The U.S. Equal Employment Opportunity Commission

Office of General Counsel
Fiscal Year 2003 Annual Report

Statement from the General Counsel

I am pleased to transmit the Fiscal Year 2003 Annual Report for the Equal Employment Opportunity Commission's Office of General Counsel.

In FY 2003, the Commission's litigation program sent the nation a message that it will not tolerate unlawful discriminatory conduct in the workplace. Specifically, in FY 2003, EEOC obtained an unprecedented $148,745,236 in monetary relief through litigation. This is the highest fiscal year monetary recovery in the history of the Commission's litigation program.

These results are the product of our dedicated legal staffs, who daily demonstrate their commitment to hard work and excellence. As General Counsel, I am proud to be part of a team that continues to redress past wrongs and shape the future in so many important ways for so many people.

Notwithstanding EEOC's achievements, we have much work ahead of us. Unlawful discrimination anywhere remains a threat to equality everywhere. Accordingly, we will continue to strive to obtain meaningful relief for victims of discrimination and achieve equality in the workplace.

I invite you to read this Fiscal Year 2003 Office of General Counsel Annual Report and learn about how the Commission's litigation program is creating equality of opportunity for those who live and work in the United States.

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U.S. Equal Employment Opportunity Commission

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I. Structure and Function of the Office of General Counsel

A. Mission of the Office of General Counsel

The Equal Employment Opportunity Commission (EEOC or Commission) was established by Title VII of the Civil Rights Act of 1964 (Title VII). In the Equal Employment Opportunity Act of 1972, Congress amended Title VII to give the Commission authority to enforce the statute through suits in federal and state courts. The 1972 Act provided for a General Counsel, appointed by the President and confirmed by the Senate for a term of four years, with responsibility for conducting the Commission's litigation program. Following transfer of enforcement functions from the U.S. Department of Labor to the Commission under a 1978 Presidential Reorganization Plan, the General Counsel was also vested with responsibility to conduct Commission litigation under the Equal Pay Act of 1963 (EPA) and the Age Discrimination in Employment Act of 1967 (ADEA). With the enactment of the Americans with Disabilities Act (ADA) in 1990, the General Counsel was granted responsibility for Commission litigation under the employment provisions of that statute (Title I; effective July 1992).

The mission of EEOC's Office of General Counsel (OGC) is to conduct litigation on behalf of the agency to obtain relief for victims of employment discrimination and to ensure compliance with the statutes EEOC is charged with enforcing. Under Title VII and the ADA, OGC is empowered to bring suit against non-government employers with 15 or more employees. The General Counsel's authority under the ADEA (20 or more employees) and the EPA (no employee minimum) includes state and local governmental employers as well as private employers. Title VII, the ADA, and the ADEA also cover labor organizations and employment agencies, and the EPA prohibits labor organizations from attempting to cause an employer to violate that statute. OGC also represents the Commission on

administrative claims and litigation brought by its employees, and provides legal advice to the agency on employee-related matters.

B. Headquarters Programs and Functions

1. General Counsel

The General Counsel is responsible for managing, coordinating, and directing the Commission's enforcement litigation program. He or she also provides overall guidance and management to all the components of OGC, including 23 district office legal units. The General Counsel recommends cases for litigation to the Commission and approves other cases for filing under authority delegated to the General Counsel under the Commission's 1996 National Enforcement Plan. The General Counsel also reports regularly to the Commission on litigation activities, including issues raised in litigation which may affect Commission policy, and advises the Chair and Commissioners on litigation strategy, agency policies, and other matters affecting the enforcement of the statutes within the Commission's authority.

2. Deputy General Counsel

The Deputy General Counsel serves as the alter ego of the General Counsel and as such is charged with the daily operations of OGC. The Deputy is responsible for supervising and managing all programmatic and administrative functions of OGC, including overseeing the litigation program. OGC functions are carried out through the operational program and service areas described below, which report to or through the Deputy.

3. Litigation Management Services

Litigation Management Services (LMS) oversees and supports the Commission's court enforcement program in the Commission's district offices. Also, in conjunction with the Office of Field Programs (OFP), LMS oversees the integration of district office legal units into the investigative enforcement structure of the district offices. LMS staff members provide direct litigation assistance to district offices as needed, draft guidance, develop training programs and materials, and collect and create litigation practice materials. In addition, LMS is responsible for maintaining and updating the Regional Attorneys' DeskBook. LMS also has an Assistant General Counsel for Technology responsible for providing technical guidance and oversight to OGC headquarters and field offices on the use of technology in litigation and the development of OGC's computer systems. LMS and OFP staff make joint visits to district offices to provide technical assistance regarding the integration of the field legal and investigative units.

4. Systemic Litigation Services

The recently reconstituted Systemic Litigation Services ("SLS") unit combines the former OGC-based Systemic Litigation Services with the former Systemic Investigations and Review Programs (previously a part of the Office of Field Programs). SLS's mission is to initiate, investigate, and litigate important legal and policy issues. Uniquely structured and staffed as an issue-oriented unit that combines investigation and litigation, SLS is able to select cases involving novel or emerging legal questions arising in favorable factual settings.

5. Internal Litigation Services

Internal Litigation Services represents the Commission and its officials on administrative claims and litigation brought by its employees, and provides legal advice to the Commission and agency management on employee-related matters.

6. Litigation Advisory Services

Litigation Advisory Services (LAS) evaluates district office suit recommendations in cases that require General Counsel or Commission authorization, and drafts litigation recommendations to the General Counsel for approval or submission to the Commission. LAS responds to Commissioner inquiries on cases under consideration for litigation, acting as OGC's liaison and contact point between the Commissioners and the field legal units or Systemic Litigation Services. LAS also performs special assignments as requested by the General Counsel.

7. Appellate Services

Appellate Services (AS) is responsible for conducting all appellate litigation where the Commission is a party. AS also participates as Commission amicus curiae in United States Courts of Appeals, as well as federal district courts and state courts, in cases involving novel issues or developing areas of the law. AS represents the Commission in the United States Supreme Court through the Solicitor General. AS also makes recommendations to the Department of Justice in cases where the Department is defending other federal agencies on claims arising under the statutes the Commission enforces. In addition, AS reviews EEOC policy materials, such as proposed regulations and enforcement guidance drafted by the Commission's Office of Legal Counsel, prior to their issuance by the agency.

8. Research and Analytic Services

Research and Analytic Services (RAS) provides expert and analytical services for cases in litigation, assists EEOC attorneys in obtaining expert services from outside the agency, and provides support to field staff investigating charges of discrimination. RAS has a professional staff with backgrounds and advanced degrees in the social sciences, economics, statistics, and psychology who serve as testifying and consulting experts on cases in litigation. RAS also provides services to other agency offices, such as conducting social science research on issues related to civil rights enforcement, advising the agency on the collection of workforce data, and developing and maintaining special census files by geography, race/ethnicity and sex, and occupation.

9. Administrative and Technical Services Staff

OGC's Administrative and Technical Services Staff (ATSS) provides administrative and technical services to all headquarters components of OGC. ATSS also is responsible for preparing the OGC budget request to the Commission for the Office of Management and Budget and Congress as well as for handling various budget execution duties such as transferring funds to field offices and monitoring expenditures. ATSS maintains nationwide data on the Commission's litigation activities.

C. Field Legal Units

OGC has legal units in each of the Commission's 23 district offices. The legal units conduct Commission litigation in the geographic area covered by the district and provide legal advice and other support to the district office enforcement units responsible for investigating charges of discrimination. Field attorney staff also participate in district office outreach efforts, and in most offices the legal unit is responsible for responding to Freedom of Information Act requests. Each district office legal unit is under the direction of a Regional Attorney, who manages a staff consisting of supervisory trial attorneys, trial attorneys, paralegals, and support personnel; legal units include trial attorneys and support staff stationed in area and local offices within the district.

> *The success of EEOC's court enforcement program is attributable to the commitment and quality work of the trial attorneys in the field who litigate employment discrimination cases in federal district courts throughout the country*

II. Summary of Fiscal Year 2003 Accomplishments

A. Making a Difference in Today's Civil Rights Legal Practice

Much has changed in the practice of civil rights legal advocacy since the Office of General Counsel began litigating employment discrimination cases 30 years ago. The private bar has taken on a large share of employment discrimination litigation, especially since passage of the Civil Rights Act of 1991 authorizing fuller monetary remedies. Employers are more aware of their legal obligations, and it is less common to encounter evidence of overt bias. Prospective litigants may turn to mediation and other forms of alternative dispute resolution as a substitute for lawsuits to save time and money and preserve personal relationships. Many employers now require applicants and employees to sign predispute, compulsory arbitration agreements as a condition of employment, thus removing civil rights claims from judicial scrutiny and the public eye. These changes raise the question: what is the role of EEOC's litigation program in today's legal environment?

EEOC's Office of General Counsel has adapted to these changes, and brings to the table a panoply of strategies and tools that set EEOC litigation apart. We bring lawsuits on behalf of multiple victims of discrimination without having to meet class certification requirements applicable to private litigants. Through consent decrees we institute broad-based equitable remedies calculated to prevent future discrimination that private litigants have less incentive to pursue. We bring cases that have the potential to develop the law in the public interest, and through our amicus curiae program offer our views and expertise to courts deciding issues of public importance in private litigation. We publicize the results of our litigation so that others can learn of their rights and obligations under the law and the potential consequences of noncompliance. We maintain a litigation presence in every region of the country. We seek to remove barriers to employees' access to redress for discrimination, such as predispute, compulsory arbitration agreements that deny discrimination victims the process afforded in the federal courts. We file suit on behalf of individuals who otherwise would be compelled to bring their claims to an arbitrator rather than a court. We obtain justice for individuals who could not afford representation by the private bar as the cost of litigation continues to rise. We actively participate in outreach and technical assistance to educate employees and employers of their rights and obligations under the law. The combined effect of these efforts not only brings justice to those individuals for whom the agency obtains relief in litigation, but also strengthens the Commission's ability to resolve meritorious charges of discrimination through conciliation, mediation, and other prelitigation settlements.

B. Summary of District Court Litigation Activity

OGC resolved 347 merits suits in fiscal year 2003. Merits suits include direct suits and interventions alleging violations of the substantive provisions of the Commission's statutes and suits to enforce administrative settlements. These resolutions resulted in a monetary recovery of $148.7 million. This amount is the highest monetary recovery in a single year in the history of the Commission's litigation program.

The table below presents the top ten cases resolved in FY 2003 by monetary recovery.

Top Ten Cases Resolved In FY 2003 By Monetary Benefits	
EEOC v. California Public Employees Retirement System	$50 million
EEOC v. Rent-A-Center	$47 million
EEOC v. Lutheran Medical Center	$5.4 million
EEOC v. Foot Locker	$3.5 million
EEOC v. TIC-The Industrial Company	$2.5 million
EEOC v. Simat, Helliesen & Eichner	$2.3 million

EEOC v. Gulfstream Aerospace	$2.2 million
EEOC v. South Beach Beverage	$1.8 million
EEOC v. DeCoster Farms	$1.5 million
EEOC v. Anchor Coin	$1.5 million

These 347 resolutions had the following characteristics:

- 123 cases resulting in remedies for multiple aggrieved individuals
- 256 Title VII suits
- 48 ADA suits
- 28 ADEA suits
- 2 EPA suits
- 13 concurrent suits (suits filed under more than one statute), including 10 with EPA claims

OGC filed 361 merits suits in FY 2003. Of the suits filed, 360 were direct suits and 1 was an action to enforce a conciliation agreement. OGC also filed 29 subpoena enforcement actions and 3 preliminary relief actions.

These 361 suit filings had the following characteristics:

- 126 cases brought on behalf of multiple aggrieved individuals
- 277 Title VII suits
- 21 ADEA suits
- 46 ADA suits
- 17 concurrent suits, including 10 with EPA claims

FY 2003's unprecedented monetary recovery provided substantial compensation for victims of employment discrimination. However, monetary relief is not the only measure of the success of EEOC's litigation program. This summary of FY 2003 accomplishments highlights those activities that best describe our contributions to remedying and deterring discrimination in today's civil rights legal environment. We first discuss the results obtained through suits seeking relief for multiple aggrieved individuals and our focus on obtaining broad-based, prospective equitable relief. We next detail our efforts to protect access to the civil rights enforcement mechanisms. We then discuss how we maintain a presence nationwide, featuring the most significant of our individual case resolutions. Next we review our law development efforts through activity in the federal and state appellate courts, both as amicus curiae and in our own litigation. Last, we present our efforts to educate the public on legal rights and responsibilities.

C. Class Litigation

While evidence of overt discriminatory bias may have receded over the last few decades, EEOC's litigation resolutions demonstrate that systemic employment discrimination nevertheless persists in today's society. In FY 2003, EEOC resolved 123 cases on behalf of multiple aggrieved individuals. In some of these cases, the defendant implemented policies or practices that systematically and intentionally discriminated against a large group of victims, numbering into the hundreds or even thousands. As described below, we obtained multi-million dollar resolutions in these cases, as well as significant, targeted equitable relief to ensure future compliance with the law.

Many other class cases presented claims of harassment. EEOC often finds during its investigation of a charge of unlawful harassment that other individuals were subjected to the same hostile work environment. As with the larger, systemic cases, we believe it is important to obtain equitable remedies calculated to prevent future discrimination in these and other smaller class cases. The case discussions below illustrate EEOC's efforts this year to maximize the impact of our litigation program through class litigation.

1. Large Class Litigation

In ***Arnett and EEOC v. California Public Employees' Retirement System (CALPERS)***, the Commission intervened in an age discrimination action alleging that defendant paid state and local public safety officers age 40 and older lower disability retirement benefits because of their age. In 1980, California abolished its age-30 cap on hiring for public safety officers, but at the same time established a method for determining benefits for industrial disability retirement that reduced such benefits from the prior level of 50% of an employee's final compensation by approximately 2% for each year of age over 30 at which an employee was hired. In August 2001, the parties entered into a partial consent decree providing that industrial disability retirement benefits from July 1, 2001, forward would be calculated without the age-based reductions. In a supplemental consent decree, defendant agreed to provide retroactive benefits for approximately 1,700 public safety officers who commenced industrial disability retirement between October 16, 1992 (the date the Older Workers Benefit Protection Act became applicable to employee benefit plans of public employers) and July 1, 2001. These retroactive benefits will total approximately $50 million. Estimated future additional benefits for these 1,700 individuals will total approximately $200 million.

If the Commission had not intervened in CALPERS, the court would have been compelled to dismiss the suit because of a Supreme Court ruling granting sovereign immunity to the states for private suits seeking monetary relief under the ADEA

In ***EEOC v. Rent-A-Center, Inc.***, the Commission filed sex discrimination actions against the nation's largest rent-to-own business which operated over 2,200 retail outlets in 50 states. One suit alleged that defendant failed to hire women into, and discharged women from, positions as account managers and inside/outside managers in its stores in Tennessee and Arkansas. The other suit, a nationwide class action in which EEOC intervened (the class was certified subsequent to EEOC's intervention), alleged that defendant discriminated against female applicants in hiring and female employees in promotion, discharge, constructive discharge, harassment and a range of terms and conditions of employment. The consent decree resolving the suits provided $47 million in monetary relief, including $10.5 million in attorney's fees and $775,000 in costs. Approximately 4,600 women received monetary relief and over 1,100 were offered jobs.

The Commission found evidence that upper level management at Rent-A-Center intentionally and systematically tried to eliminate women from the company's workforce. This case shows that overt sex discrimination still exists today.

In ***EEOC v. Foot Locker Specialty, Inc.***, the EEOC alleged that defendant, a successor to the Woolworth chain of general merchandise retail stores, engaged in a pattern or practice of discrimination against full-time Woolworth employees age 40 or over by systematically selecting older employees for discharge and replacing them with younger part-time workers.

As part of a cost-reducing nationwide corporate reorganization in 1995-97, Woolworth terminated over

600 employees who were age 40 or older and replaced them with less expensive part-time younger employees, relying on birth dates and ages in making layoff decisions. The Woolworth retail stores ceased operations in 1997. The case was resolved through a consent decree which provided for a total payment of $3.5 million in back pay and liquidated damages to 678 identified claimants, in amounts ranging from $1,500 to $10,000.

In ***EEOC v. Gulfstream Aerospace Corp.***, the Commission alleged that defendant, a manufacturer of business aircraft, discriminated against workers age 40 and over when selecting approximately 200 management-level employees for layoff during a reduction-in-force (RIF) at its Savannah, Georgia facility. Pursuant to a consent decree, defendant will pay $2,176,307 into a settlement fund for distribution to 66 eligible claimants. If defendant implements a RIF involving 75 or more employees over a 6-month period at any Savannah facility it will provide EEOC with a report providing detailed department-level information on employees laid off and retained.

In ***EEOC v. TIC - The Industrial Company***, the Commission alleged that defendant, which builds heavy industrial facilities such as power and wastewater treatment plants, engaged in discriminatory recruitment and hiring practices on a nationwide basis which prevented African-Americans from being hired into construction positions. Pursuant to a consent decree, defendant will pay $2.3 million to identified black claimants who unsuccessfully applied for work during the relevant time period, and $200,000 to establish a Minority Development Program to prepare blacks for employment in the construction industry. TIC also will engage in targeted advertising and recruitment activities to encourage black construction workers to apply for employment with the company.

The Commission has noted that more than a generation after the Civil Rights Act of 1964 was passed, African-Americans continue to face exclusionary hiring and recruitment practices

2. Harassment of a Class of Women

In ***EEOC v. Lutheran Medical Center***, the Commission alleged that female employees were sexually harassed by a hospital doctor while he conducted employment-related medical examinations. The sexual harassment included invasive touching and intrusive questioning about the employees' sexual practices. The case was resolved through a consent decree which provides for a total payment of $5.425 million to at least 51 women who were sexually harassed during the employment-related examinations. Defendant agreed to reinstate qualified employees who quit because of a sexually inappropriate medical examination and to revise its antiharassment policy and adopt a new policy for conducting employee medical examinations.

In ***EEOC v. Austin J. DeCoster d/b/a DeCoster Farms of Iowa and Iowa AG, L.L.C.***, the EEOC alleged that defendants subjected female employees at egg processing facilities operated by DeCoster Farms in Wright County, Iowa to a sexually hostile work environment, including sexual assault and rape by supervisors. Defendant Iowa AG supplies employees for the DeCoster facilities. At the time of the harassment, the female victims were undocumented workers from Mexico. In August 2001, following receipt of a charge filed on the female employees' behalf by the Iowa Coalition Against Domestic Violence (ICADV), EEOC filed a petition for a preliminary injunction, which was resolved through an agreed order requiring defendants to distribute and enforce harassment and non-retaliation policies drafted by EEOC, to encourage cooperation with EEOC's investigation of the charge, and to ensure that employees were not subjected to harassment, discrimination, or retaliation. Following a cause finding and conciliation failure on ICADV's charge, the EEOC filed the present action, which was resolved through a consent decree providing $1.3 million in damages to 11 individuals, $100,000 to ICADV, and $125,000 to any additional victims identified within a year of entry of the decree, with any money remaining at that time going to ICADV. Defendants are required to promulgate policies in both English and Spanish prohibiting race, sex, or national origin harassment and retaliation.

In ***EEOC v. Simat, Helliesen & Eichner, Inc., and Reed Elsevier, Inc.***, the Commission alleged that defendants, an airline consulting firm and a former affiliate of a multinational publishing company, subjected five female employees working in clerical and professional jobs to a sexually hostile work environment at its Manhattan headquarters. Four of the claimants were sexually harassed by SH&E's former president, and another female employee was harassed by a male coworker. The former president's secretary was discharged in retaliation for complaining of the harassment. To resolve EEOC's lawsuit and a related private suit filed by the claimants, defendant agreed to a consent decree which provides for a total payment of $2.3 million, including attorneys' fees and costs, to the four women harassed by SH&E's former president. (EEOC resolved the coworker harassment claim of the fifth claimant for $150,000 through a separate consent decree entered in June 2002.) Pursuant to the decree, defendants agreed to adopt appropriate measures to ensure compliance with Title VII, including implementing a sexual harassment training program for all U.S. management personnel. SH&E's former president (now Chairman and CEO) was required to attend the management training as well as an additional training program relating to sexual harassment and retaliation. SH&E also agreed to make reasonable efforts to actively seek qualified female candidates for professional positions.

In ***EEOC v. Rio Bravo Int'l, Inc.***, and Innovative Restaurant Concepts, Inc., the EEOC alleged that defendants, owner/operators of a restaurant located in Clearwater, Florida, subjected five female servers and hostesses at the restaurant to a sexually hostile working environment and retaliated against some of them for complaining about the harassment. The jury awarded $50,000 ($10,000 each to five claimants) in compensatory damages and $1.5 million ($500,000 each to three claimants) in punitive damages based on the hostile working environment claim. (The damages awards were reduced by the court to comply with the $300,000 statutory caps).

In ***EEOC v. Cheap Tickets, Inc.***, the EEOC alleged that defendant, which sells discounted leisure travel products, subjected a group of female employees working at its Los Angeles call center to a sexually hostile working environment. The harassment included unwelcome touching, propositions for sexual favors and sexually charged speech from two male supervisors. The lawsuit further alleged that defendant discharged the female employee who filed the initial charge of discrimination in retaliation for complaining about the harassment. Following defendant's sale to another corporation and the closures of the call center, the case was resolved through a settlement agreement providing $1.1 million in monetary relief to former female employees affected by the discrimination.

In ***EEOC v. Pizza Hut of America***, the EEOC alleged that defendant, a national restaurant chain, subjected four female employees to a sexually hostile working environment. The harassment included sexual touching and groping by a co-worker at a Pizza Hut restaurant in Diamond Bar, California. The women were forced to quit their jobs because of the harassment. The case was resolved through a consent decree which provides for a total payment of $360,000 ($35,209 in back pay and $324,791 in compensatory damages) to the four female claimants.

In ***EEOC v. New Prime, Inc.***, the EEOC alleged that defendant, one of the nation's largest trucking companies, subjected three female truck drivers to a sexually hostile working environment. One of the female drivers was subjected to sexually offensive comments and touching and unwelcome sexual advances by a male Driver-Trainer while she was training on the road. After she objected to the harassment and asked to get out of the truck, the Driver-Trainer refused to take her to a hotel and instead drove her to his home in rural Louisiana. Following a 10-day trial, the jury returned a verdict for the Commission on its sexual harassment claim, awarding $5,000 in compensatory damages and $80,000 in punitive damages. (The jury also awarded $1 in actual damages and $10,000 in punitive damages on the charging party's state law offensive touching claim against the harasser.) The jury found for defendant on the Commission's claims of harassment for the other two female drivers, but the judge ordered a new trial on one of those claims.

3. Harassment of a Class of Men

In ***EEOC v. Ron Clark Ford, Inc.***, the EEOC alleged that defendant, an automobile dealership, discriminated against six male employees by subjecting them to a sexually hostile working

environment. The claimants were subjected to lewd, inappropriate comments of a sexual nature by other male employees, had their genitals and buttocks grabbed against their will, and were forced to quit their jobs due to the harassment. The case was resolved through a consent decree which provided a total payment of $140,000 to the six male claimants.

In ***EEOC v. RSG Forest Products, Inc.***, the EEOC alleged that defendant subjected five male mill workers to a sexually hostile working environment at the company's Estacada, Oregon sawmill. The men experienced repeated inappropriate and unwelcome sexual conduct from a high-level male manager. The supervisor made vulgar comments and thrusting motions and grabbed the male employees' genital areas. Workers reported the harassment to management but the company failed to take effective remedial action to end the harassment. The case was resolved through a consent decree which provides for a total payment of $200,000 to the five male claimants and the creation and distribution of a written equal employment opportunity policy.

4. Harassment Based on Race or National Origin

In ***EEOC v. Anchor Coin d/b/a Colorado Central Station Casino, Inc.***, the EEOC alleged that defendant, a casino located in Black Hawk, Colorado, subjected a group of Hispanic employees working in its housekeeping department to a hostile working environment based on their national origin and imposed an unlawful English-only rule on Hispanic workers. In 1998, defendant's Human Resources Director instructed the Chief of Engineering, the Housekeeping Manager and other housekeeping supervisors to implement a blanket English-only language policy in the housekeeping department and to discipline any housekeeping employee, some of whom only spoke Spanish, who violated the policy. Managers chastised employees for speaking Spanish at any time and would shout "English-English-English" or "English-only" at them in the halls. The court's settlement order provides for a total payment of $1,516,000 ($1,201,000 to the 9 plaintiff-intervenors and $315,000 to 24 additional claimants). The order also prohibits defendant from maintaining an English-only policy or other policies that restrict the use of any language other than English.

This case illustrated how English-only rules can contribute to a hostile environment of harassment based on national origin

In ***EEOC v. Hugh O'Kane Electric Co., LLC***, the EEOC alleged that defendant, a nationwide telecommunications network, subjected a group of employees working at company facilities in Maryland, Virginia, and the District of Columbia to a hostile working environment based on their race (black) and countries of national origin (Afghanistan, Nigeria, Sudan, and Cameroon). The claimants, who were employed for approximately 4 to 6 weeks, were subjected to racial epithets ("sand nigger," "black monkey") and insulting comments ("beatle eater," "camel jockey") from managers and some were discharged because of their race and/or national origin. EEOC also alleged that an Afghani class member employed as a project manager was demoted and discharged because he opposed the discriminatory practices, including refusing to discriminatorily discharge class members. A related case, ***Nestor, et al. v. Hugh O'Kane Electric Co.***, was consolidated with EEOC's lawsuit. The two cases were resolved through a consent decree which provides for a total payment of $1.1 million in monetary relief to be distributed to the aggrieved claimants. Defendant is enjoined in Maryland, Virginia, and DC from harassing or discharging employees on the basis of race or national origin and from retaliation.

In ***EEOC v. The Herrick Corporation d/b/a Stockton Steel***, the EEOC alleged that defendant, a steel fabrication plant, denied equal employment opportunities to and subjected four Pakistani-American and Muslim employees to a hostile working environment based on their national origin (Pakistani) and religion (Islam). Over an extended period of time, the employees were hassled during their daily Muslim prayer obligations, mocked because of their traditional dress, and repeatedly called "camel jockey" and "raghead." The case was resolved through a consent decree which provides for a total payment of $1.11 million to the four claimants (two of whom intervened in EEOC's suit) representing compensatory damages. The decree prohibits defendant from discriminating on the basis

of national origin or religion in employees' terms and conditions of employment, including harassment. The defendant also is required to make policy changes to establish a more effective complaint and investigation procedure and to provide for supervisor accountability for national origin or religious harassment.

Since the terrorist attacks of 9/11, the Commission has used a variety of tools, including litigation, to combat discrimination against Muslims and people of Middle Eastern, African and Asian national origin

In ***EEOC v. TMBR/Sharp Drilling, Inc.***, the EEOC alleged that defendant, a West Texas oil and gas drilling contractor, subjected an African-American employee to a racially hostile work environment because of his race and subjected four of his white co-workers to a hostile work environment because of their association with him. On a daily basis, the Black employee was subjected to racial slurs, racist jokes, derogatory comments, ridicule and intimidation. In addition, Nazi "SS" symbols and hangman nooses were placed around the drilling site. The case was consolidated with a private action and resolved for a total payment of $859,000 to be divided equally among the five claimants.

In ***EEOC v. G.F.B. Enterprises, LLC d/b/a Lexus of Kendall***, the EEOC alleged that defendant, a car dealership, subjected a group of employees to a hostile working environment on the basis of national origin (Hispanic), race (Black) and religion (Jewish). The harassment consisted of derogatory comments ("America is for whites only") and name-calling ("spic," "nigger") made by the Director of Fixed Operations and the son of the dealership's owner. One of the charging parties was forced to quit his job due to the harassment. The case was resolved through a four-year consent decree which provides for a total payment of $700,000. Defendant is also enjoined from discriminating against any employee who opposes unlawful employment practices under Title VII.

In ***EEOC v. Pinnacle Nissan, Inc., and ABC Nissan, d/b/a Automotive Investment Group, Inc.***, the EEOC alleged that defendant, a car dealership, subjected employees to a hostile working environment based upon their national origin (Middle-Eastern and Hispanic) and religion (Jewish) and retaliated against those employees who opposed discrimination. The case was resolved through a consent decree which provides for a total payment of $361,451 to seven claimants (ranging from $168,000 to $6,667) plus an additional $159,549 in fees and costs to the attorney representing three claimants who intervened. Pursuant to the decree, defendant is prohibited from discriminating based on national origin or religion or retaliating against any employee. Defendant is required to evaluate managerial personnel on their performance in responding to employee discrimination complaints and their compliance with EEO laws and will discipline any manager who fails to enforce defendant's antidiscriminatory policies and EEO laws. Defendant also agreed to hire an Ombudsperson, who will report directly to defendant's president, to review its antidiscrimination policies, establish a diversity awareness program, and investigate complaints of discrimination.

In many of the agency's settlement negotiations, the Commission explores creative ways to increase management accountability for discrimination to help prevent future violations of the law

In ***EEOC v. Control Building Services, Inc.***, the EEOC alleged that defendant, a cleaning contractor, subjected two female maintenance employees to a hostile working environment based on their sex and national origin (Polish), and that the women were given extra cleaning assignments in retaliation for rejecting their supervisor's sexual advances. The supervisor repeatedly called the two women derogatory names which emphasized their Polish heritage and requested sexual intercourse and other sexual acts with them. One of the female claimants was forced to quit her job due to the harassment. In addition to the sexual harassment, a male maintenance employee was harassed because of his

national origin (Peruvian) and dark skin. The case was resolved through a consent decree for a total payment of $575,000 to the three claimants, all of whom intervened.

In ***EEOC v. Ford of Greensburg***, the EEOC alleged that defendant, a car dealership, subjected charging party, an African-American salesman, and other Black employees, to a racially hostile working environment. The harassment included racially derogatory comments made by co-workers and managers, racially motivated pranks, and the distribution of KKK literature at the work site. As a result of the harassment, charging party quit his job. The case was resolved through a consent decree which provides for a total payment of $534,000 in back pay and compensatory damages ($272,000 to charging party and $262,000 to another claimant).

5. Hiring and Assignment Discrimination

In ***EEOC v. Shelbyville Mixing Center, Inc.***, the EEOC alleged that defendant, an automobile distributor specializing in freight car loading and unloading, refused to hire qualified female applicants as Loaders/Unloaders during the period October 1, 1997, through August 1, 2002, because of their sex. Defendant filed for bankruptcy in November 2002, after the lawsuit was filed. EEOC filed a motion for summary judgment, which was unopposed, and presented evidence showing that, in 1997-98, 1,929 males applied for Loader/Unloader positions and 263 females applied. During that same time period, defendant hired 138 men as Loaders/Unloaders and only three women. If the defendant had hired female applicants consistent with their representation in the applicant pool, it would have hired a total of 18 women for the Loader/Unloader position in 1997-98. The court granted summary judgment to EEOC, finding that defendant denied female applicants employment because of their sex and instead hired male applicants who were no more qualified or even less qualified than the female applicants. The court awarded $750,000 in compensatory damages to be equitably divided among the women who applied for Loader/Unloader jobs during 1997 and 1998.

This case illustrates that women continue to face discrimination in access to traditionally male jobs

In ***EEOC v. DaimlerChrysler Corp. and UAW Local Union No. 685***, the EEOC alleged that defendant Daimler discriminated against charging party (who has severely restricted mobility in her right arm and hand) and other qualified individuals with disabilities employed at its Kokomo, Indiana automobile manufacturing plant through its practice of denying job transfers to employees with medical work restrictions (characterized as "PQX" - people with qualified exceptions). Daimler's no-transfer practice extended to persons with both temporary and permanent medical conditions. Daimler claimed that the "no PQX transfers" policy had been abolished but charging party and other employees alleged that the practice still existed. The case was resolved through a consent decree which provides for payment of $100,000 to be distributed equally among 10 class members. Daimler will provide individual notice to employees that transfers will not be denied based on PQX codes and that to the extent Daimler's Kokomo, Indiana facility ever had a policy of denying transfers on this basis, that policy no longer exists.

An employment policy that denies employment opportunities to employees with work restrictions violates the Americans with Disabilities Act when it is applied to a qualified individual with a disability and the employer cannot show that the policy is justified by business necessity

In EEOC v. Speedway SuperAmerica, LLC, the EEOC alleged that defendant, a gas station/mini-market chain, refused to hire African-American applicants who applied for Customer Service Representative positions because of their race. The case was resolved through a total payment of $150,000 ($21,000

in back pay and $129,000 in compensatory damages) to 16 black job applicants who were denied employment. In addition to the monetary relief, Speedway agreed to offer to the aggrieved claimants the next 14 Customer Service Representative positions that become available and to provide training on federal discrimination laws to its management personnel in 2003 with an estimated cost of $200,000.

Management training on civil rights laws is a crucial component of many of the resolutions of our lawsuits

In ***EEOC v. U.S. Pipeline, Inc., and Local 980 of the Laborers' International Union of North America***, the EEOC alleged that defendants, a pipeline construction company and a local union, discriminated against 11 Hispanic applicants by refusing to hire them as laborers to work on a short-term gas pipeline project in Concord, North Carolina because of their national origin. Despite having prior work experience with U.S. Pipeline, when charging parties showed up at the Concord project, they were ignored or told to go home. In contrast, non-Hispanic applicants were hired the same day the charging parties applied for work. The case was resolved through a consent decree for a total payment of $90,000. The decree prohibits defendants from refusing to hire or refer Hispanic applicants because of their national origin, and requires the institution of antidiscrimination policies and annual nationwide training on those policies for two years for U.S. Pipeline managers and Local 980 representatives involved in hiring or referrals.

The Commission has filed several lawsuits involving discrimination against Hispanics and immigrants in regions that historically have not had significant Hispanic or immigrant populations

In ***EEOC v. Bazaar Del Mundo (BDM)***, the EEOC alleged that defendant, a Mexican-themed tourist attraction with shops and restaurants in Old Town San Diego which employs over 500 workers, refused to hire African-American job applicants because of their race. The black claimants applied for various jobs with defendant, including cashier, salesperson, line cook/food prep, and customer service positions, and though qualified for the positions for which they applied, were not hired. Instead, defendant continued soliciting applications and hired less qualified non-black applicants. The case was resolved through a consent decree which provides for a total payment of $120,000 for 12 black job applicants who were denied employment because of their race. Pursuant to the decree, defendant is enjoined from engaging in any hiring practice which discriminates against blacks. BDM further agreed to retain a consultant for a period of three years to develop recruiting, screening and hiring procedures, assist in training defendant's supervisory employees, and ensure compliance with the provisions of the decree. Defendant further agreed to actively recruit African-American job applicants with a hiring goal of 5% Black employees in each 12-month period during the three-year term of the decree.

In ***EEOC v. Enterprise Rent-A-Car Company of Texas, Inc.***, the EEOC alleged that defendant, a car rental company with 48 branch offices in the Austin, Texas metropolitan area, refused to hire individuals age 40 and older into entry-level Management Trainee positions. In 1998, approximately 1100 individuals applied for Management Trainee positions in the Austin area, almost 10% of whom were in the protected age group. Of the 110 candidates hired for trainee positions in 1998, none were age 40 or older. The case was resolved through a consent decree which provides for a total payment of $160,000 in monetary relief to PAG applicants denied jobs. Defendant agreed that for each year during the four-year term of the decree, it shall have an annual goal of hiring five qualified age-protected persons to fill available Management Trainee positions in the Austin metropolitan area.

In ***EEOC v. American Cyanamid***, the EEOC alleged that defendant, an agricultural chemicals manufacturer, refused to hire individuals as material handlers because of their insulin-dependent diabetes. Following a single blood test which showed elevated blood sugar and with no consideration of

charging party's work history or current medical information, defendant rescinded its offer of employment. EEOC's investigation also revealed that defendant had previously withdrawn an offer of employment to another job applicant for similar reasons. The case was resolved through a consent decree which provides for a total payment of $75,000 to the two applicants and, due to layoffs at the facility, requires that they be added to the collective bargaining agreement recall list with seniority rights as of the dates their job offers were withdrawn.

6. Discriminatory Discharge

In ***EEOC v. Anderson & Vreeland, Inc.***, the EEOC alleged that defendant, a national supplier of printing equipment and materials based in Ohio, discriminated against four long term employees when it terminated them and replaced them with substantially younger individuals. The four claimants (a regional sales manager, a draftsman, and two sales representatives) were between the ages of 60 and 69 at the time of their discharge and had worked for defendant for periods ranging from 11 to 18 years. The case was resolved through a consent decree which provides for a total payment of $554,000 to the four claimants and enjoins defendant from discriminating on the basis of age and from retaliation.

In ***EEOC v. Lithia Centennial Chrysler Plymouth Jeep, Inc., and Moreland Auto Group, LLP***, the EEOC alleged that defendant Moreland Auto Group fired the only three African-American salespersons employed at an automobile dealership purchased by defendant Lithia, due to their race. The lawsuit alleged that on January 15, 1999, Martin Luther King, Jr., Day, the dealership's General Manager used racial epithets and directed a supervisor to fire all Black salespersons. The case was resolved through a consent decree which provided for a total payment of $450,000 to the three charging parties. The decree enjoins Moreland and three automobile dealerships it controls from discriminating on the basis of race and from retaliating against employees, and requires Moreland to adopt an anti-discrimination policy and to conduct annual training for all employees with regard to discrimination issues. The decree also requires Moreland's owner to issue a letter to the three charging parties apologizing for the racially discriminatory conduct of his former managers.

In ***EEOC v. Sterling McCall Toyota***, the EEOC alleged that defendant, an auto dealership, discharged two Nigerian-born car sales employees in retaliation for their complaints that car sales employees of Nigerian national origin were singled out for criticism of their sales practices. The case was resolved through a consent decree which provides for a total payment of $135,000 to the two claimants.

D. Protecting Access to Enforcement Mechanisms

The effective enforcement of the civil rights laws depends on preserving unfettered access to civil rights enforcement mechanisms, including individuals' rights to report discriminatory practices to their employers, file charges of discrimination, and participate in Commission proceedings, and the Commission's ability to obtain evidence relevant to discrimination claims. Any barrier to the access of civil rights protections poses a serious threat to the ability of the Commission to carry out its mission and has a chilling effect on the exercise of federally protected rights. Therefore, EEOC is vigilant in pursuing claims of retaliation and enforcing the agency's right to obtain relevant evidence. In addition, we examine private agreements, such as predispute, compulsory arbitration agreements and waivers of claims, to ensure that an individual's absolute right to file a charge as well as his or her right to proceed in court have not been compromised. The discussion below illustrates several cases we pursued this year in the trial courts to protect access to civil rights protections.

In ***EEOC v. Severn Trent Services, Inc.***, the EEOC alleged that defendant, a worldwide supplier of water and wastewater treatment solutions, invoked a non-disparagement provision contained in an employee's written consulting agreement to prevent the employee from speaking freely with the EEOC during an investigation of a sexual harassment charge filed by another employee against defendant. The EEOC filed an application for an injunction which was granted by the district court. The court's order enjoined Severn Trent from entering into or enforcing any provision of any contract or agreement which prohibits or purports to prohibit the Executive Vice President/Consultant from participating in the

investigation and processing of the charge in question or from providing information to EEOC in connection with the charge.

This case illustrates that the Commission will move quickly to eliminate threats to the absolute right of individuals to provide the agency with evidence of discrimination

In ***EEOC v. Bon Secours DePaul Medical Center, Inc.***, the EEOC alleged that defendant, a hospital, forced charging party, a female Director of Operative Services and acting Nurse Manager, to resign in retaliation for her attempts to prevent sexual harassment in the hospital's operating rooms and facilities. Following a four-day trial, the jury returned a verdict for the Commission and awarded the charging party $1,050,000 in compensatory damages and $3,000,000 in punitive damages. Total damages are subject to a $300,000 cap. The court determined back pay and injunctive relief.

In ***EEOC v. Fru-Con Construction Corp.***, the EEOC alleged that defendant, a maintenance contractor, fired charging party, a welder, in retaliation for his participation as an adverse witness in an EEOC lawsuit brought against charging party's former employer, Rust Constructors. When defendant replaced Rust Constructors at a client company's facility, it retained many of Rust's employees but discharged charging party because of his participation in the prior lawsuit against Rust. The case was resolved through a consent decree which provided for payment of $45,000 to charging party.

In ***EEOC v. PEMCO, Corp.***, the EEOC alleged that defendant, an umbrella corporation for a number of insurance and financial businesses, retaliated against charging party, an African-American female Lead Programmer/Analyst, when it fired her after learning that she had contacted EEOC to file a charge alleging race discrimination. The case was resolved through a consent decree which provides for payment of $200,000 to charging party.

In ***EEOC v. Norstan Apparel Shops, Inc., d/b/a Fashion Cents***, the EEOC alleged that defendant, a clothing retailer, retaliated against charging party, a Store Manager, after she reported to her District Manager that several of her subordinates complained that they were being sexually harassed by another (male) Store Manager. Charging party was asked to prepare a written statement detailing her knowledge of the sexual harassment allegations. Management rejected charging party's statement and demanded that she prepare a different statement containing a false description of events related to the harassment. Charging party signed the inaccurate statement because she believed she would be fired if she did not. Later that same day, charging party was fired. The case was resolved through a consent decree which provides a payment of $250,000 in monetary relief to charging party.

In ***EEOC v. InteliOffice, LLC and Intelitouch.com***, the EEOC alleged that defendants, related businesses that provide an internet-based customer relationship management system designed for real estate professionals, retaliated against charging party, an Area Sales Manager, when they demoted her, suspended her and discharged her shortly after she complained about inappropriate sexual language being used by a manager during an employee training session. The case was resolved through a stipulated final judgment and order which provides for a payment of $112,000 to charging party and an injunction prohibiting future discrimination.

In ***EEOC v. GeoLogistics Americas, Inc.***, the EEOC alleged that defendant, a freight and cargo shipping agent, retaliated against charging party, an employee in defendant's Processing Department, when it fired her after she complained that she was denied training and job opportunities because of her sex (female). The Processing Department, which was responsible for distributing merchandise to department stores, had only female employees and the Receiving Department, which was responsible for unloading pallets of merchandise using forklifts, had only male employees. Because defendant routinely assigned charging party to assist in the Receiving Department, she requested to be trained and certified as a forklift operator. Defendant denied her request, and after charging party objected to what she believed was sex discrimination, she was fired. The case was resolved through a consent

decree which provides for payment of $100,000 to charging party and an injunction prohibiting future retaliation.

E. The Power of One: Making a Difference Through Individual Claims

Much of EEOC's litigation program is dedicated to bringing claims on behalf of individual victims of employment discrimination. Successfully resolving individual claims is important to ensuring that justice prevails in all areas of the country and helps us strengthen ties to local communities. In addition, individual claims often result in prospective, equitable relief geared towards preventing future discrimination. Combined with effective publicity, individual cases can also have a ripple effect of deterrence within a community. Indeed, litigation is usually the only stage in EEOC's process where discrimination claims are open to the public eye. Thus, the filing and resolution of a Commission lawsuit is an important opportunity to use the media as a tool for education, prevention, and deterrence.

The great majority of EEOC's disability discrimination claims are brought on behalf of a single individual. This phenomenon is due largely to the fact that unlike the other statutes we enforce, where membership in a protected group is never an issue, the determination of whether a person has a disability under the ADA is made on an individual basis and it is therefore difficult to establish a class of disabled individuals. However, the ADA provides that a seemingly neutral employment selection criterion that screens out only one disabled person violates the law when it is not job-related and justified by business necessity, whereas under the other statues we enforce, neutral barriers are illegal only where they disproportionately affect a particular class of individuals.

The significance of our individual cases should be viewed in the context of today's civil rights practice. Many of these cases may be unappealing to private attorneys because of the difficulty of prevailing in court (especially on ADA claims), the expert testimony needed to prove the claim, or the limited financial recovery expected. In many of these cases, the victim of discrimination simply cannot afford to retain private counsel. Whatever the reason, many victims of discrimination, in every region of the country, rely on the Commission to obtain justice in the courts.

The cases below are a cross-section of significant individual FY 2003 resolutions under all the statutes we enforce. This selection demonstrates the agency's commitment to maintaining a presence in all regions of the country, maintaining a docket representing all protected bases, and advocating for meaningful monetary relief, as well as for improvements to workplace policies and procedures, new job opportunities, training, and other relief in the public interest.

1. Title VII

a. Sex Discrimination

In ***EEOC v. Babies "R" Us, Inc.***, the EEOC alleged that defendant subjected charging party, an 18-year-old male sales clerk, to a hostile working environment because of his sex. Throughout his employment, charging party was the target of daily unwelcome and derogatory comments (such as "fag," "faggot" and "happy pants") that mocked him because he did not conform to societal stereotypes of how a male should appear or behave. He was also grabbed and held by co-workers and had his pants forcibly removed. Despite knowledge by defendant's supervisors of the verbal and physical harassment, no action was taken to stop the unlawful conduct. As a result of the ongoing harassment, charging party was forced to quit his job. The case was resolved through a consent decree which provides for payment of $205,000 to charging party representing $30,000 in backpay and $175,000 in compensatory damages. Among other relief, defendant is also enjoined from any employment practice which violates Title VII and specifically from creating or tolerating a sexually hostile work environment and from retaliation.

In ***EEOC v. B.K., Inc. d/b/a Church's Chicken***, the EEOC alleged that defendant, an owner/operator of fast food franchises, subjected charging party, a 14-year-old female employee, to a sexually hostile

work environment. In July 2000, one of defendant's Store Managers sexually assaulted charging party. He was later convicted of aggravated indecent liberties with a child and sentenced to eight years in prison. The case was resolved through a consent decree which provides for a payment of $150,000 to the charging party. The decree also requires defendant to issue a letter of apology to charging party, provide sexual harassment training to all employees and post notices at its four restaurants informing employees of their right to be free from sexual harassment.

The Commission has brought multiple class and individual lawsuits involving sexual harassment directed towards teenagers, particularly in the restaurant and retail industries

In EEOC v. Taco Bell, the EEOC alleged that charging party, a 16-year-old female food service worker, was raped by a male shift supervisor while working at a Taco Bell restaurant in Glenolden, Pennsylvania. After charging party reported the sexual assault to the police, the supervisor pled guilty to a "corruption of minor" charge. The day after filing the police report, charging party and her mother reported the rape to the Assistant Manager, who laughed and said she did not believe the allegations. Charging party never returned to work. Only after defendant learned of the harasser's guilty plea, did it terminate him. The case was resolved through a consent decree which provides for payment of $150,000 to charging party. Defendant was also required to pay $1,500 to the EEOC's San Francisco-based project to create a training tool for minors about sexual harassment.

In ***EEOC v. Denny's, Inc.***, the EEOC alleged that defendant, a nationwide restaurant chain, discriminated against charging party, a high school student employed as a waitress in a Carbondale, Illinois restaurant, by subjecting her to a sexually hostile working environment and retaliating against her after she contacted EEOC to complain. The lawsuit claimed that defendant's Restaurant Manager routinely touched the charging party in a sexual manner and that a coworker continually made sexually graphic comments to her. After she complained, charging party's work hours were reduced and she was eventually fired. The case was resolved through a consent judgment which provides charging party $135,000 in monetary relief and enjoins defendant from sex discrimination and retaliation. The consent judgment also provides that the manager will be terminated within 10 days of the entry of the judgment and that neither he nor the coworker will ever be employed in a restaurant owned or operated by defendant.

In ***EEOC v. Wal-Mart Stores, Inc.***, the EEOC alleged that defendant, the nationwide retail chain, subjected charging party, a female Bakery Department employee, to a sexually hostile working environment through the actions of the Bakery Manager. The harassment included unwelcome sexual comments and touching. After charging party complained about the harassment, she was transferred to a position in the hardware department that required heavy lifting and was ultimately forced to quit her job. The case was resolved through a consent decree which provides for payment of $150,000 to charging party. Defendant is also required to document the sexual harassment complaints against the Bakery Manager in his permanent personnel file with an indication that any further complaints will be fully investigated and appropriate disciplinary action taken.

In ***EEOC v. Brink's, Inc.***, the EEOC alleged that defendant, a security firm, discriminated against charging party, a female employee, when it failed to promote her to an Assistant Branch Manager position because of her sex and instead selected a less qualified male for the promotion. The case was resolved through a consent decree which provides for a payment of $58,750 in compensatory damages to charging party. Among other relief, defendant also agreed not to discriminate or retaliate against any individual and to provide a letter of recommendation for charging party.

In ***EEOC v. Laidlaw, Inc. & Laidlaw Educational Services***, the EEOC alleged that defendant, a provider of bus transportation services for school systems and other industries, discriminated against charging party, a female bus driver, by denying her driving assignments on which she would have earned extra compensation and by refusing to provide her training because of her sex. During a

"mountain trip," an additional and more lucrative assignment than charging party's normal duties, charging party called defendant's District Manager about her paycheck and mentioned during the conversation that she and the two male drivers on the trip were having communication problems because they did not have a calling card. The exchange became heated and the District Manager said to charging party "no female will ever stand up to me and get away with it." Subsequently, charging party was not permitted to drive mountain trips and was refused "retraining" that the District Manager said was necessary for her to be eligible to make these trips. Following a four-day bench trial, the judge awarded charging party, who intervened, $3,200 in back pay, $30,000 in compensatory damages, and attorneys fees.

In ***EEOC v. Creative Packaging Corp.***, the EEOC alleged that defendants, a plastic injection molding corporation and its packaging affiliate, discriminated against charging party, a female salesperson, because of her sex by paying her less money than a male employee who performed the same job duties, and retaliated against her after she complained about the discrimination. One month after charging party asked to be placed into a higher-paying International Salesperson position, defendants fired her. The case was resolved through a consent decree which provided charging party $110,000 in monetary relief and enjoins defendants from discriminating on the basis of sex and from retaliation.

In ***EEOC v. Kettering University***, the EEOC alleged that defendant, an engineering college, paid charging party, a female Full Professor, lower wages than male professors and denied her the opportunity to earn supplemental income because of her sex. Charging party was hired by defendant in 1989 as an Associate Professor, granted tenure in 1991 and made a Full Professor in 1995. She retired on disability in December 1999. A male professor with comparable job responsibilities was hired in 1995 as a Lecturer, promoted to Assistant Professor in 1996 and to Associate Professor in 2000. Despite having a superior educational background and employment history and being made a Full Professor earlier than her comparator, charging party earned a lower base salary than her male colleague in each academic year that they worked together. The complaint further alleged that defendant refused to give charging party "overload" administrative assignments which would have allowed her to earn supplemental income. In comparison, similarly situated male professors were assigned such work. The case was resolved through a settlement agreement which provides for payment of $55,000 to charging party.

In ***EEOC v. Jacobs Engineering Group, Inc.***, the EEOC alleged that defendant, a consulting company which provides scientific and specialty consulting services to industrial, commercial, and governmental clients, discriminated against charging party, a female Estimator-Level IV, by paying her lower wages than comparable males because of her sex. Charging party objected to the pay disparity but was told that "it's no place for a woman to work" and "you have a husband and child." Defendant refused to increase her salary to equal the pay of male estimators with similar or lesser credentials. The lawsuit was resolved through a consent decree which provides for payment of $200,000 to charging party, and an agreement not to engage in wage discrimination or retaliation. Defendant further agreed to state, when recruiting, that it is an equal employment opportunity employer and is seeking qualified female and male applicants. Additionally, pictorial job advertisements will feature a female.

The Commission works to remove discriminatory barriers to women's advancement and to ensure equal pay for equal work

In ***EEOC v. The Guardian Insurance Co.***, the EEOC alleged that defendant discharged charging party, a female field representative, because of her sex. Defendant fired charging party for having signed a client with an outside insurance company but did not discharge similarly situated male employees who also had contracts with outside insurance companies. The case was resolved through an agreed order which provides for a payment of $103,000 in monetary relief to charging party.

In ***EEOC v. Wal-Mart Stores, Inc.***, the EEOC alleged that defendant refused to rehire charging party, a former clothing clerk, because she told the interviewer that she was pregnant. After charging party's

interview in November 1991, an assistant manager at the Tucson-area store told her to "come back after she had the baby." In 1997, a jury found that Wal-Mart had intentionally discriminated against charging party and awarded her $1,700 in back pay but the judge refused to allow the issue of punitive damages to go to the jury. Following an appeal and remand on the punitive damages issue, Wal-Mart agreed to enter into a consent decree providing for a payment of $220,000 to charging party.

b. Race Discrimination

In ***EEOC v. Lincare, Inc.***, the EEOC alleged that defendant, a provider of home infusion products and services such as oxygen therapy, respirator services and ventilators, fired charging party, an African-American Service Representative, because of his race. When it was announced at an employee meeting that charging party had been hired and that he is black, another employee stated that she did not like "niggers" and did not want to work with black people. This employee later became charging party's supervisor, and shortly thereafter fired charging party. At the time of his termination, charging party was the only black employee working at defendant's branch office. The case was resolved through a consent decree which provides for payment of $118,000 to charging party.

In ***EEOC v. Home Depot U.S.A.***, Inc., the EEOC alleged that defendant, the home improvement retail chain, fired charging party, an African-American Associate Development Supervisor, because of her race. During charging party's employment at a Home Depot store in Newport News, Virginia, an individual began working at the store before being officially hired and was paid out of petty cash. Four employees were involved in allowing this person to work "off the books" - the Store Manager and charging party, both of whom are black, and two white Assistant Store Managers. Defendant fired charging party and the Store Manager because of their involvement in the incident but did not terminate either of the white Assistant Store Mangers despite their participation. The case was resolved through a consent decree for a payment of $61,000 to charging party.

In ***EEOC v. Wal-Mart Stores, Inc.***, the EEOC alleged that defendant discriminated against charging party, an African-American Unloader, when it denied him a promotion to a Receiving Team Supervisor position and instead promoted a less qualified non-black employee. EEOC also alleged that defendant discriminated against a group of African-American Unloaders by denying them pay raises and paying them lower wages than comparable non-black Unloaders. The case was resolved through a consent decree which provides for a payment of $140,000 to charging party. Pursuant to the Decree, defendant will study the wage rates of black Unloaders currently employed at the facility where the discrimination occurred and adjust any wage rate to be no less than the average wage rate paid to an Unloader with similar tenure and experience.

c. National Origin Discrimination

In ***EEOC v. The Reliable Life Insurance Company***, the EEOC alleged that defendant discriminated against charging party, an Iranian-born insurance sales representative, when it withdrew an offer of promotion because of his national origin. Charging party was offered a promotion to an Assistant Manager position in September 2000 which was to become effective November 20, 2000. In October 2000, defendant announced an initiative to increase the number of Hispanic and Black sales representatives and assistant managers working in the Houston area. Thereafter, charging party's District Manager told him that non-Hispanic employees were not going to be promoted to assistant manager positions. The company withdrew his promotion and promoted a Hispanic male into the Assistant Manager position previously offered to him. The case was resolved through an Agreed Final Judgment which provides for payment of $75,000 to charging party.

In ***EEOC v. Williamson County Cablevision Co. d/b/a Cox Communications***, the EEOC alleged that defendant, a cable television provider and distributor, subjected charging party, a Hispanic construction foreman, to a hostile working environment based on his national origin (Puerto Rican) through the derogatory comments and physical threats of a coworker. Further, after filing his EEOC charge, charging party was told by defendant's General Manager that he would be fired if he followed through with his complaint. The General Manager also verbally harassed charging party, disciplined him

more severely than co-workers who had not filed discrimination charges and closely scrutinized his work. As a result of the harassment and retaliation, charging party quit his job. The case was resolved through a consent decree which provides for payment of $99,000 to charging party and enjoins defendant from discriminating on the basis of national origin or color and from engaging in any form of retaliation.

d. Religious Discrimination

In ***EEOC v. Brink's, Inc.***, the EEOC alleged that defendant, a security firm, terminated charging party, a practicing Pentecostal Christian, when she refused to wear pants because of her religious beliefs. Hired as a uniformed relief messenger and assigned to an armored car crew, the charging party suggested that she wear culottes instead of pants and even offered to buy the uniform material and make the culottes. Nonetheless, the company rejected this accommodation and fired her. After charging party filed a discrimination charge, the company rehired her and allowed her to wear culottes. The case was resolved through a consent decree which provides for a payment of $30,000 in monetary relief to charging party and $9,500 for her attorney's fees.

In ***EEOC v. Victoria's Secret Stores, Inc.***, the EEOC alleged that defendant, a nationwide chain of lingerie stores, subjected charging party, an African-American comanager of a Victoria's Secret store in Langhorne, Pennsylvania, to a hostile working environment because of her race and religion (Baptist) and failed to accommodate her need to attend religious services. The store manager, comanagers, and sales associates repeatedly made offensive remarks and insulted charging party's race and religion. The complaint further alleged that defendant failed to cooperate in scheduling Sunday work to allow charging party to attend church services. The District Manager failed to take steps to remedy the harassment and discouraged charging party from bringing her complaints to higher-level managers. As a result of the hostile working environment, charging party quit her job. The case was resolved through a consent decree which provides for payment of $179,300 to charging party.

In ***EEOC v. Union Independiente Autentica de la Autoridad de Acueductos y Alcantarillados (UIA)***, and Rule 19 Defendants Autoridad de Acueductos y Alcantarillados (AAA) and Ondeo de Puerto Rico, the EEOC alleged that defendant UIA, one of the largest labor unions in Puerto Rico, discriminated against charging party, a Seventh Day Adventist and an employee of Rule 19 defendant AAA, Puerto Rico's aqueduct and sewer authority, because of his religion by insisting that he become a union member despite his religious beliefs which forbid membership in a labor union. The complaint also alleged that UIA failed to provide charging party a reasonable accommodation for his religious observance and practice. When charging party refused to join UIA, the union caused his termination from AAA. After EEOC prevailed on summary judgment, defendants appealed and the case was remanded to the district court for trial. The litigation was resolved through a two-year consent decree which provides for payment by UIA of $75,000 in back pay to charging party and an agreement by defendants that charging party (who was reinstated in January 2001 while the case was on appeal) can work in a bargaining unit position at AAA without joining the union and can pay an amount equal to the union dues to a nonreligious charitable organization.

2. Age Discrimination in Employment Act

In ***EEOC v. Robertson Cheatham Farmers Cooperative***, the EEOC alleged that defendant, a farming cooperative in Tennessee, discharged charging party, a 72-year-old truck driver/fertilizer spreader, because of his age. Following a three and a half day trial, the jury returned a verdict for the Commission and awarded the charging party approximately $37,000 in back pay. Charging party had worked for defendant for nine years and had a satisfactory work record. His manager asked him to quit on at least three occasions and, when charging party refused, fired him. Defendant argued that it terminated charging party because of concerns about his health (bad knees) and safety (he had fallen two times at work) and because his skills had deteriorated. The Commission presented evidence that defendant never raised a concern with charging party relating to his health and/or safety before his discharge and that he was capable of performing his job duties. Defendant's hiring of a 29-year-old replacement the day after charging party's termination further supported a finding that charging party's

age, and not his abilities, motivated the discharge.

In ***EEOC v. KL Shangri-La Owners, L.P., Highgate Hotels, Inc. and Highgate Holdings, Inc., all d/b/a Shangri-La Resort, Inc.***, the EEOC alleged that defendant, a resort comprised of a lodge, several restaurants, conference/meeting centers, and two 18 hole golf courses, discriminated against charging party, a 58-year-old bartender/cashier, when it denied her a transfer/promotion to a more lucrative bartender/supervisor position (which she had worked on the same seasonal basis in past years) because of her age. Before the denial of the transfer, defendant's General Manager stated that charging party was "too old and grumpy" to work in the bartender/supervisor position and he and another supervisor made other ageist statements. As a result of the discriminatory treatment, charging party felt forced to quit her job. The case was resolved through a consent decree which provides for payment of $75,000 to charging party.

In ***EEOC v. Rice Cohen International, Inc.***, the EEOC alleged that defendant, an executive search firm, refused to refer charging party, then age 52, for a Federal Accounts Manager position at a client company because of his age. Four days after e-mailing his job application to defendant's Account Executive in response to a vacancy announcement, charging party was mistakenly sent an e-mail message from defendant's Director of Strategic Alliance to the Account Executive which included the statement, referring to charging party, "thanks Mike but he is too old!" Charging party never heard from defendant again about the position. The case was resolved through a consent decree which provides for payment of $40,000 to charging party.

3. Americans with Disabilities Act

In ***EEOC v. Northwest Airlines***, the Commission alleged that defendant failed to hire the charging party as an equipment service employee (ESE) because it regarded him as substantially limited in working due to his insulin dependent diabetes. Following a five-day trial, the jury returned a verdict for the Commission, awarding charging party $20,967 in back pay and $19,250 in compensatory damages. Charging party applied to defendant in May 1998, was issued a conditional job offer, and passed his replacement physical. The job offer was withdrawn after defendant's contract physician learned that the charging party was an insulin-dependent diabetic and that his diabetes was poorly controlled. Defendant contended that charging party posed a direct threat to himself and others in the workplace because he could not drive, operate heavy equipment or work at unprotected heights without possibly experiencing a sudden incapacitation or sudden altered state of consciousness. At trial, the Commission presented evidence that charging party had hypoglycemia awareness; that he had performed similar jobs at two other airlines; and that he had never experienced sudden incapacitation or an altered state of consciousness due to his diabetes. Charging party's primary care physician, who is a board certified internist and endocrinologist, testified that the charging party could safely perform the ESE job and confirmed that he had hypoglycemia awareness.

In ***EEOC v. Browning-Ferris, Inc.***, the EEOC alleged that defendant, a waste removal company, discriminated against charging party, a boom truck driver and trash compactor repair person, when it fired her because of her disability, Crohn's disease, an inflammatory bowel disorder. Despite the insistence of both charging party and her doctors that the external environment had no relation to her Crohn's disease and that she could continue to safely and effectively work around waste as she had done throughout her 10-year career with defendant, the company refused to allow her to return to work after a medical leave of absence. The case was resolved through a consent decree which provides for payment of $194,000 to charging party and an injunction prohibiting future discrimination.

In ***EEOC v. Land Air Express of New England***, the EEOC alleged in this ADA lawsuit that defendant, an air freight and delivery company, discharged charging party, an assistant manager, because of her disability when she was hospitalized for depression and post traumatic stress disorder. Charging party, who had worked for the company for over six years, had a lifelong problem of sleeplessness and depression and had been upset by the recent suicide of a friend. Over the objections of her immediate supervisor and her personal physician, defendant fired charging party because a high-level manager had a "gut feeling" that she might "go postal." The evidence also showed that charging party's

discharge violated defendant's own internal medical leave policy. The case was resolved through a consent decree which provides for payment of $360,000 to charging party, who intervened in the suit.

The Commission has brought multiple cases on behalf of individuals with mental impairments, including depression, post traumatic stress disorder, bipolar disorder and mental retardation

In ***EEOC v. United Parcel Service***, the EEOC alleged that defendant, a nationwide delivery service, discriminated against charging party, a feeder driver, by failing to transfer him to a vacant position as a reasonable accommodation for his insulin dependent diabetes. Charging party, who had worked for defendant as a tractor-trailer driver for approximately 15 years, was first diagnosed with Type II diabetes in 1998. In July 1998 he suffered a hypoglycemic episode while driving which caused him to become disoriented and to crash his truck. Thereafter, he was removed from driving duties and placed on short-term disability leave. Despite repeated attempts, charging party was unable to obtain a non-driving position with defendant. The case was resolved through a settlement agreement for payment of $149,999 to charging party. Defendant also agreed to provide charging party a positive letter of reference and to not contest his application for unemployment benefits.

In ***EEOC v. R.R. Donnelley & Sons Company, Inc.***, the EEOC alleged that defendant, a large commercial printing company, refused to accommodate charging party, a paraplegic graphics technician who uses a wheelchair, and discharged him because of his disability. Defendant hired charging party through an employment agency for a temporary position in its on-line services division. A few hours after charging party arrived for his first day of work, he encountered a rare incontinence problem and was permitted to return home to take care of it. That afternoon, however, his supervisor at R.R. Donnelley called the employment agency who had placed charging party and stated that charging party could not come back to work. The case was resolved through a consent decree which provides for a payment of $150,000 to charging party and requires defendant to revise its anti-discrimination policies to explicitly include coverage of temporary employees.

In ***EEOC v. Sears, Roebuck & Co.***, the EEOC alleged that defendant discriminated against charging party, who is blind, by failing to provide work equipment that would accommodate his disability. Charging party was hired as a credit collections specialist, a job that involved using a computer while contacting customers by phone; however, he was unable to begin work because defendant refused to provide the adaptive equipment he needed to perform the job, a refreshable braille display and adaptive software. The case was resolved through a consent decree which provides for payment of $125,000 to charging party and enjoins defendant from discriminating against any job applicant on the basis of disability during the hiring process and from failing to provide reasonable accommodations as required by the ADA. Defendant further agreed to designate a manager at the site where the discrimination occurred who will oversee disability related issues including requests for reasonable accommodations. Defendant also will make good faith efforts to recruit qualified visually impaired applicants.

Technological advances have expanded the range of reasonable accommodations an employer should consider, thus removing barriers to the employment of disabled individuals

In ***EEOC v. Honeywell, Inc.***, the EEOC alleged that defendant, a large aerospace and systems control company, discriminated against charging party, who is hearing and visually impaired, by withdrawing an accommodation of her disability, involuntarily transferring her, and retaliating against her because she sought an accommodation of her disability. As a result of the discrimination, charging party was forced to quit her job. The case was resolved through a consent decree which provides a payment of $100,000 to charging party and enjoins defendant from engaging in any employment practice that

discriminates on the basis of disability at its Union Hills, Arizona facility, including failing to engage in good faith efforts to accommodate an employee's disability, and from retaliating against any employee who seeks to exercise rights under the ADA.

In ***EEOC v. Renaissance Roofing, Inc.***, the EEOC alleged that defendant, a company specializing in clay roofing installation, harassed and failed to recall/discharged charging party, a laborer, because of his disability - mild mental retardation. Charging party, who has a full scale IQ of 69, was hired by defendant in May 1999 and worked as a roofer until his layoff in December 1999. During his employment, defendant's owners, its general manager and the warehouse manager repeatedly made comments to charging party that disparaged his intelligence. He was asked on various occasions whether he was "just stupid or retarded" and was also called "stupid" and "doufus." The case was resolved through a consent decree which provides for payment of $50,000 to charging party.

F. Developing the Law

The Office of General Counsel's litigation program is an important tool for shaping the growth of civil rights law. Whether through litigating enforcement suits or participating as amicus curiae in private litigation, we urge courts at all levels to accept our views on novel and complex legal issues of public importance. The cases below illustrate our success this year in the appellate courts.

1. Supreme Court Decision

In ***Clackamas Gastroenterology Assocs., P.C. v. Wells***, 538 U.S. 440 (2003), the Supreme Court considered the question whether four physicians, actively engaged in medical practice as shareholders and directors of an Oregon professional corporation, should be considered "employees" under the Americans with Disabilities Act. The Court, expressly agreeing with the position articulated in the Commission's amicus brief, held that the focus should be on whether the individuals in question act independently and participate in managing the organization, or whether they are instead subject to the organization's control. The Court noted that six factors enunciated in EEOC's Compliance Manual were relevant to this inquiry. The Court also ruled, however, that these factors were nonexhaustive, and that whether a shareholder-director in a professional corporation is an "employee" depends upon all the incidents of the relationship, with no one factor being decisive.

Directors and partners may be covered as "employees" under the civil rights laws depending on their level of independence and participation in the management of the company

2. Courts of Appeals Decisions

a. Title VII

In ***Beck v. The Boeing Co.,*** 320 F.3d 1021 (9th Cir. 2003), the Ninth Circuit held that the district court "did not err in certifying the class of women employed at Boeing's Puget Sound facilities for purposes of determining whether the employer engaged in a pattern or practice of discrimination against its female employees." The court agreed with the Commission's argument as amicus curiae that class certification remains proper under Federal Rule of Civil Procedure 23(b)(2) despite the availability of compensatory and punitive damages under the Civil Rights Act of 1991. The court reasoned that class-wide liability can be determined at stage one without regard to an individual's entitlement to monetary damages. Upon a finding that the employer "engaged in classwide discrimination, the district court may award at least declaratory and injunctive relief," the court stated.

In ***Burns v. City of Detroit,*** 658 N.W.2d 468 (Mich. 2003), after the Michigan Court of Appeals affirmed a judgment for the plaintiff in this action on her claim of sexual harassment, the Michigan

Supreme Court remanded the case to the court of appeals with instructions to consider the question whether "the remarks that supported the 'hostile environment' sexual harassment claims cannot form the basis for liability because they are protected speech under [the First Amendment of the U.S. Constitution, and Article 1, § 5 of the Michigan Constitution] and because basing a finding of liability on such remarks would raise vagueness and over-breadth concerns under the same constitutional provisions." The Commission filed an amicus brief arguing that the finding of liability in this case did not raise First Amendment concerns. The court of appeals held that the sexually harassing comments in this case do not constitute protected speech under the United States and Michigan constitutions, and that the imposition of liability for the sexually hostile work environment raises neither vagueness nor over-breadth concerns. The court's decision largely follows the reasoning and arguments the Commission offered as amicus curiae.

In ***Mack v. Otis Elevator Co.,*** 326 F.3d 116 (2d Cir), *cert. denied*, 124 S. Ct. 562 (2003), the Second Circuit vacated a part of the district court's decision that had granted summary judgment for the defendant on plaintiff's claim of sexual harassment. The court of appeals held that, based on the undisputed evidence, the alleged harasser was the plaintiff's "supervisor" for purposes of imposing vicarious liability for his actions, notwithstanding the fact that he did not have the authority to take tangible employment actions regarding the plaintiff. In reaching this conclusion, the court agreed with the position advanced in the Commission's amicus brief and relied on the Commission's enforcement guidance.

This decision comports with the EEOC's view that an employer may be vicariously liable for harassment committed by a supervisor even where the supervisor has no authority to take tangible employment actions against the victim

In ***Ocheltree v. Scollon Prods., Inc.,*** 335 F.3d 325 (4th Cir. 2003) (*en banc*), a jury found that the plaintiff was subjected to a hostile work environment because of her sex and awarded her compensatory and punitive damages. On appeal, a three-judge panel of the Fourth Circuit reversed the jury verdict and ordered judgment in favor of the defendant. When the Fourth Circuit vacated the panel decision and agreed to rehear the case en banc, the Commission filed an amicus curiae brief arguing that the panel's decision to overturn the jury verdict rested on an erroneous standard for deciding whether harassing conduct is based on sex. The Commission argued that harassing conduct need not be directed at a particular individual to be "based on sex," and that verbal or physical conduct of a sexual nature can be based on sex where the effect of the conduct is to create an environment more demeaning to women or disproportionately hostile to women precisely because they are women. The Fourth Circuit, sitting en banc, affirmed the jury verdict on liability, but reversed the jury's award of punitive damages.

In ***EEOC v. Kohler Co.,*** 335 F.3d 766 (8th Cir. 2003), the Eighth Circuit reversed the district court's entry of judgment as a matter on law and reinstated the jury verdict in favor of the EEOC on its claim that Kohler fired John Reynolds because he complained about race discrimination. The Court held that the proximity of Reynolds' complaint of discrimination to his discharge, coupled with evidence of the employer's inconsistent enforcement of its disciplinary policies, provided a basis from which a reasonable jury could infer that Kohler retaliated against Reynolds for registering a race discrimination complaint.

b. Age Discrimination in Employment Act

In ***EEOC v. Sidley Austin Brown & Wood,*** 315 F.3d 696 (7th Cir. 2002), a subpoena enforcement action, the district court ordered the law firm of Sidley Austin Brown & Wood to comply with a Commission subpoena seeking information relevant to whether Sidley violated the ADEA by demoting partners over age 40 and by maintaining a mandatory retirement policy. The subpoena sought information relevant both to the question of whether lawyers deemed "partners" in Sidley's

organizational structure should be considered employees for purposes of ADEA coverage, and to the question of age discrimination. The Seventh Circuit agreed that the Commission was entitled to full compliance with that part of the subpoena relating to the coverage question. The court of appeals declined to order, at this stage of the proceedings, compliance with the part of the subpoena seeking merits-based information. After Sidley produces all coverage information, it will be required to produce the merits-based information unless the district court determines that it is plain on the basis of uncontested facts that the relevant partners are not covered by the ADEA.

In ***EEOC v. Liberal R-II School District,*** 314 F.3d 920 (8th Cir. 2002), the Eighth Circuit reversed the district court's grant of summary judgment against the Commission and vacated the lower court's award of attorney's fees to the defendant. The court of appeals held that the defendant was not entitled to summary judgment because evidence that the school superintendent stated that a bus driver's contract was not renewed because of his age was sufficient direct evidence of age discrimination to create an issue of material fact even though the superintendent was not the actual decision maker.

In ***Palasota v. Haggar Clothing Co.,*** 342 F.3d 569 (5t Cir. 2003), a 51-year-old employee was terminated after 28 years of service. The Fifth Circuit reversed the judgment of the district court and reinstated a $842,218.96 jury verdict in favor of the employee. Largely accepting the Commission's arguments as amicus curiae, the court held that the district court "erred by (1) holding that Palasota was required to show that a younger employee was given preferential treatment; (2) ignoring much evidence which supports the jury's verdict. . . ; and (3) discounting the probative value of management's remarks, despite Palasota's establishment of a prima facie case."

c. Americans with Disabilities Act

In ***EEOC v. Dillon Companies,*** 310 F.3d 1271 (10th Cir. 2002), the Tenth Circuit reversed a district court decision refusing to enforce part of an EEOC subpoena issued in conjunction with the investigation of an ADA charge. The court ordered the district court to enforce the subpoena in its entirety. The court of appeals held that the district court erred in concluding that some of the information sought in the subpoena was irrelevant based solely on the respondent's assertion that certain jobs were filled pursuant to a seniority system and were, therefore, unavailable to accommodate the charging party's disability.

In ***Echazabal v. Chevron U.S.A., Inc.,*** 336 F.3d 1023 (9th Cir. 2003), on remand from the Supreme Court, the Ninth Circuit ruled that material issues of fact remained as to whether Chevron, in deciding that Mario Echazabal's continued employment in its refinery posed a direct threat to his own health, met its obligations under the ADA and the EEOC's interpretive regulations. The court agreed with the position taken by the Commission as amicus curiae.

In ***Fenney v. Dakota, Minnesota & Eastern Railroad Co.,*** 327 F.3d 707 (8th Cir. 2003), the plaintiff alleged that defendant failed to accommodate his disability, a missing thumb. Finding that the plaintiff was not covered by the ADA because he did not have a disability, the district court granted summary judgment to defendant. On appeal, EEOC filed an amicus curiae brief, arguing that a reasonable jury could find that Fenney was an individual with a disability under the ADA. Adopting the Commission's view, the Eight Circuit reversed summary judgment and held that plaintiff produced sufficient evidence to show that his missing thumb substantially limited him in major life activity of caring for himself and thus was covered as a disability.

Plaintiffs often do not fare well in the courts of appeals on the question of whether their condition is covered as a disability under the Americans with Disabilities Act, due to the lack of specific evidence of how their condition substantially limits a major life activity. In this case, the Commission pointed to specific evidence

of plaintiff's limitations in changing his clothes, bathing, shaving, preparing a meal, and going to the restroom.

In ***Brown v. City of Tucson,*** 336 F.3d 1181 (9th Cir. 2003), the Commission filed an amicus brief arguing that retaliatory threats by an employer need not result in an adverse employment decision or be sufficiently severe or pervasive to alter the terms or conditions of employment to trigger the protections of the ADA's "interference" provision. The court of appeals agreed with the Commission's position and held that "[t]he plain language of § 503(b) clearly prohibits a supervisor from threatening an individual with transfer, demotion, or forced retirement unless the individual foregoes a statutorily protected accommodation."

This decision comports with the EEOC's view that the "interference" provision of the ADA affords broader protection than the retaliation provisions of the federal civil rights laws we enforce

G. Outreach: Educating the Public

During FY 2003, field legal units participated in more than 600 outreach events addressing more than 30,000 individuals. These efforts were directed at educating EEOC's constituents on the federal laws prohibiting employment discrimination and EEOC's charge filing processes. Benefitting from these informative sessions were employees, employers, community groups, labor unions, the legal community, federal and state agencies, and the general public.

The following is a sampling of outreach and education activities conducted by OGC attorneys throughout the country in FY 2003:

A trial attorney from the San Antonio District Office discussed the statutes enforced by EEOC and explained private sector charge processing at a seminar presented by the San Antonio Human Resources Management Association. Trial attorneys from the Charlotte District Office conducted training sessions on harassment for a company which provides assisted living services and for a small manufacturing company. The Detroit and San Francisco District Office Regional Attorneys gave a joint presentation to Human Resources personnel and advocates from the private and public sectors at the National Association of ADA Coordinators conference.

The Regional Attorney for New York provided a legal update to union leaders attending the American Federation of Teachers' Civil, Human and Women's Rights Seminar and the Chicago District Office Regional Attorney delivered an address at the NAACP's Illinois State conference. The Philadelphia District Office Regional Attorney spoke to an employer audience representing the construction, manufacturing, food processing, transportation technology, and health care industries about a variety of topics including proactive workplace initiatives, recent EEOC lawsuits, trends represented in EEOC's litigation docket, and the value of mediation.

The Regional Attorney in Cleveland delivered a presentation on "Best Practices" at a meeting of a local chapter of the Society for Human Resource Management (SHRM). Legal unit staff from the New York District Office held a Community Forum on national origin issues, including accent and English-only discrimination and 9/11 backlash discrimination. Among the groups attending were Farmworkers Legal Services, National Employment Law Project, Asian American Legal Defense Fund, Puerto Rican Legal Defense Fund, Arab-American Anti-Discrimination Committee, and the Department of Justice.

The Indianapolis Regional Attorney provided ADA training to state personnel directors at the Indiana State Personnel Department's Compliance Conference and the Regional Attorney in Houston

presented "Valuing Diversity in Clients and Staff" at an event sponsored by Legal Aid of West Texas. The Dallas Regional Attorney participated in the launching of the "Justice, Equality and Safety in the Workplace" initiative with the Department of Labor (OSHA and the Wage and Hour Division), the Consulates of Mexico and El Salvador, the Dallas Police Department, and the Hispanic Broadcasting Corporation. This initiative is designed to educate the public on issues affecting immigrant workers. The Regional Attorney in St. Louis discussed the Future of Equal Opportunity Law at the annual meeting of the Missouri Bar Association.

Managers from the Office of General Counsel-Headquarters also gave several presentations in fiscal year 2003 including a Supreme Court Review to the Employment Law Section of the District of Columbia Bar, a discussion about jury instructions in Title VII pretext cases at the Washington & Lee School of Law, and presentations regarding Commission operations and litigation to the American Bar Association.

III. Litigation Statistics

A. Overview of Suits Filed

In FY 2003, the field legal units filed 361 merits lawsuits: 360 direct suits and 1 action to enforce a conciliation agreement. (As indicated in section II.B. above, merits suits include direct suits and interventions alleging violations of the substantive provisions of the Commission's statutes and suits to enforce administrative settlements.) The field legal units also filed 29 subpoena enforcement actions and 3 actions seeking preliminary relief.

Merits Filings in FY 2003	
	Count
Direct	360
Administ. Enf.	1
Intervention	0
Total	361
235 Individual Suits	
126 Class Suits	

1. Litigation Workload

The FY 2003 litigation workload (merits cases active at the start of the fiscal year plus merits cases filed during the fiscal year) remained substantial with 872 suits in total.

Litigation Workload			
	Active	**Filed**	**Workload**
FY 2003	511	361	872

2. Filing Authority

With the adoption of the National Enforcement Plan in February 1996, the Commission delegated litigation filing authority to the General Counsel in all but a few areas; in July 1996, the General

Counsel redelegated much of his authority to the Regional Attorneys. Approximately 81% of the cases filed in FY 2003 were authorized by the Regional Attorneys under their redelegated authority.

FY 2003 Suit Authority		
	Count	**Percent**
Regional Attorney	294	81.4%
Commission	52	14.4%
General Counsel	15	4.2%
Total	361	100%

3. Statutes Invoked

Of the 361 merits suits filed, 76.7% were filed to enforce Title VII, 12.8% were filed under the ADA, 5.8% were filed under the ADEA, and 4.7% were filed under more than one statute, including the EPA which was invoked in 10 of the concurrent cases.

Merit Filings in FY 2003 By Statute		
	Count	**Percent**
Title VII	277	76.7%
ADA	46	12.8%
ADEA	21	5.8%
Concurrent	17	4.7%
Total	361	100%

4. Bases Alleged

As shown in the next table, sex discrimination (48.5%) and retaliation (36.3%) were the bases alleged most often in suits filed on the merits. Race (17.7%) and disability discrimination (12.7%) were the next most frequently alleged bases. Note: Total count exceeds suits filed (361) because suits often contain multiple bases.

Bases Alleged in Suits Filed		
	Count	**Percent**
Sex	175	48.5%
Retaliation	131	36.3%
Race	64	17.7%
Disability	46	12.7%
National Origin	38	10.5%
Age	27	7.5%
Religion	20	5.5%
Equal Pay	10	2.8%

5. Issues Alleged

As indicated in the table below, discharge was an issue in over almost 58% of the merits suits filed in FY 2003 when constructive discharge is included. Harassment of all varieties was involved in 46.8% of suits filed.

Issues Alleged in Suits Filed	Count	Percent
All Discharge	209	57.9%
Const. Discharge	59	16.3%
All Harassment	169	46.8%
Sex Harassment	117	32.4%
Hiring	51	14.1%
Promotion	25	6.9%
Wages	20	5.5%
Reas. Accom. (Disability)	18	5.0%
Reas. Accom. (Religious)	9	2.5%
Language	2	0.6%

B. Suits Filed by Bases and Issues

1. Sex Discrimination

As shown below, 67.4% of cases with sex as a basis alleged some form of harassment; 55.4% of the cases with sex as a basis alleged some form of discharge.

Sex Discrimination Issues	Count	Percent
Harassment	118	67.4%
All Discharge	97	55.4%
Terms/Conditions	27	15.4%
Hiring	16	9.1%
Wages	14	8.0%

2. Race Discrimination

As shown below, cases with race alleged as a basis had a higher percentage of harassment alleged (48.4%) than any other issue; race cases alleging discharge ran second (40.6%).

Race Discrimination Issues	Count	Percent
Harassment	31	48.4%
All Discharge	26	40.6%
Hiring	13	20.3%

Promotion	11	17.2%

3. National Origin Discrimination

As shown in the next table, discharge was the most frequently alleged issue in suits with national origin as a basis (71%) followed by harassment as the second most alleged issue (50% of the suits).

National Origin Discrimination Issues		
	Count	**Percent**
All Discharge	27	71.0%
Harassment	19	50.0%
Terms & Conditions	11	28.9%
Hiring	4	10.5%

4. Religious Discrimination

As shown below, discharge was the issue most often alleged in religious discrimination suits (75%) with reasonable accommodation next at 45%. Harassment was the issue in 40% of the cases filed with religion as a basis.

Religious Discrimination Issues		
	Count	**Percent**
All Discharge	15	75.0%
Reas. Accom.	9	45.0%
Harassment	8	40.0%

5. Age Discrimination

As shown below, discharge was the most frequently alleged issue in age discrimination suits (62.9%). Hiring and promotion issues, at 22.2% each, ranked higher than under other bases; harassment was the issue in 11.1% of the cases with age as a basis.

Age Discrimination Issues		
	Count	**Percent**
All Discharge	17	62.9%
Promotion	6	22.2%
Hiring	6	22.2%
Harassment	3	11.1%

6. Disability Discrimination

As the following table indicates, discharge was the most frequently alleged issue with disability as a basis (58.7% of all suits filed). Reasonable accommodation was the issue next most often alleged (39.1%). Hiring was the issue in 32.6% of the cases filed with disability as a basis.

Disability Discrimination Issues		
	Count	**Percent**
All Discharge	27	58.7%
Reas. Accom.	18	39.1%
Hiring	15	32.6%

7. Retaliation

As shown below, discharge was alleged in 67.2% of the suits filed with retaliation as a basis.

Retaliation Discrimination Issues		
	Count	**Percent**
All Discharge	88	67.2%
Hiring	6	4.6%
Wages	6	4.6%

C. Bases Alleged in Suits Filed from FY 1999 through FY 2003

As the following table indicates, during the past five fiscal years, from FY 1999 through FY 2003, suits alleging discrimination on the basis of sex (female) ranged from 30% to 43% of suits filed each year by the EEOC.

In four of the five years, suits filed on the basis of sex (female) represented the highest percentage of cases filed. In FY 2001, suits alleging retaliation represented the highest percentage of cases filed; in the other four years retaliation suits represented the second highest percentage of cases filed. Roughly 15% to 21% of the suits filed each year alleged race discrimination while allegations of national origin discrimination were present in approximately 6% to 13% of all suits filed.

Suits filed on the basis of sex (pregnancy) ranged from 1% to approximately 5% over the five years. Suits filed on the basis of sex (male) ranged from approximately 2% to 6%.

Suits filed on the basis of age have fluctuated 3.5 percentage points over the five-year period. Suits filed on the basis of religion fluctuated very little with a difference of only 1.8% from the highest to the lowest year. Conversely, disability suits fluctuated 7.5 percentage points, from a low of 9% in FY 2000 to a high of 16.58% in FY 2001.

Bases Alleged in Suits Filed FY 1999 - 2003 Percent Distribution									
FY	**Sex (F)**	**Sex (P)**	**Sex (M)**	**Disab.**	**Age**	**Retal.**	**Relig.**	**Nat. Or.**	**Race**
1999	38.7%	3.7%	4.3%	12.4%	10.5%	35.6%	6.2%	6.6%	20.6%
2000	42.4%	3.1%	2.4%	9.0%	11.0%	26.6%	5.9%	13.4%	20.0%
2001	30.4%	1.0%	2.1%	16.5%	9.8%	32.7%	4.4%	7.5%	20.9%
2002	38.8%	4.8%	6.0%	12.1%	10.2%	35.8%	6.0%	7.8%	15.4%
2003	43.5%	3.1%	1.9%	12.7%	7.5%	36.3%	5.5%	10.5%	17.7%

	Count								
FY	**Sex (F)**	**Sex (P)**	**Sex (M)**	**Disab.**	**Age**	**Retal.**	**Relig.**	**Nat. Or.**	**Race**
1999	169	16	19	54	46	153	27	29	90
2000	123	9	7	26	32	77	17	39	58
2001	143	16	8	40	34	119	17	29	81
2002	129	16	20	40	34	119	20	26	51
2003	157	11	7	46	27	131	20	38	64

D. Suits Resolved

In FY 2003, the Office of General Counsel resolved a total of 347 merits lawsuits, yielding $148,745,236 in monetary relief.

1. Types of Resolutions and Success Rate

As the table below indicates, of the 347 resolutions of merits suits, 74.9% were resolved by consent decree, 13.3% by settlement agreement, 5.5% by favorable court order, 3.7% by unfavorable court order, and 2.6% were voluntarily dismissed. Of the 347 merits resolutions, 123 had been filed as class cases compared with 224 filed as individual cases. The rate of merits suits successfully resolved in FY 2003 was 93.7% (includes consent decrees, settlement agreements, and favorable court orders).

Types of Resolutions		
	Count	**Percent**
Consent Decree	260	74.9%
Settlement Agreement	46	13.3%
Favorable Court Order	19	5.5%
Unfavorable Court Order	13	3.7%
Voluntary Dismissal	9	2.6%
Total	347	100%

2. Filing Authority

As shown below, of the 347 merits suits resolved, the Commission had approved 66 or 19% for filing, the General Counsel had approved 16 or 4.6% for filing under his authority delegated by the Commission, and Regional Attorneys had approved another 265 or 76.4% for filing under their authority redelegated from the General Counsel.

Suit Authority		
	Count	**Percent**
RA	265	76.4%
Commission	66	19.0%
GC	16	4.6%

Total	347	100%

3. Statutes Invoked

Of the 347 merit suits resolved during the fiscal year, 73.8% were filed to enforce Title VII, 13.8% were filed under the ADA, 8.1% were filed under the ADEA, 6% under the EPA, and 3.8% were filed under more than one statute, including the EPA which was invoked in 10 of the 13 concurrent suits.

FY 2003 Resolutions By Statute		
	Count	**Percent**
Title VII	256	73.8%
ADA	48	13.8%
ADEA	28	8.1%
EPA	2	0.6%
Concurrent	13	3.7%
Total	347	100%

As shown below, Title VII suits accounted for more than half of all monetary relief obtained and ADEA suits accounted for nearly 39% of monetary relief obtained. ADA suits accounted for $2.5 million in recoveries, 1.7% of all monetary relief obtained.

FY 2003 Resolutions By Statute		
Statute	**Relief (millions)**	**Relief Percent**
Title VII	$87.2	58.7%
ADEA	$57.7	38.8%
ADA	$2.6	1.7%
EPA	$0.01	0.01%
Concurrent	$1.2	0.8%
Total	$148.7	100%

4. Bases Alleged

As shown in the following table, sex was alleged in 46.7% of the suits resolved while race was alleged in 22.6% of suits resolved. Retaliation was alleged in 32.9% of the suits resolved and disability in 17%. Note: Total count exceeds suits resolved (347) because suits often contain multiple bases.

Bases Alleged in Suits Resolved		
	Count	**Percent**
Sex	163	46.7%
Retaliation	114	32.9%
Race	59	22.6%
Disability	47	17.0%

National Origin	33	9.5%
Age	31	8.9%
Religion	17	4.9%
Equal Pay	10	2.9%

5. Issues Alleged

As shown below, the most frequent issue alleged in suits resolved involved some form of discharge (60.8%).

Harassment of some kind was alleged as an issue in 42.9% of the suits resolved and sexual harassment was alleged as an issue in 31.9% of the suits resolved.

The issue of hiring was involved in 12.4% of suits resolved. Reasonable accommodation under the ADA was an issue in 6.1% of all suits resolved.

Issues Alleged in Suits Resolved		
	Count	**Percent**
All Discharge	211	60.8%
Const. Discharge	65	18.7%
All Harassment	149	42.9%
Sex Harassment	111	31.9%
Hiring	43	12.4%
Reasonable Accom. (Disability)	21	6.1%
Wages	21	6.1%
Promotion	18	5.2%
Reasonable Accom. (Religion)	14	4.0%

E. Resources

1. Staffing

In FY 1999, additional attorneys and support staff were hired to provide onsite legal support to investigators in local and area offices. Since FY 2001, OGC's field staff has decreased from 383 to 332, with attorney staff decreasing from 248 to 210. The following shows field and headquarters staffing numbers for the last five years.

OGC Staffing (On Board)			
Year	**HQ**	**All Field**	**Field Attorneys***
1999	98	365	248
2000	89	359	226
2001	81	383	248
2002	79	353	229
2003	86	332	210
* Includes Regional Attorneys, Supervisory Trial Attorneys, and Trial Attorneys			

2. Litigation Budget

In FY 2003, the litigation support budget was $3.30 million which is a 15.4% increase from the $2.86 million spent in FY 2002, but lower than the budgets for 2000 and 2001. The following table shows litigation support figures for the last five years.

Litigation Support Funding (Millions)	
Year	**Funding**
1999	$2.88
2000	$3.75
2001	$3.45
2002	$2.86
2003	$3.30

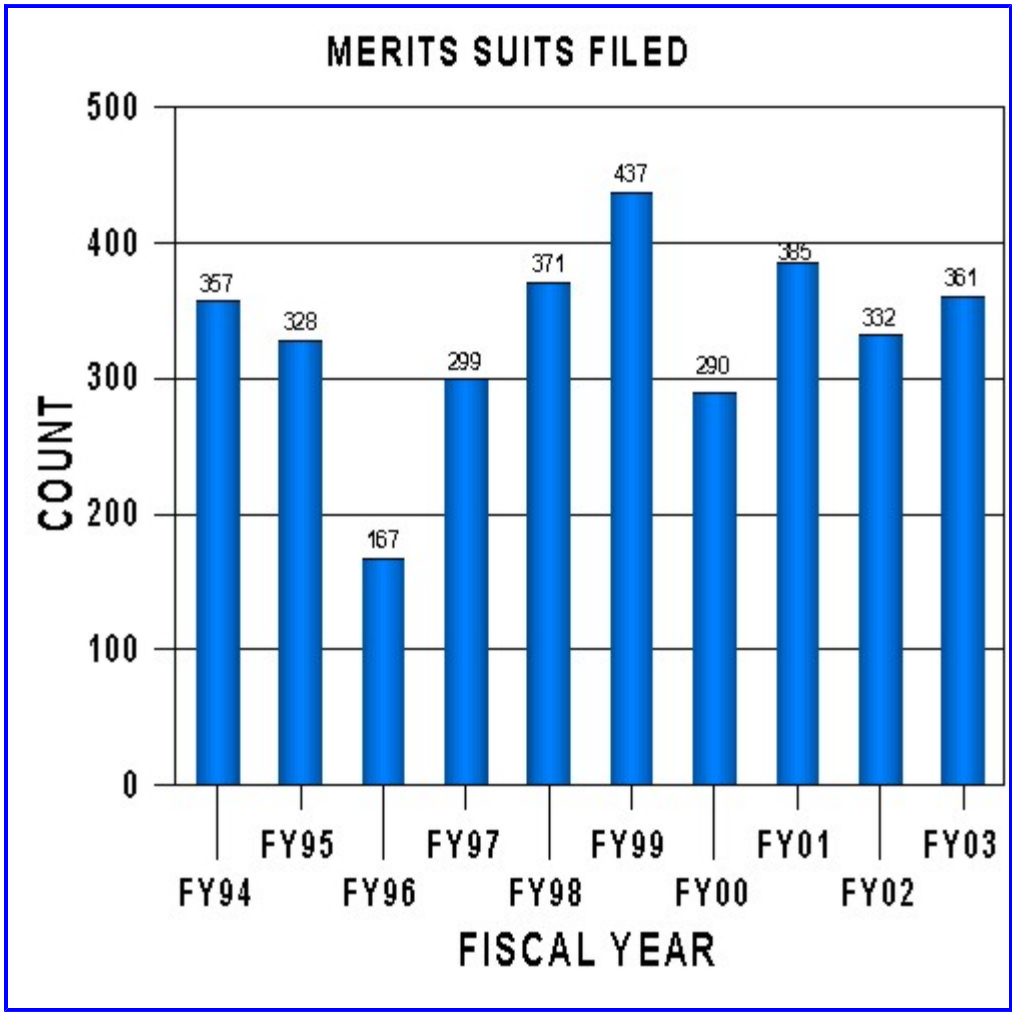
F. Historical Summary: Tables and Charts

EEOC Ten-Year Litigation History: FY1994 - FY2003

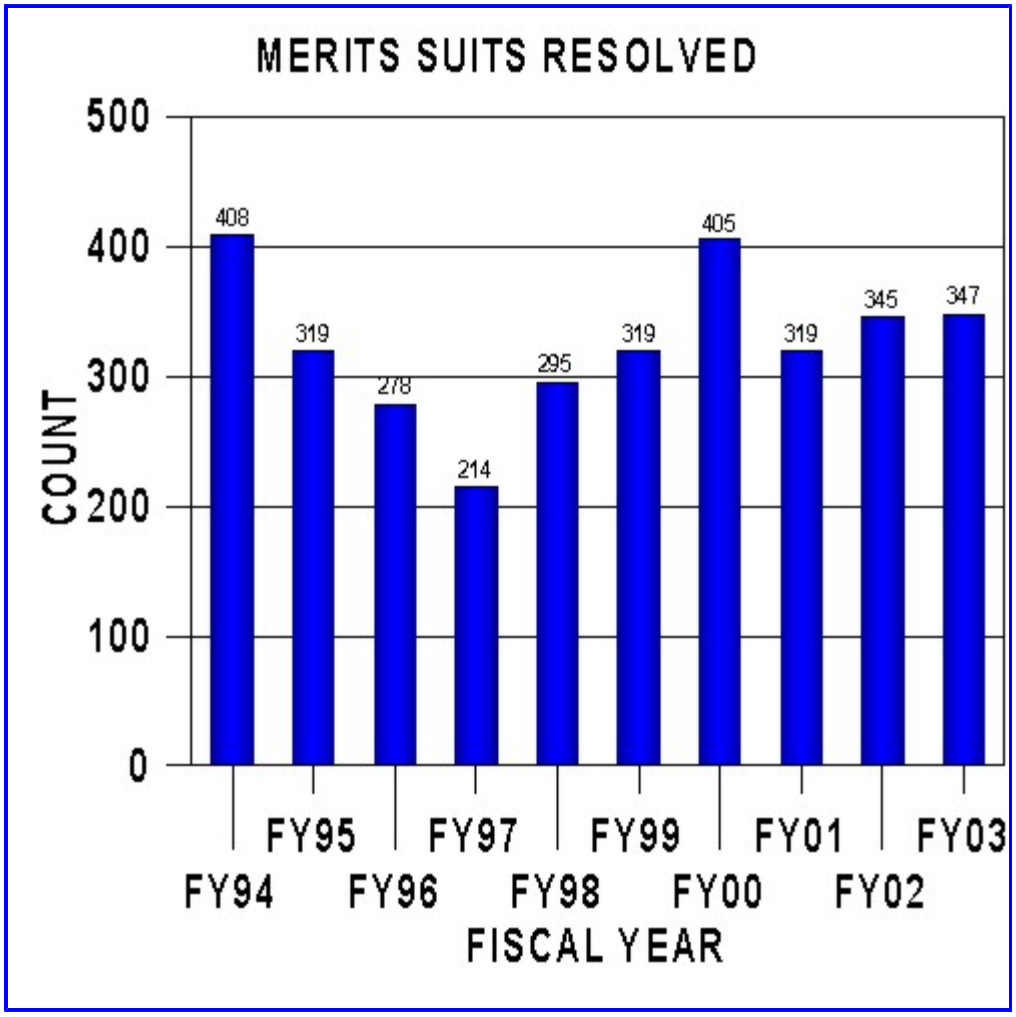
	FY94	FY95	FY96	FY97	FY98	FY99	FY00	FY01	FY02	FY03
All Suits Filed	425	373	193	330	411	464	328	430	364	393
Merits	357	328	167	299	371	437	290	385	332	361
Title VII	235	193	106	174	235	325	222	269	246	277
ADA	34	81	38	79	79	51	23	62	41	46
ADEA	74	41	13	36	36	41	27	31	29	21
EPA	0	1	1	0	2	3	3	5	2	0
Concur.	14	12	9	10	19	17	15	17	14	17
Subpoen. & Prelim. Relief	68	45	26	31	40	27	38	45	32	32
All Resolutions	469	338	296	245	331	349	438	360	373	378
Merits	408	319	278	214	295	319	405	319	345	347
Title VII	266	216	175	122	181	192	305	219	247	256
ADA	9	25	52	45	69	65	52	42	61	48

ADEA	109	61	35	35	35	41	35	34	20	28
EPA	3	2	0	0	1	0	4	6	3	2
Concur.	21	15	16	12	9	21	9	8	14	13
Subpoen. & Prelim. Relief	61	19	18	31	36	30	33	41	28	31
Monetary Relief	$39.5	$18.9	$50.8	$114.7	$95.5	$98.4	$49.8	$51.2	$52.8	$148.7
Title VII	$23.6	$9.0	$18.8	$95.0	$62.0	$49.2	$35.1	$29.8	$29.0	$87.2
ADA	$0.4	$1.4	$2.5	$1.1	$2.4	$2.9	$3.0	$2.2	$12.0	$2.6
ADEA	$15.0	$8.0	$10.5	$18.0	$29.5	$42.5	$11.2	$3.1	$1.4	$57.7
EPA	$0.0	$0.2	$0.0	$0.3	$0.7	$0.3	$0.2	$0.3	$0.1	$0.01
Concur.	$0.5	$0.3	$19.0	$0.3	$0.9	$3.5	$0.3	$15.8	$10.3	$1.2

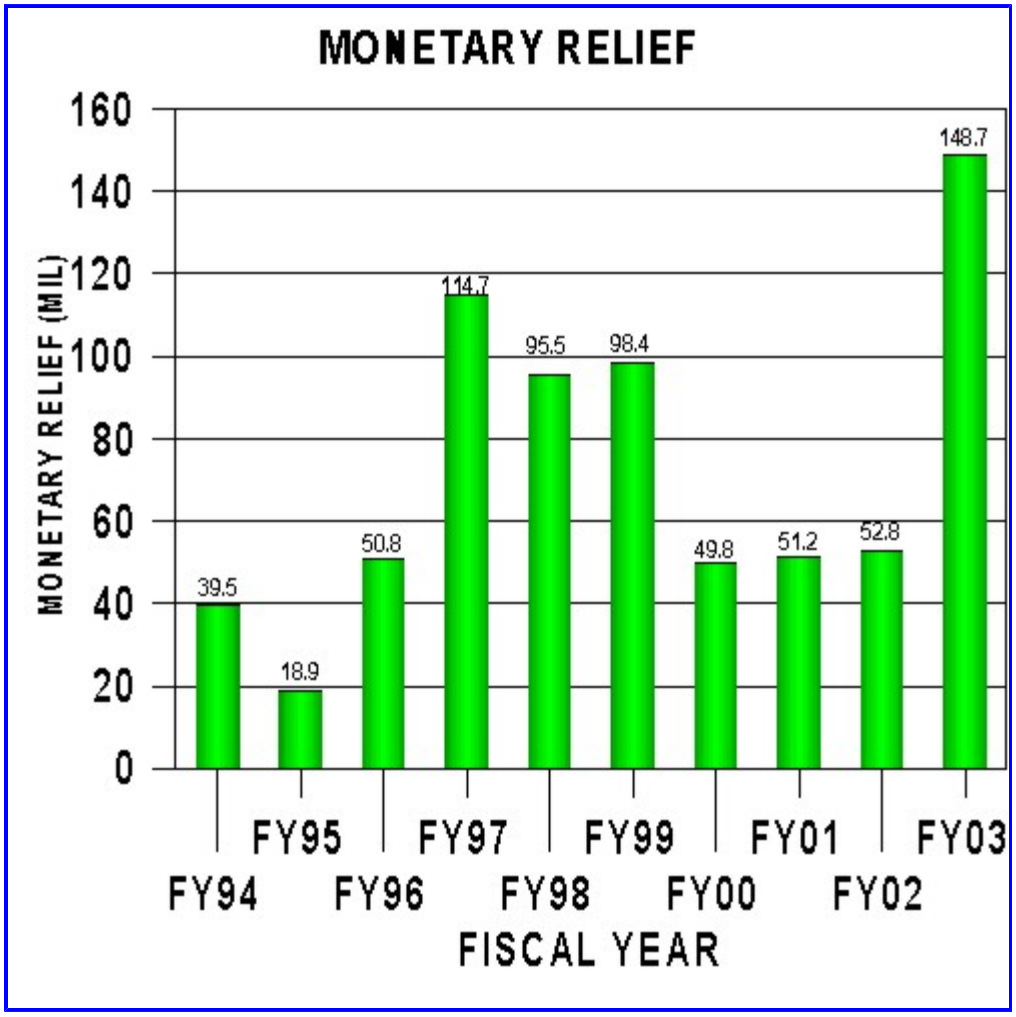
The chart below shows merits suits filed for FY 1994 through FY 2003.



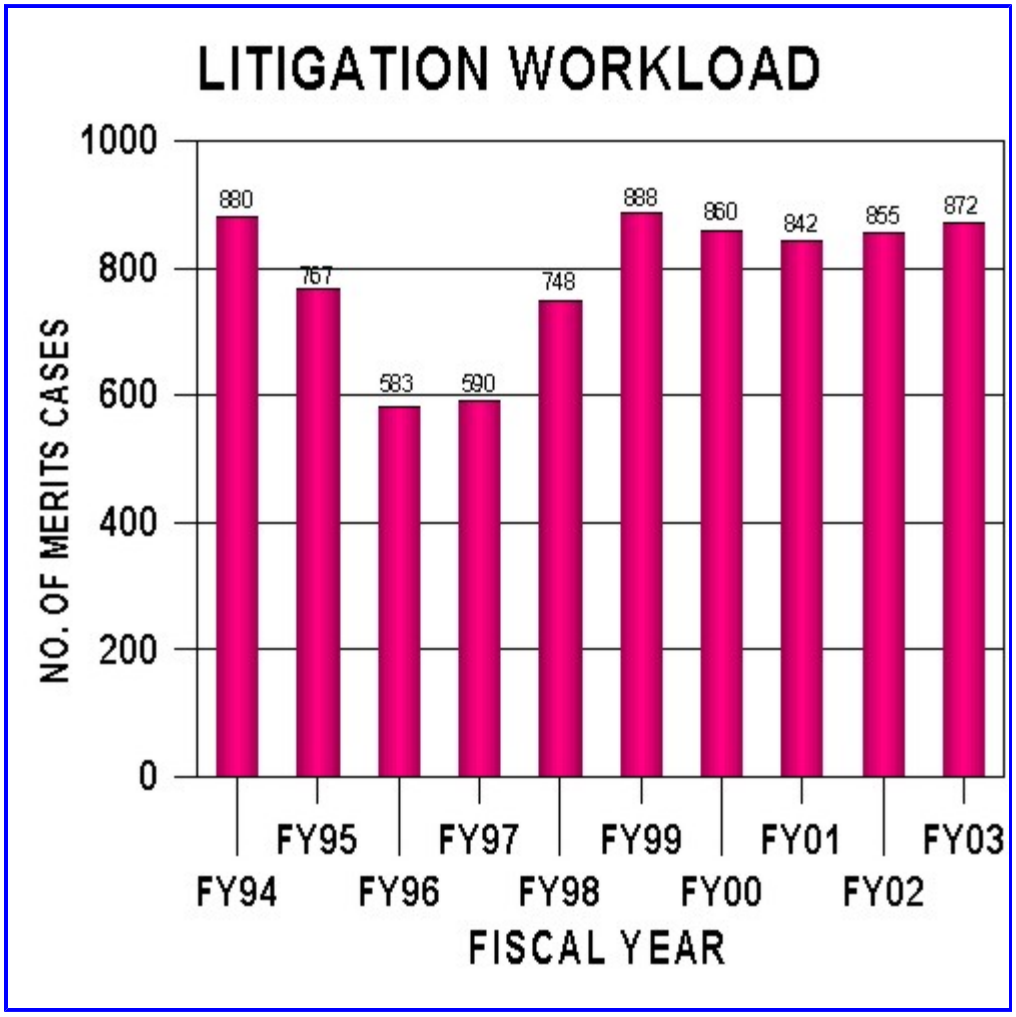
The chart below shows merits suits resolved for FY 1994 through FY 2003.



The chart below shows monetary relief for FY 1994 through FY 2003.



The chart below shows the litigation workload from FY 1994 through FY 2003. Since FY 1999, the litigation workload has totaled over 800 cases each fiscal year. These workload figures are based on merits cases and are calculated by adding the total merits cases filed for each fiscal year with the number of active merits cases at the start of the fiscal year.



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