist surveillance activities, the freezing of terrorist assets, and the designation of foreign terrorist organizations. Also, these responsibilities have increased significantly in regard to the Guantanamo



<http://www.supremecourt.gov/>

Bay detainee cases, which involve classified materials and present complex issues of law and fact. Finally, the Appellate Staff's work concerns Federal programs, such as those under the Food, Drug and Cosmetic Act, and matters involving most Federal agencies.

## **FEDERAL PROGRAMS**

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Federal Programs (FP) attorneys 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, Federal regulations, and administrative decisions. Other FP cases protect the public fisc by defending entitlement programs such as Medicare and Social Security. The Branch is also working with the Appellate Staff on the Guantanamo Bay detainees' *habeas corpus* cases. In June 2008, the Supreme Court ruled in *Boumediene v. Bush* that the review process under the Detainee Treatment Act of 2005 did not meet constitutional standards for *habeas corpus* review in this context. Currently, there are approximately 150 *habeas corpus* cases pending on behalf of the detainees still held at Guantanamo Bay, with typically one to three merits trials every month.

## **TORTS BRANCH**

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### **Environmental Torts**

The Environmental Torts Section (ET) 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. Recent cases arose out of the

2001 anthrax attacks, the Navy's use of Vieques Island for military exercises, the use of formaldehyde in emergency housing units provided in response to Hurricanes Katrina and Rita, and alleged contamination at military bases.

The largest case currently handled by ET, *Adams v. United States*, involves claims of more than \$800,000,000 stemming from the Department of the Interior's application of OUST, an herbicide, to wildfire burn areas in Southern Idaho in 1999 and 2000. More than 100 groups sued the United States and DuPont (OUST's manufacturer) alleging that the herbicide damaged their crops. The first bellwether trial was completed in 2009 and the Division is appealing the court's March 2010 decision that found the United States liable.

Environmental Torts attorneys are also representing the United States' interests in the World Trade Center (WTC) litigation, which consists of approximately 5,000 administrative claims alleging personal injury following efforts to clean up the WTC Disaster Site. However, enactment of the James Zadroga 9/11 Health and Compensation Act of 2010 could significantly reduce the number of claims, if claimants opt to seek compensation under the Act.

### **Federal Tort Claims Act**

The Federal Tort Claims Act (FTCA) provides for compensation for personal injury and property damage claims caused by the "negligent or wrongful act of any employee of the Government while acting within the scope of his office or employment." Prior to filing suit 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. Settlements and judgments are generally paid from the Judgment Fund.

The Office handles a wide variety of complex, and often controversial, suits filed under the FTCA. These suits arise most often from the provision of medical care at Federal facilities or community health centers, law enforcement operations, maintenance of Federal lands and regulatory activities. The FTCA Office also handles hundreds of administrative claims based on the conduct of Department employees each year. On a daily basis, the FTCA Office provides guidance to United States Attorneys' Offices (USAOs) and agencies on a broad range of legal issues, as well as strategy and case development.



One of the core missions of the FTCA Office is to protect the Judgment Fund from unauthorized or excessive payments. This is accomplished by assisting USAOs and agencies in assessing claims and negotiating and obtaining higher-level approval for settlements above their authority levels. The FTCA Office has particular expertise in the evaluation and settlement of catastrophic injury cases. It actively promotes the use of annuities, to reduce the cost of the settlement, and reversionary medical trusts, to avoid unintended windfalls and duplicative payments. Unused trust funds are returned to the Treasury upon

termination of the trust. As of June 1, 2010, approximately \$81,600,000 had accrued from the trust funds and was refunded to the treasury.

The largest group of cases currently handled by the FTCA Office is the Hurricane Katrina litigation. Over 400 lawsuits have been filed and more than 500,000 administrative claims are pending with the Army Corps of Engineers seeking compensation for damages. After trial in the lead case, the district court concluded that negligence on the part of the Corps led to the massive flooding that damaged much of the greater New Orleans area. Unless reversed on appeal, this ruling could result in the activation of hundreds of thousands of other cases from individuals, businesses, and governmental entities with claims currently pending.



<https://eportal.usace.army.mil/sites/DVL/DVL%20Images/Forms/DispForm.aspx?ID=6296>

## **Aviation and Admiralty Torts**

The Aviation and Admiralty Section handles aviation and maritime accident cases and claims. 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-value litigation involving the Federal Aviation Administration's air traffic control and weather dissemination services, as well as its certification of airports, aircraft, and air personnel.

Admiralty litigation includes collisions involving U.S. vessels, grounding of vessels using U.S. produced charts, challenges to the boarding of vessels on the high seas during national security and drug interdiction activities, and maritime aspects of pollution incidents at sea. The Section also represents the United States in its role as ship-owner, regulator, and protector of the nation's waterways and maritime resources. Currently, the Section is handling matters related to the explosion of the Deepwater Horizon offshore drilling station and the resulting oil spill in the Gulf of Mexico. The Civil Division is responsible for recovering the billions of dollars spent by numerous Government agencies in response costs, as well as assessing and pursuing damages and fines authorized under existing statutes. The Deepwater Horizon litigation will likely be the largest, most significant civil enforcement action in the Civil Division's history. Additionally, the Division may be responsible for defending the Government if the United States is named as a third party in defensive suits.



<http://www.uscgnews.com/go/doc/786/440291/>

On December 15, 2010, the United States filed suit against BP Exploration and Production, Inc. and eight other defendants. The district court established an ambitious schedule, with test trials set to begin in the summer of 2011. The United States must participate fully in discovery and other pre-trial proceedings, which will include completing the collection, processing, review, and production of billions of pages of documents and electronic files from multiple agencies; taking and defending hundreds of depositions; and engaging in extensive motions practice involving hundreds of parties. Recovery efforts will

intensify as the Limitation of Liability trial commences in February/March of FY 2012. In a pretrial order, the court inserted the United States as an official party in the liability trial, giving the Government a formal role in witness depositions. The order also expanded the work required for deposition coverage by doubling the length of time from eight to fifteen hours and mandating that depositions be multi-tracked. A dedicated trial team, along with support from experts, consultants, and litigation support services, will be essential as the case moves into the litigation phases. Given the pre-trial requirements, the huge volume of evidentiary material, and the magnitude of the cases, this litigation will require significant staffing and technological resources.

## **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 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.

## **COMMERCIAL BRANCH**

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### **National Courts**

Attorneys in National Courts represent the United States before the Court of Federal Claims, the Court of International Trade, and the Court of Appeals for the Federal Circuit. This litigation involves a wide and varied range of substantive law, including Government procurement and contract disputes, Fifth Amendment takings, military and civilian pay claims, international

trade, and claims brought by veterans and Federal employees. The Section routinely manages complex cases concerning significant legal issues and billions of taxpayer dollars.



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 72 cases in the Court of Federal Claims seeking damages that they estimate exceed \$50 billion. Several trials are expected in FY 2012 alone. Litigation support services, which include collecting, organizing, and reviewing a substantial number of documents, continue to be critical to the Government's defense. Attorneys held a settlement conference on May 11, 2010 with representatives of the plaintiff utilities to discuss the parameters of a potential settlement agreement.

National Courts is also handling a variety of litigation arising from the economic crisis, including matters related to the American Recovery and Reinvestment Act. The Section gained extensive experience and institutional knowledge concerning financial matters as a result of the savings and loan crisis of the 1980s, which produced an influx of litigation by financial institutions and investors. National Courts attorneys have put that knowledge to use by consulting with various Federal agencies and their components concerning the Government's response to the economic crisis.

## 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. The past year included work with the U.S. Attorney's Office in New York on the successful Chrysler and General Motors reorganizations. The Section is also handling implementation of the settlement in one of the largest cases ever filed against the Government: *Cobell v. Salazar*.



**On December 8, 2010, the President signed the "Claims Resolution Act of 2010" which provides funding for the settlement agreements reached in the *Cobell* and *Pigford II* lawsuits.**

<http://www.whitehouse.gov/blog/2010/12/08/president-obama-signs-claims-resolution-act-2010>

## Fraud

The Fraud Section pursues fraud committed against the Government and its programs. Attorneys are increasing enforcement of cases involving pharmaceutical and medical device fraud and are coordinating with the Centers for Medicare and Medicaid Services on the development of investigative leads and damages models. The Division engages in active data-mining efforts, proactively identifying and investigating potential health care fraud trends as they arise. In addition, attorneys continue to investigate and intervene where appropriate in cases filed initially by private citizens under the *qui tam* provisions of the False Claims Act.

The Fraud Section also handles procurement fraud, Iraq and Afghanistan War fraud, mortgage fraud, and any potential fraud matters in connection with the Deepwater Horizon incident. These efforts provide significant deterrence to those contemplating defrauding Federal programs.

## Foreign Litigation

The Office of Foreign Litigation attorneys retain and directly instruct foreign counsel to represent the United States in cases filed in foreign courts. Most of these cases are defensive and arise out of the wide range of international activities in which the United States is involved. The Office's defensive litigation includes commercial transactions, tort damages, and labor disputes arising from the many U.S. Government offices and facilities located abroad, as well as the extensive overseas U.S. military bases and deployments. The Office conducts affirmative litigation including cases aimed at fighting cross-border fraud that targets American citizens through telemarketing or the internet. It also represents the interests of the United States in foreign litigation arising out of terrorism or other criminal activities directed against the United States, its officers, and its employees.

## Intellectual Property

Intellectual Property handles a wide variety of litigation involving patents, trademarks, copyrights, trade secrets, and other related matters. 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.

## OFFICE OF CONSUMER PROTECTION LITIGATION

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The Office of Consumer Protection Litigation (OCPL) was recently reorganized and renamed to reflect its larger and revitalized role in protecting consumers. It is at the forefront of the efforts of both the Civil Division and the Department to protect consumers through vigorous civil and criminal enforcement of Federal consumer protection

laws. Its enforcement includes fraud perpetrated by manufacturers and distributors of misbranded, adulterated, or defective consumer goods. OCPL safeguards consumers through the pursuit of cases regarding deceptive advertisements and sales through unfair practices that extract billions of dollars from consumers. OCPL also defends legal and constitutional attacks on consumer protection laws and statutes.

OCPL attorneys investigate and litigate a growing number of health care fraud-related cases, the majority of which are criminal. OCPL is also actively involved in investigating and prosecuting major prescription drug and device manufacturers 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.

## OFFICE OF IMMIGRATION LITIGATION

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Established in 1983 to achieve central control over immigration litigation, the Office of Immigration Litigation (OIL) defends Government agencies in immigration-related litigation and decisions of DOJ's Executive Office for Immigration Review (EOIR) when aliens file petitions for review in the circuit courts of appeals. 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. OIL is divided into two sections: the Appellate Section, which handles petitions for review filed in circuit courts, and the District Court Section, which handles all other litigation in both the trial and appellate stages.



**The U.S. – Mexico Border**

[http://www.cbp.gov/xp/cgov/newsroom/multimedia/  
photo\\_gallery/afc/bp/07.xml](http://www.cbp.gov/xp/cgov/newsroom/multimedia/photo_gallery/afc/bp/07.xml)

The Appellate Section's caseload is directly tied to the Department of Homeland Security's (DHS) immigration efforts and to the immigration adjudication rates of the Board of Immigration Appeals in EOIR. As DHS's enforcement activities become more aggressive, OIL receives a corresponding increase in petitions for review to defend in the circuit courts. The District Court Section represents the United States in immigration cases which originate in Federal district courts nationwide. Most of its litigation responsibilities are defensive in nature, consisting of a wide range of individual and class action cases, such as petitions for writs of

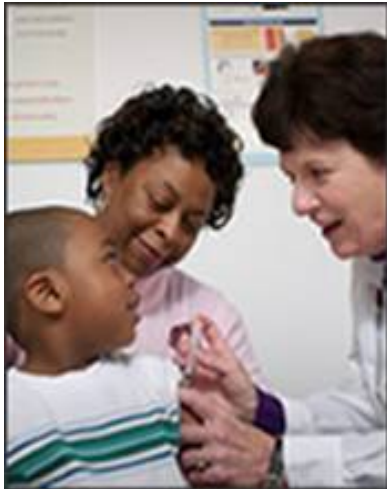


*habeas corpus* and constitutional challenges to immigration policies. Changes to immigration policy have historically led to significant increases in OIL's caseload.

## **COMPENSATION PROGRAMS**

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### **Vaccine Injury Compensation Program**



<http://www.cdc.gov/vaccines/vpd-vac/mumps/default.htm>

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. 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. The Program is intended to provide a more expeditious, less costly way for resolving claims. The Act established a Trust Fund, funded by an excise tax imposed on each purchased dose of a covered vaccine, to pay compensation awards, claimants' attorneys' fees, and all administrative governmental costs. Since the inception of the Program, over \$2.1 billion in compensation has been awarded to over 2,500 claimants.

Since FY 2001, the Program has experienced a staggering increase in new claims. This increase can be partly attributed to the addition of new vaccines covered by the Program. However, the most significant reason is the approximately 5,000 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 Special Master has ruled in the Government's favor on a number of the test cases. However, the pending cases are not bound by these rulings. Additionally, attorneys' fees and costs will be available in a large percentage of the cases and will need to be determined in each case.

### **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. The RECA Program was designed as an alternative to litigation in that the statutory criteria do 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, 33,107 claims have been filed and over \$1.5 billion has been awarded to 23,408 claimants (as of January 1, 2011). 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.



**In the summer of 2010, the RECA Program instituted an outreach program to train college and graduate students from the Four Corners region. Students are now providing on-site claims assistance to potential filers.**

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. Over the past decade, receipts have decreased and are now averaging approximately 2,000 claims a year.

## **OFFICE OF MANAGEMENT PROGRAMS**

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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 Policy and Management Operations; the Office of Administration; the Office of Management Information, and the Office of Litigation Support.

**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.**

<b>WORKLOAD/ RESOURCES</b>		<b>Final Target</b>		<b>Actual</b>		<b>Projected</b>		<b>Changes</b>		<b>Requested (Total)</b>	
		<b>FY 2010</b>		<b>FY 2010</b>		<b>FY 2011 Continuing Resolution</b>		<b>Current Services Adjustments and FY 2012 Program Changes</b>		<b>FY 2012 Request</b>	
<b>Workload</b>	1. Number of cases pending beginning of year	35,147	34,757	35,859	N/A	33,371					
	2. Number of cases received during the year	16,889	16,813	15,575	N/A	16,212					
	3. Total Workload	52,036	51,570	51,434	N/A	49,583					
<b>Total Costs and FTE</b>		<b>FTE</b>	<b>\$000</b>	<b>FTE</b>	<b>\$000</b>	<b>FTE</b>	<b>\$000</b>	<b>FTE</b>	<b>\$000</b>	<b>FTE</b>	<b>\$000</b>
(Reimbursable FTE are included, but reimbursable costs are bracketed and not included in the total)		1,403	293,070 (103,918)	1,403	293,070 (76,676)	1,391	287,758 (115,004)	234	22,354 (-2,143)	1,625	310,112 (112,861)
<b>TYPE/ Strategic Objective</b>	<b>PERFORMANCE</b>	<b>FY 2010</b>		<b>FY 2010</b>		<b>FY 2011 Enacted</b>		<b>Current Services Adjustments and FY 2012 Program Changes</b>		<b>FY 2012 Request</b>	
<b>Output</b>	1. Number of cases terminated during the year	14,889	15,711	18,063	N/A	13,710					
<b>Civil Division Performance Measures (Excludes VICP and RECA)</b>											
<b>Outcome</b>	2. Percent of civil cases favorably resolved	80%	92%	80%	N/A	80%					
	3. Percent of defensive cases in which at least 85 percent of the claim is defeated	80%	85%	80%	N/A	80%					
	4. Percent of affirmative cases in which at least 85 percent of the claim is recovered	60%	74%	60%	N/A	60%					
	5. Percent of favorable resolutions in non-monetary trial cases	80%	93%	80%	N/A	80%					
	6. Percent of favorable resolutions in non-monetary appellate cases	85%	92%	85%	N/A	85%					
<b>Efficiency</b>	7. Ratio of dollars defeated and recovered to dollars obligated for litigation	\$44	\$48	\$45	N/A	\$46					

		Final Target	Actual	Projected	Changes	Requested (Total)
TYPE/ Strategic Objective	PERFORMANCE	FY 2010	FY 2010	FY 2011 Continuing Resolution	Current Services Adjustments and FY 2012 Program Changes	FY 2012 Request
<b>Vaccine Injury Compensation Program</b>						
<b>Output</b>	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%	96%	86%	N/A	86%
	9. Median time to process an award for damages (in days)	475	388	TBD	N/A	TBD
<b>Outcome</b>	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)	1,300	1,269	TBD	N/A	TBD
<b>Efficiency</b>	12. Percentage of cases in which settlements are completed within the court-ordered 15 weeks	92%	100%	92%	N/A	92%
<b>Radiation Exposure Compensation Program</b>						
<b>Output</b>	13. Reduce backlog of pending claims by 60% by FY 2011	404	459	350	N/A	N/A
	14. Reduce average claim processing time to 200 days by FY 2011	219	100	200	N/A	N/A
	15. Percentage of claims paid within six weeks of Program receipt of acceptance form	90%	90%	TBD	N/A	TBD
	16. Percentage of claims appeals adjudicated within 90 days of filing administrative appeal	95%	100%	TBD	N/A	TBD
<b>Efficiency</b>	17. Percentage of claims adjudicated within 12 months or less (RECA)	80%	96%	TBD	N/A	TBD

**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 U.S. 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 nearly 500,000 Hurricane Katrina administrative claims, which could all become individually active cases by FY 2011, and approximately 100,000 FEMA: Hurricane Katrina/Rita Trailer-related administrative claims. These claims have been removed to avoid skewing the data.

**ISSUES AFFECTING SELECTION OF FY 2011 AND FY 2012 ESTIMATES**

- **Performance Indicators 2 and 3:** Vaccine Injury Compensation Program cases are excluded from these measures.

## Performance Measure Table: Legal Representation

Performance Report and Performance Plan Targets		FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010		FY 2011	FY 2012
		Actual	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Target	Actual	Target
<b>Output</b>	Number of cases terminated during the year	12,231	12,154	15,101	15,727	15,435	17,147	22,939	16,554	14,889	15,711	18,063	13,710
<b>Civil Division Performance Measures (Excludes VICP and RECA)</b>													
<b>Outcome</b>	Percent of cases favorably resolved	93%	94%	93%	90%	93%	89%	91%	93%	80%	92%	80%	80%
	Percent of defensive cases in which at least 85 percent of the claim is defeated	86%	89%	90%	90%	91%	91%	90%	88%	80%	85%	80%	80%
	Percent of affirmative cases in which at least 85 percent of the claim is recovered	64%	66%	65%	72%	72%	68%	64%	63%	60%	74%	60%	60%
	Percent of favorable resolutions in non-monetary trial cases	85%	86%	84%	89%	92%	86%	90%	90%	80%	93%	80%	80%
	Percent of favorable resolutions in non-monetary appellate cases	89%	92%	93%	91%	87%	87%	90%	92%	85%	92%	85%	85%
<b>Efficiency</b>	Ratio of dollars defeated and recovered to dollars obligated for litigation	\$79	\$64	\$67	\$60	\$60	\$49	\$37	\$70	\$44	\$48	\$45	\$46
<b>Vaccine Injury Compensation Program</b>													
<b>Outcome</b>	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	75%	84%	82%	83%	95%	94%	86%	96%	86%	86%
	Median time to process an award for damages (in days)	533	564.5	529.5	484	335	483	445	637	475	388	TBD	TBD
	Percentage of cases in which judgment awarding compensation is rejected and an election to pursue a civil action is filed	0%	1.5%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%

**Performance Measure Table: Legal Representation**

Performance Report and Performance Plan Targets		FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010		FY 2011	FY 2012
		Actual	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Target	Actual	Target	Target
	Average claim processing time (in days)	995	1,021	738	894	834	1,337	1,280	1,269	1,300	1,269	TBD	TBD
<b>Efficiency</b>	Percentage of cases in which settlements are completed within the court-ordered 15 weeks	80%	92%	80%	95%	98%	96%	100%	100%	92%	100%	92%	92%
<b>Radiation Exposure Compensation Program</b>													
<b>Outcome</b>	Reduce backlog of pending claims by 60% by FY 2011	N/A	N/A	N/A	2,021	2,032	807	618	558	404	459	350	N/A
	Reduce average claim processing time to 200 days by FY 2011	N/A	N/A	N/A	316	339	298	156	127	219	100	200	N/A
	Percentage of claims paid within six weeks of Program receipt of acceptance form	N/A	37%	51%	63%	71%	91%	89%	94%	90%	90%	TBD	TBD
	Percentage of claims appeals adjudicated within 90 days of filing administrative appeal	N/A	N/A	77%	84%	100%	97%	100%	100%	95%	100%	TBD	TBD
<b>Efficiency</b>	Percentage of claims adjudicated within 12 months or less	64%	74%	55%	71%	66%	71%	93%	96%	80%	96%	TBD	TBD

# Performance, Resources, and Strategies

## Performance Plan and Report for Outcomes:

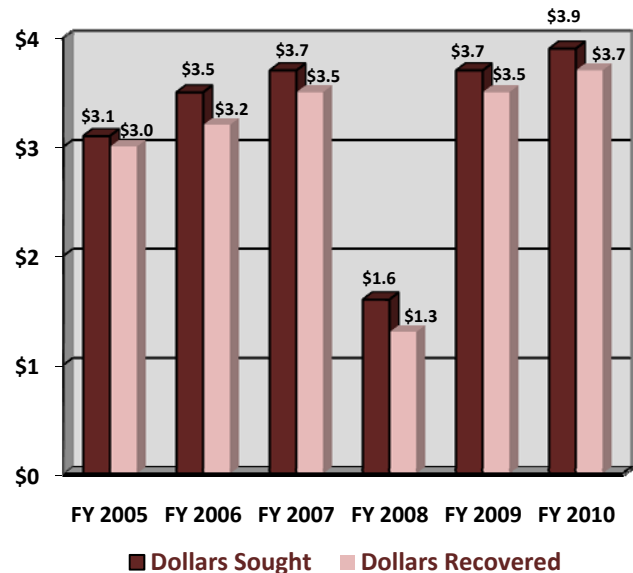
The data presented in the Performance and Resources Table demonstrate the Civil Division’s consistent success in meeting performance targets in support of the Department’s Strategic Objective 2.7 to “vigorously enforce and represent the interests of the United States in all matters over which the Department has jurisdiction.” In FY 2010, the Division met or exceeded each target. The following cases highlight how the Division has recently worked to protect the public fisc, defend U.S. policies, and enforce civil statutes.

Over the last six years, the Division has made significant affirmative recoveries totaling \$18.2 billion. Most were the result of *qui tam* health care fraud and procurement matters. The following cases are particularly noteworthy:

- Health Care Fraud** In September 2010, pharmaceutical manufacturer Allergan Inc. agreed to plead guilty and pay \$600,000,000 to resolve criminal and civil fraud allegations arising from the company’s illegal promotion of Botox for unapproved uses in direct violation of the Food, Drug and Cosmetic Act. The settlement also resolved civil allegations under the False Claims Act that the company’s unlawful marketing practices caused false claims to be submitted to Government health care programs, defrauding the Government of millions of dollars. Additionally, the company provided kickbacks to physicians to induce them to use this product for off-label uses.

- Consumer Protection Fraud** In October 2010, GlaxoSmithKline, a global pharmaceutical and consumer health care company, agreed to plead guilty and pay \$750,000,000 for charges related to the manufacturing and distribution of adulterated drugs. The drugs were found to be processed and held in facilities that did not conform to standard manufacturing practices, thereby failing to meet drug safety and purity requirements. The civil settlement resolved allegations that false claims were submitted to Government health care programs.

**Affirmative Cases Closed**  
(\$ in Billions)



- False Claims Act Lawsuit** In November 2010, four student aid lenders agreed to pay \$57,750,000 to resolve allegations that they improperly inflated their entitlement in

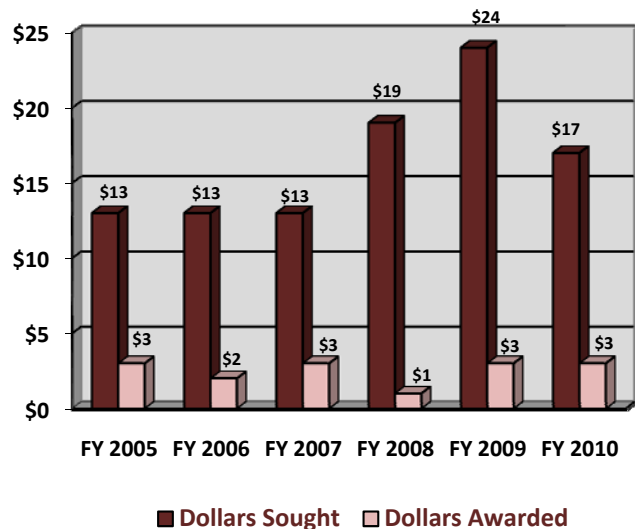


violation of the False Claims Act. The case was initiated by a whistleblower who claimed that the lenders created billing systems that allowed them to receive improperly inflated interest rate subsidies from the U.S. Department of Education.

Between FY 2005 and FY 2010, more than \$84 billion was saved as a result of the Civil Division’s successful defense against unmeritorious monetary claims. In FY 2010 alone, the Division defeated \$14 billion in unmeritorious claims. Significant victories include the following:

- **FEMA Trailers** In *In re: FEMA Trailer Formaldehyde Product Liability Litigation*, plaintiffs seek to recover damages exceeding \$100 billion for personal injuries allegedly resulting from exposure to formaldehyde in temporary emergency housing units provided by the Federal Emergency Management Agency in response to Hurricanes Katrina and Rita. The United States has been dismissed from all of the suits heard thus far, including all simple negligence claims from Louisiana and all claims arising in Mississippi and Alabama.

**Defensive Cases Closed**  
(\$ in Billions)



- **Cobell Settlement** On December 8, 2010, President Obama signed legislation approving a settlement in the class-action *Cobell v. Salazar*. Filed in 1996, this case involved individual Indian trust accounts belonging to as many as 500,000 Native Americans, whose claims exceeded \$100 billion. The settlement provides \$1.5 billion as compensation for alleged accounting and asset mismanagement claims and an additional \$1.9 billion to be used to acquire small, fractionated land interests held by individual Indians.

The following are representative of the Division’s non-monetary work:

- **Constitutional Challenges** The Freedom from Religion Foundation challenged the engravings of the Pledge of Allegiance, as well as the motto “In God We Trust,” in prominent places, alleging the violation of the Establishment Clause. In September 2010, the district court granted the Government’s motion to dismiss in *Freedom from Religion Foundation, Inc., et al. v. Ayers*. The plaintiff filed a similar Establishment Clause challenge to a New Hampshire statute that requires public schools to set aside a period during the school day for voluntary recitation of the Pledge of Allegiance. In November 2010, the First Circuit rejected the plaintiff’s constitutional challenge in favor of the Government in *Freedom of Religion Foundation, Inc. v. Hanover School District*.

- **Challenges to Federal Law** The Free Speech Coalition presented various challenges to provisions in the U.S. Code regarding child protection and obscenity that require producers to verify the ages of their performers. In July 2010, the district court granted the Government's motion to dismiss, affirming that Federal requirements are content-neutral and satisfy intermediate scrutiny under the First Amendment because they apply only to images that, if made using children, would qualify as child pornography.
- **Guantanamo Bay (GTMO)** Two notable cases were decided in June and July 2010 that denied habeas corpus petitions on appeal from GTMO detainees. In *Al Odah v. United States*, the D.C. Circuit affirmed the district court decision denying habeas relief to a GTMO detainee. The district court found that the Government had sufficiently demonstrated that he was part of al Qaeda or Taliban forces. In *Al-Adahi v. Obama*, the D.C. Circuit reversed a district court decision initially granting habeas relief to a GTMO detainee. The court of appeals ruled that in detainee habeas cases the evidence must be considered cumulatively and that the Government had provided enough evidence to show that the defendant was part of al Qaeda.
- **National Childhood Vaccine Injury Act** In August 2010, the U.S. Court of Appeals for the Federal Circuit upheld the decision of the Court of Federal Claims in *Cedillo v. Secretary of Health and Human Services*, rejecting the plaintiff's claim that there is a causal connection between childhood vaccines and the onset of autism. *Cedillo* was one of the lead cases in the Omnibus Autism Proceeding, in which approximately 5,000 claims were filed against the Government asserting that certain vaccines, or a vaccine preservative, thimerosal, can cause autism.
- **Foreign Litigation** In July 2010, the Supreme Court of Greece affirmed the felony convictions of members of the Greek terrorist group "17 November" for attacks on Greece, the United States, and other governments and their personnel. Division attorneys participated in the prosecution on behalf of U.S. Government victims and their families. In its opinion, the Supreme Court affirmed all convictions related to the attacks on the United States, including the murder or attempted murder of Government personnel and the attack on the U.S. Embassy in Athens.

## **Strategy to Accomplish Outcomes: Information Technology**

The Civil Division's information technology (IT) infrastructure plays a critical role in serving the Division's core mission of representing the United States in a variety of civil matters. The following items outline the Division's commitment to preserving its primary IT needs, including efforts to improve E-Discovery resources, case management systems, and other litigation technology needs while keeping costs to a minimum. The implementation of most of the strategies set forth below is contingent upon adequate base funding.

- Complete virtualization of office automation system (JCONV) Division-wide

The Division has designed a virtualized infrastructure employing state of the art technology that meets or exceeds current Federal regulations and standards for

information security, availability, confidentiality, and energy efficiency. Furthermore, because user data and operating systems are located on secure centralized servers, the cost to support JCONV will be less than conventional “desktops” because it eliminates the need for technicians to visit user desktops.

- Continue the deployment of additional Automated Litigation Support (ALS) Labs

To address the needs of its small- to medium-sized cases, the Division has established an on-site program in its Commercial Fraud Section that offers a range of products and services. During its first year of operation in 2009, the program supported 140 cases. The program provides on-site E-Discovery resources, database creation and management, and guidance to attorneys and paralegals. Once



**Civil Division Commercial Fraud Section:  
On-Site Program**

electronic data is uploaded, much of the work typically performed by contractors can be performed by Government paralegals and attorneys. These capabilities are particularly important because it provides attorneys and paralegals with the flexibility and functionality they require to handle matters that increasingly rely on electronic data. Moreover, the Fraud facility requires little space and the overhead is not substantial.

- Implement web-based litigation databases

The Division has identified the need to share data with other litigating components to facilitate the efficient and cost-effective use of case material and documents. The Division needs to implement document management and review databases that other components can access via a secure web interface. These web-based databases would represent a significant advancement in available E-Discovery resources.

- Expand the Division’s video teleconferencing (VTC) and web-conferencing capabilities

The Division is working to implement VTC capabilities and explore alternatives for secure web-conferencing in an effort to reduce employee travel expenses and increase overall productivity.

- Hire additional support staff with E-Discovery expertise

To successfully fulfill the Department’s obligation to meet E-Discovery requirements in litigation, the Division needs to hire and train individuals with technical and legal E-Discovery expertise.

## **Priority Goals**

The Civil Division is one of five components which contribute to the Department's Priority Goal of increasing its white collar crime caseload by five percent with 90 percent of cases favorably resolved.

## Program Offsets

**Item Name:** Administrative Efficiencies

Budget Decision Unit: Legal Representation

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

Ranking: N/A

Program Reduction: Dollars \$264,000

### Description of Item

The Department is continually evaluating its programs and operations with the goal of achieving across-the-board economies of scale that result in increased efficiencies and cost savings. In FY 2012, the Department is focusing on areas in which savings can be achieved, which includes: printing, publications, travel, conferences, supplies, and general equipment. Upgrades that the Civil Division is currently performing for office automation will yield savings in expenditures for equipment. Such administrative efficiencies will result in an offset of \$264,000 for the Civil Division.

**Item Name:** Technology Refresh

Budget Decision Unit: Legal Representation

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

Ranking: N/A

Program Reduction: Dollars \$120,000

### Description of Item

As desktops and laptops are used primarily for basic office automation applications (e.g., spreadsheets and word processing), replacing the inventory at a slower rate is expected to have minimal impact on Department operations. In FY 2012, the Department is proposing to extend the refresh rate of all desktops or laptops by one year. In FY 2011, the Civil Division will undergo a major software upgrade from JCON3 to JCONV and expects the JCONV capabilities to successfully serve the Division's needs into the foreseeable future. The installation of JCONV will enable the Division to significantly extend its refresh rate, resulting in an offset of \$120,000 in FY 2012.