UNITED STATES
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

OFFICE OF GENERAL COUNSEL

FISCAL YEAR 2021 ANNUAL REPORT

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A. Mission of the Office of General Counsel

The Equal Employment Opportunity Act of 1972 amended Title VII of the Civil Rights Act of 1964 (Title VII) to give litigation authority to the Equal Employment Opportunity Commission (EEOC or Commission) and provide for a General Counsel, appointed by the President and confirmed by the Senate, with responsibility for conducting the Commission's litigation program. Under a 1978 Presidential Reorganization Plan, approved by the Senate, enforcement of the Equal Pay Act of 1963 (EPA) and the Age Discrimination in Employment Act of 1967 (ADEA) was transferred from the Department of Labor to the Commission, and the General Counsel became responsible for litigation under those statutes. With the enactment of the Americans with Disabilities Act of 1990 (ADA) (effective July 26, 1992) and the Genetic Information Nondiscrimination Act of 2008 (GINA) (effective November 21, 2009), the General Counsel became responsible for litigation under the employment provisions of those statutes (Title I of the ADA and Title II of GINA).

The mission of EEOC's Office of General Counsel (OGC) is to conduct litigation on behalf of the Commission to obtain relief for victims of employment discrimination and ensure compliance with the statutes EEOC is charged with enforcing. Under Title VII, the ADA, and GINA, the Commission can sue nongovernmental employers with 15 or more employees. The Commission's suit authority under the ADEA and the EPA includes both private and state and local governmental employers. Private employers must have 20 or more employees for ADEA coverage; there is no employee minimum for governmental employers. There is no employee minimum for EPA coverage, but for most private employers coverage requires $500,000 or more in annual business. Title VII, the ADA, GINA, 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 against the agency by its employees and applicants for employment.

B. Headquarters Programs and Functions

1. General Counsel

The General Counsel is responsible for managing and coordinating the Commission's enforcement litigation program and provides overall direction to all components of OGC, including district office legal units (see section C below). The General Counsel also provides reports to the Commission on litigation activities and, upon request,

advises the EEOC Chair and Commissioners on agency policies and other matters affecting enforcement of the statutes within the Commission's authority.

2. Deputy General Counsel

The Deputy General Counsel is responsible for overseeing all programmatic and administrative functions of OGC, including the litigation program and the litigation support budget allocated to OGC by the EEOC Chair. 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 agency's district offices. In conjunction with EEOC's Office of Field Programs, LMS also oversees the integration of district office legal units with the offices' investigative units. LMS provides direct litigation assistance to district office legal units, drafts guidance, develops training programs and materials, and collects and creates litigation practice materials. LMS also reviews litigation recommendations submitted by district offices. LMS reviews various other field litigation related matters, such as requests to contract for expert services and proposed resolutions in cases in which the General Counsel has retained settlement authority. LMS contains a unit that provides technical support to field offices in matters such as producing, receiving, and organizing electronically stored information in discovery, extracting and preserving digital media, and collecting and preserving information from social media sites.

4. Internal Litigation Services

Internal Litigation Services (ILS) represents the Commission and its officials on claims brought against the agency by its employees and applicants for employment, and advises the Commission and agency management on employment-related matters.

5. Appellate Litigation Services

Appellate Litigation Services (ALS) represents the Commission in the federal courts of appeals in all litigation where the agency is a party. ALS also participates as amicus curiae, as approved by the Commission, in federal courts of appeals, federal district courts, and state courts, in cases of interest to the Commission. ALS represents the Commission in the United States Supreme Court through the Department of Justice's Office of the Solicitor General. ALS also makes recommendations to the Department of Justice (DOJ) in cases where the DOJ is defending other federal agencies on claims arising under the statutes the Commission enforces. ALS 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.

6. Research and Analytic Services

Research and Analytic Services (RAS) provides testifying and consulting expert services for EEOC cases in litigation. RAS also provides various forms of litigation-related assistance, including database construction, statistical analyses, and labor market determinations; drafting discovery requests regarding technical matters; review of employment tests and other selection procedures; and damages calculations. In addition, RAS performs analytic work in support of select charges during administrative investigations that involve complex analyses or large, complicated datasets. Other RAS activities include providing training to district office legal and investigative staff in RAS areas of expertise (e.g., economics, statistics, industrial organizational psychology), and representation of the EEOC at various agency and interagency initiatives that involve analytic and data-related issues.

C. District Office Legal Units

District office legal units conduct Commission litigation in the geographic areas covered by the agency's 15 district offices and provide legal advice and other support to district staff responsible for investigating charges of discrimination. In addition to the district office itself, OGC Trial Attorneys are stationed in most field, area, and local offices within districts. Legal units are under the direction of Regional Attorneys, who manage staffs consisting of Supervisory Trial Attorneys, Trial Attorneys, Paralegals, and support personnel.

II. Fiscal Year 2021 Accomplishments

In fiscal year 2021, OGC filed 116 merits lawsuits and resolved 138, obtaining $34 million in monetary relief. Section A below contains summary statistical information on the fiscal year's trial court litigation results (more detailed statistics appear in part III of the Annual Report). Sections B and C contain descriptions of selected district court resolutions, and Section D contains descriptions of selected appellate and amicus curiae resolutions.

A. Summary of District Court Litigation Activity

OGC filed 116 merits suits in FY 2021. Merits suits consist of direct suits and interventions alleging violations of the substantive provisions of the Commission's statutes, and suits to enforce settlements reached during the EEOC's administrative

process. All FY 2021 merits suits were direct actions. In addition to merits suits, OGC filed eight actions to enforce subpoenas issued during EEOC charge investigations.

OGC's FY 2021 merits suit filings had the following characteristics:

- 71 contained claims under Title VII (61.2%)
- 43 contained claims under the ADA (37.1%)
- 4 contained claims under the ADEA (3.4%)
- 3 contained a claim under the EPA (2.6%)
- 45 sought relief for multiple individuals (38.8%)

The above statutory claims exceed the number of suits filed (and percentages total over 100) because cases sometimes contain claims under more than one statute. There were five of these "concurrent" suits (4.3%) among the FY 2021 filings.

OGC's merits filings alleged violations covering a variety of bases: sex (48), retaliation (43), disability (40), race (20), religion (5), national origin (5), age (3), and EPA (3). The issues raised most frequently in EEOC suits were discharge (89), harassment (33), hiring (27), and disability accommodation (25). At the end of FY 2021, the EEOC had 180 merits cases on its active district court docket, of which 60 (33.3%) were class or systemic cases.

In FY 2021, the Commission filed 13 systemic lawsuits. The allegations in these lawsuits involved challenges to employment policies that limit the rights of individuals with disabilities, sex-based failure to hire, harassment based on sex and pregnancy, discharge based on race and national origin, and age-based layoffs. At the end of FY 2021, 29 cases on the EEOC's active litigation docket were systemic suits, accounting for 16.1% of the 180 active merits suits.

OGC resolved 138 merits suits in FY 2021, recovering $33,973,795 for 1,920 individuals. OGC achieved a successful outcome (settlement or favorable judgment) in 95.7% of all suit resolutions. Suit resolutions had the following characteristics:

- 82 contained claims under Title VII (59.4%)
- 34 contained claims under the ADA (24.6%)
- 10 contained claims under the ADEA (7.2%)
- 2 contained claims under the EPA (1.4%)
- 51 cases sought relief for multiple individuals (37%)

The above statutory claims exceed the number of suits filed (and percentages total over 100) because cases sometimes contain claims under more than one statute. There were 10 of these "concurrent" suits (7.2%) among the FY 2021 resolutions.

Part III of the Annual Report contains detailed statistical information on OGC's FY 2021 litigation activities, as well as summary information for past years.

B. Selected Systemic Resolutions

In fiscal year 2021, the EEOC resolved 26 systemic suits, obtaining a total of approximately $22.7 million for 1,671 individuals and significant equitable relief. Below are some examples of FY 2021 systemic resolutions:

EEOC v. Dillard's Department Store, No. 4:20-cv-01152 (E.D. Ark. Oct. 8, 2020)

The EEOC alleged in this Title VII lawsuit that a national department store chain denied Black employees promotions to supervisory and managerial positions, and failed to recruit Black college students into an executive development internship program, because of their race. From at least January 2011, defendant did not post supervisor and manager vacancies; it instead used a "tap on the shoulder" approach in filling these positions, which caused a statistically significant underrepresentation of African Americans in supervisor and manager positions (compared to African American representation in sales positions). Also, during the period 2010-2013, 40 of 41 college students placed into defendant's Little Rock, Arkansas, Buyers Program, which provided paid internships that led to supervisory and managerial positions, were white. A two-year nationwide consent decree provides $900,000 in backpay and compensatory damages to approximately 30 individuals. The decree enjoins race discrimination in promotions to supervisory and management positions. For all managerial/supervisory positions up to area selling manager, defendant will no longer use a "tap on the shoulder" process for promotions, but will post open positions.

EEOC v. Palm USA, Inc., d/b/a City Sports; et al., No. 17-cv-6692 (N.D. Ill. Oct. 30, 2020)

The EEOC alleged in this Title VII action that 8 related entities operating 22 sports-themed clothing and shoe retail stores in the Chicago, Illinois, area denied Black and Hispanic applicants and employees management positions due to their race and national origin. Defendants had no education or experience requirements for store manager positions. Managers were hired primarily from the outside, and manager openings were advertised only in Korean newspapers. At the time of the EEOC's investigation, 75 of 78 sales associates at defendants' stores were Black or Hispanic, while 19 of 23 store managers were Asian. A five-year consent decree provides $420,000

in compensatory damages (personally guaranteed by three of defendants' owners) to 19 individuals. The decree enjoins defendants from discriminating against Black and Hispanic persons based on race or national origin in hiring, promotions, training, and transfers. Defendants will offer store manager positions to individuals identified by the EEOC.

EEOC v. Birmingham Beverage Co., Inc., d/b/a Alabev, No. 2:17-cv-01651 (N.D. Ala. June 4, 2021)

The EEOC alleged in this Title VII action that a Birmingham, Alabama-based wholesale beverage importer and distributor denied promotions to route sales positions to Black delivery and merchandise drivers because of their race. From June 2013 through September 2017, defendant hired or promoted 11 white and zero Black individuals into route sales positions, which pay substantially more than delivery and merchandise driver jobs. Black employees were passed over in favor of less qualified white individuals. During the relevant period, defendant employed 21 white route salespersons and 2 Black route salespersons, and assigned the latter to predominantly Black neighborhoods. A three-year consent decree provides $825,000 to 35 individuals (approximately 25% backpay and 75% compensatory damages) and enjoins race discrimination and retaliation. Black employees receiving monetary relief will be given first consideration when defendant fills route sales positions.

EEOC v. Cardinal Health 200, LLC, d/b/a Cardinal Health; and Howroyd-Wright Employment Agency, Inc., d/b/a AppleOne Employment Services, No. 5:19-cv-00941 (C.D. Cal. July 8, 2021)

The EEOC alleged in this Title VII lawsuit that a distributor of medical equipment and supplies (Cardinal Health) and a staffing agency (AppleOne) subjected Black employees at an Ontario, California warehouse to a hostile work environment, disparate treatment, and constructive discharge, and retaliated against employees for opposing racial discrimination. Managers and employees made derogatory racial comments to Black employees, including use of the n-word and references to Black employees as monkeys and slaves. Restroom facilities were defaced with racist graffiti. Black workers also were given less favorable assignments and were denied cross-training that would prepare them for permanent positions. Black employees complained to both defendants about the racial harassment, but the conduct continued, causing some Black employees to resign due to the intolerable working conditions. Some Black employees who complained were denied full-time positions or discharged. The case was resolved through separate two-year consent decrees; Cardinal Health agreed to pay $1.45 million and both companies agreed to injunctive relief aimed at preventing workplace harassment, discrimination and retaliation.

EEOC v. Kimco Staffing Services, Inc. and Ryder Integrated Logistics, Inc., No. 5:19-cv-01838 (C.D. Cal. May 25, 2021)

The EEOC alleged in this Title VII action that a provider of logistic and freight transportation services and a staffing firm subjected Black employees at a warehouse and distribution facility in Moreno Valley, California, to racial harassment and retaliated against them for opposing the discriminatory conduct. Non-Black employees used racist language toward Black employees, including the n-word. Managers heard the comments, and when complaints were made, defendants dismissed the conduct as "gossip" and harmless "name-calling." Some employees who complained about racial harassment were terminated without warning. The EEOC entered into separate two-year consent decrees with defendants, each paying $1 million to Black employees who worked at the facility between May 2016, and the effective date of the decree. Both decrees enjoin race discrimination and retaliation. The staffing firm will ensure its clients have policies against discrimination and protocols to handle complaints by placed employees, and the logistics firm will include in future contracts with staffing firms a provision that prohibits discrimination.

EEOC v. JBS USA, LLC, d/b/a JBS Swift & Company, No. 1:10-cv-02103 (D. Colo. June 8, 2021)

The EEOC alleged in this Title VII lawsuit that the operator of a slaughterhouse and meatpacking plant in Greeley, Colorado, denied Black Somali Muslim employees religious accommodations and subjected them to harassment based on race, national origin, and religion. Defendant also disciplined and discharged Somali Muslim employees because of their national origin and religion and in retaliation for requesting religious accommodations. The Somali Muslim employees were denied prayer accommodations and subjected to derogatory graffiti on restroom walls and pejorative comments by coworkers. During Ramadan in 2008, defendant refused to permit Muslim employees to take prayer breaks and end their fasts at appropriate times. On September 5, 2008, defendant accused Muslim employees of engaging in an unauthorized work stoppage and placed them on indefinite suspensions. Defendant then discharged employees for not returning to work on September 9, despite failing to inform the employees of that return date. A two-year consent decree applicable to the Greeley plant provides $5.5 million in monetary relief to about 300 individuals identified in the decree. Defendant will provide clean, quiet, and appropriate locations, other than a bathroom, for employees to observe their religious beliefs, and employees will be permitted to use approved unscheduled breaks to pray.

EEOC v. MVM, Inc., No. 8:17-cv-o2864 (D. Md. Dec 17, 2020)

The EEOC alleged in this Title VII action that an Ashburn, Virginia-based provider of security services to federal facilities subjected employees of actual or perceived African birth, most working as security guards, to disparate terms and conditions of employment, a hostile work environment, and discharge or constructive discharge due to their national origin, and retaliated against employees for opposing the discrimination. The employees worked at four National Institutes of Health (NIH) research locations in Maryland. In October 2013, a new project manager criticized the number of Africans employed and mocked their accents. Supervisors and managers told employees they thought were African to "go back to Africa," and referred to them in derogatory terms. Due to their national origin and their complaints about the discriminatory conduct, the project manager subjected the African employees to adverse terms and conditions of employment, accused them of poor performance, and discharged them. A two-year consent decree provides $1.6 million in backpay and compensatory damages to employees of African or Caribbean descent who worked at designated NIH facilities at any time since October 2013. The decree enjoins subjecting employees to disparate terms and conditions of employment, a hostile work environment, or actual or constructive discharge based on national origin and enjoins retaliation.

EEOC v. Performance Food Group, Inc., No. 1:13-cv-01712 (D. Md. Dec. 16, 2020)

The EEOC alleged in this Title VII lawsuit that a national distributor of food products denied operative positions at its Broadline Division distribution centers to female applicants because of their sex. Corporate officials told distribution center managers not to hire women into warehouse jobs, and female applicants were told by interviewers that defendant did not believe women were appropriate for warehouse positions. There was a statistically significant underrepresentation of female operatives both in the Broadline Division as a whole and at individual distribution centers. A five-year consent decree provides monetary relief of $5 million to women rejected for selector, driver, or forklift positions at any of 24 distribution centers during the period January 1, 2004, to December 31, 2013. The decree enjoins failing to hire women as selectors or drivers because of their sex and establishes hiring goals for female selectors and drivers equal to the yearly percentage of qualified female applicants for those positions. Defendant will inform third-party staffing agencies in writing of the decree and hiring injunction and that female applicants for selector and driver positions are welcome and should be referred in the same manner as male applicants.

EEOC v. Stan Koch & Sons Trucking, Inc., No, 19-cv-2148 (D. Minn. Aug. 30, 2021)

The court granted the EEOC summary judgment on liability in this Title VII action alleging that from February 2013 through January 2018, a Minneapolis, Minnesota-based transport business required that applicants for truck driver positions, and employees returning to those positions following a medical leave, pass a physical abilities test that had a disparate impact on female applicants and employees. The test, developed by third-party Cost Reduction Technologies (CRT), is administered on an isokinetic apparatus and measures a person's range of motion and torque in the shoulders, knees, and trunk. CRT markets the test as preventing musculoskeletal disorder injuries to the knees, shoulders, and back by matching the physical abilities of the test taker to the physical requirement of a job. The EEOC presented expert evidence that male driver applicants passed the test at a much higher rate (93.9%) than female applicants (52%), and that a review of defendant's worker's compensation claims from 2005 to 2020, and an analysis of the prevalence of injuries that the CRT test purports to prevent, showed no evidence that drivers who passed the CRT test pre-hire sustained statistically significantly fewer injuries than drivers who did not take the test pre-hire.

EEOC v. Schuster Co., No. 5:19-cv-4063 (N.D. Ill. Sept. 27, 2021)

The EEOC alleged in this Title VII action that a LeMars, Iowa-based interstate trucking business conditioned hiring for truck driver positions on passing a physical abilities test that had a disparate impact on female applicants. Beginning in June 2014, defendant required truck driver applicants to pass a test developed by third-party Cost Reduction Technologies (CRT). The test is administered on an isokinetic apparatus and measures a person's range of motion and torque in the shoulders, knees, and trunk. CRT markets the test as preventing musculoskeletal disorder injuries to the knees, shoulders, and back by matching the physical abilities of the test taker to the physical requirement of a job. During the period June 2014 to June 2017, 98% of male applicants passed the test compared to 75% of female applicants. Data on defendant's worker's compensation claims over the period 2012 through June 2017 failed to show a statistically significant reduction in claims following implementation of the test.

A three-year consent decree enjoins use of the CRT test in hiring for driver positions; enjoins use of any physical abilities test in hiring for driver positions if such use has a disparate impact on female applicants and defendant cannot demonstrate that the test is job related and consistent with business necessity; and enjoins retaliation. Prior to the use of any physical abilities test in hiring for driver positions, defendant must follow detailed procedures set out in the decree that include validation of the test under the EEOC's Uniform Guidelines on Employer Selection Procedures, 29 C.F.R. pt. 1607. Defendant must offer driver positions to women who, during the period from June 2014

to the defendant's cessation of the CRT test, had their conditional job offers revoked because they did not pass the test. Nine individuals named in the decree will share $45,575 in backpay.

EEOC v. Del Taco, LLC, No. 5:18-cv-1978 (C.D. Cal. Nov. 30, 2020)

The EEOC alleged in this Title VII action that defendant subjected female employees (some of them teens) at a number of restaurants it operated in California to sexual harassment, and retaliated against employees for opposing the discriminatory conduct. From at least 2014, male employees made sexually explicit comments to female workers and touched them inappropriately. Female employees complained about the conduct to managers and on defendant's hotline, but the sexually offensive conduct continued. Some female employees were forced to resign because their working conditions became intolerable. A three-year consent decree provides $1.25 million to affected current and former female employees identified by the EEOC. The decree enjoins defendant from sexual harassment, sex-based harassment, and retaliation. Defendant will not provide negative references regarding individuals receiving relief and will not deny employment to individuals who have left. Defendant will retain a person from outside the company to monitor compliance with the decree.

EEOC v. Computer Science Corp., No. 1:20-cv-10372 (S.D.N.Y. Dec. 11, 2020)

The EEOC alleged in this ADEA lawsuit that a provider of technology consulting services laid off employees age 40 and over due to their ages. In a nationwide series of reductions in force from January 1, 2012, to December 31, 2014, defendant laid off employees age 40 and over at a statistically significantly higher rate than younger workers (nearly 20% compared to approximately 14%). Defendant's CEO stated he wanted to transform the company, was looking to be "more agile," and was bringing in "high energy" people. A two-year consent decree applies to defendant and to DXC Technology Corporation, which purchased defendant on April 1, 2017. The decree provides $700,000 in backpay and liquidated damages to individuals identified by the EEOC and prohibits age discrimination in layoffs.

C. Other District Court Resolutions

Below are representative non-systemic FY 2021 resolutions:

EEOC v. CCC Group, Inc, No. 1:20-cv-00610 (N.D.N.Y. Aug. 8, 2021)

The EEOC alleged in this Title VII lawsuit that a general construction contractor subjected Black employees working at a site in Ravena, New York, to racial harassment.

white supervisors and employees referred to Black workers by the n-word and "boy," and called them gorillas and monkeys. Black employees were assigned to less desirable and more physically demanding work and subjected to greater scrutiny and work criticism than white employees. Employees complained to management about the racial harassment, but defendant failed to correct it. A three-year consent decree provides $420,000 in compensatory damages to seven individuals employed at the Ravena site between February 1, 2015, and December 31, 2016. Defendant's CEO will send the individuals letters describing the racial harassment at issue in the litigation and the remedial measures taken by defendant under the decree. The decree enjoins defendant from race harassment and retaliation and from employing or contracting with two individuals named in the decree.

EEOC v. Food Ventures North America, Inc., d/b/a Wild Fork Foods, No. 1:21-cv-21389 (S.D. Fla. April 12, 2021)

The EEOC alleged in this Title VII lawsuit that a Miami, Florida-based retailer of frozen meat and seafood products subjected an employee of Venezuelan descent to a hostile work environment due to her national origin and race, retaliated against her for opposing the discrimination, and constructively discharged her due to the harassment and retaliation. The employee was hired in June 2018 as social media manager at defendant's Miami headquarters. From the start, defendant's head of marketing, who directly supervised the social media manager, subjected her to daily derogatory comments about Hispanics, describing them as lazy and barbaric. He told her not to dress or wear her hair in ways that would make her appear Hispanic, belittled any marketing campaign designed to appeal to Hispanics, and repeatedly told her that she worked in America. In August and September 2018, the employee complained to human resources, but the harassing conduct continued, and the head of marketing began undermining her work. When the employee submitted a written complaint to human resources in November 2018, she was told it might be better if she took her talents elsewhere. A 30-month consent decree provides the former social media manager $37,500 in backpay and $92,500 in compensatory damages, enjoins subjecting employees to a hostile work environment based on national origin or race, and enjoins retaliation.

EEOC v. R.G. & G.R. Harris Funeral Homes, Inc., No. 2:14-cv-13710 (E.D. Mich. Nov. 30, 2020)

The EEOC alleged in this Title VII action that an owner of funeral homes in Detroit, Michigan, discharged a funeral director/embalmer because of her transgender status, and failed to provide female public contact employees a clothing allowance provided to male public contact employees. The funeral director/embalmer was hired in 2007 and

presented as a man at that time. In 2013, two weeks after the funeral director/embalmer informed defendant she was transitioning from male to female and intended to dress as a woman at work, defendant's owner told her that what she was proposing to do was unacceptable and discharged her. The EEOC prevailed on liability on the transgender discrimination discharge claim in the Sixth Circuit and the U.S. Supreme Court. A three-year consent decree provides $130,000 ($63,723.91 in backpay and $66,276.09 in compensatory damages) in trust to the funeral director/embalmer's estate, and $120,000 in costs and attorney's fees to the American Civil Liberties Union, which represented the trustee of Charging Party's estate, who intervened while the case was on appeal. The decree also provides $3,705 in resolution of the clothing allowance claim. The decree enjoins firing employees based on transgender status and providing employees with unequal clothing benefits based on sex.

EEOC v. Ferman Management Services Corporation d/b/a Ferman Automotive Group & Cigar City Motors, Inc., d/b/a Harley-Davidson of Tampa, No. 8-18-cv-2055 (M.D. Fla. Aug. 3, 2021)

The EEOC alleged in this Title VII action that defendants, owners of Florida Harley-Davidson motorcycle dealerships, denied a female employee a promotion to a general manager position because of her sex. Following a weeklong trial, the jury returned a verdict for EEOC, awarding the employee $500,000 in punitive damages. (The applicable statutory damages cap is $300,000.) The female employee worked as the general sales manager of defendant Cigar City Motors' Harley-Davidson dealership in Tampa, Florida. Throughout her employment she expressed interest in a general manager position. The Tampa dealership general manager position opened in January 2015, and defendants filled it with a man who EEOC contended at trial was less qualified than the female general sales manager. EEOC presented evidence that prior to the agency's lawsuit, Cigar City Motors had not promoted a woman to a general manager position at any of its five Florida Harley-Davidson dealerships. EEOC presented testimony from several former Cigar City general managers that the female general sales manager was qualified for the general manager position at the Tampa location, but that Cigar City thought she was "too motherly" for the job.

EEOC v. Enoch Pratt Free Library, No. 8:17-cv-02860 (D. Md. Dec. 23, 2020)

The EEOC alleged in this EPA action that the Baltimore, Maryland, public library system paid five female Librarian Supervisor-1s (branch managers) less than a male branch manager for performing substantially equal work. Following a five-day bench trial, the court ruled in favor of EEOC, awarding the five individuals backpay -- $1,040.88 to one, $18,929.86 to another, and $25,801.16 each to three others – and equal amounts in liquidated damages. The court also required defendant to make adjustments

to the individuals' retirement accounts consistent with the backpay awards. The female branch managers had been in their positions for 7 to 21 years when in 2015 defendant hired a male former branch manager and paid him an annual salary $1,100 to $6,000 higher than the females were receiving. The court found that education and experience requirements were largely the same for all branch managers; that branch managers shared a common core of duties and defendant treated them as fungible; and that the females had been branch managers for longer periods than the male branch manager and had comparable or superior records and performance evaluations to his.

EEOC v. First Metropolitan Financial Services, Inc., No. 1:18-cv-177 (N.D. Miss. March 18, 2021)

The EEOC alleged in this Title VII/EPA action that a provider of consumer loans with locations in Tennessee and Mississippi paid female branch managers less than men in that position. A woman hired in 2010 as branch manager of defendant's Tupelo, Mississippi location was paid a salary of $36,000, and in 2016, was earning $41,691 at the much larger Fulton, Mississippi branch. In December 2016, she learned defendant hired a man as manager of the Tupelo branch at a salary of $48,014. She asked defendant about the pay discrepancy, and defendant refused to discuss it. The female branch manager resigned in February 2017. A two-year consent decree provides $20,000 in backpay and $45,000 in compensatory damages to the former female branch manager and $10,000 in backpay and $25,000 in compensatory damages to a second affected individual. The decree enjoins paying female branch managers less than male branch managers, inquiring about applicants' prior earnings history, and retaliation.

EEOC v. Stan Koch & Sons Trucking, Inc., No. 19-cv-1371 (D. Minn. Oct. 16, 2020)

The EEOC alleged in this Title VII lawsuit that a Minneapolis, Minnesota-based transport business denied rehire to a truck driver because she filed a discrimination charge with the EEOC. The driver began working for defendant in July 2012. Due to an occupational injury, she was on worker's compensation leave for three months in 2013. Defendant required her to take an isokinetic strength test as a condition of returning to work, and she failed the test. Defendant discharged her, but told her she could reapply after six months and would be hired if she passed the test. She filed an EEOC charge in December 2013 alleging that the test was discriminatory. When she reapplied for employment in April 2014, defendant refused to consider her, admitting in its position statement to the EEOC that this was due to her pending discrimination charge. A 33-month consent decree provides $165,000 to the former driver, $41,250 of which constitutes backpay, and prohibits retaliation. (See related case on page 9 *supra*.)

EEOC v. Tim Shepherd MD, PA d/b/a Shepherd Healthcare, and Bridges Healthcare, PA, No. 4:20-cv-060 (E.D. Tex. March 11, 2021)

The EEOC alleged in this Title VII action that a medical practice in Lewisville, Texas, failed to accommodate employees' religious beliefs, subjected employees to a hostile work environment based on religion, and retaliated against employees for objecting to religious discrimination. Defendant Shepherd Healthcare held daily Christian Bible study meetings, which became mandatory in January 2016. Employees were threatened with discharge if they did not attend and actively participate in the meetings. Also, they were told their personal behaviors were sinful. Some employees were discharged due to their personal behaviors or for opposing the religious meetings. In August 2018, Bridges Healthcare, a business created by Shepherd Healthcare's owners that purchased Shepherd Healthcare's assets out of a Chapter 7 bankruptcy proceeding, was added as a defendant under a successor liability theory. A four-year final judgment provides $375,000 to 10 individuals, and enjoins religious discrimination, subjecting employees to a hostile work environment based on religion and retaliation. Defendants will adopt and distribute policies against religious discrimination, with procedures for requesting religious accommodation.

EEOC v. AscensionPoint Recovery Services, LLC, No. 21-cv-01428 (D. Minn. Sept. 7, 2021)

The EEOC alleged in this Title VII lawsuit that a Minnesota-based estate and probate debt recovery business denied an employee an accommodation for his religious practices and discharged him because of his religion. In July 2017, a client informed defendant that it discovered in a May 2017 audit that defendant fingerprinted only individuals working on the client's contract, which failed to meet the contract's requirement that all employees with access to the client's data be fingerprinted. Defendant notified employees of the expanded fingerprinting requirement, and an employee working as a client services representative asked for an exemption, explaining that being fingerprinted conflicted with his religious belief against having his fingerprints captured. Defendant denied the employee's exemption request, and when he refused to be fingerprinted, discharged him. A three-year consent decree provides the former employee $28,000 in backpay and $37,000 in compensatory damages. The decree prohibits discharge based on religion or the need to provide religious accommodation and requires that religious observances or practices be accommodated.

EEOC v. Rural/Metro Corporation of Florida, Rural/Metro Corporation and Lifefleet Southeast, Inc., No. 6:20-cv-01678 (M.D. Fla. Sept. 22, 2021)

The EEOC alleged in this Title VII/ADA case that defendants, providers of medical transportation services in Orlando, Florida, refused to provide an employee accommodations for her pregnancy and pregnancy-related disability (hyperemesis gravidarum, which causes severe nausea and vomiting during pregnancy). In August 2016, the employee, an emergency medical technician, submitted a note from her doctor restricting her from riding in ambulances, ambulating patients, or lifting over 25 pounds. Defendants had a policy of providing light duty to employees who experience an on-the-job injury or illness that is accepted by defendant's worker's compensation carrier, but refused to accommodate the pregnant employee and required her to take unpaid leave under the Family Medical Leave Act. During the employee's leave, defendants asked for volunteers to cross-train on dispatch duties. She volunteered but was told she was ineligible because of her pregnancy. A three-year consent decree provides $55,000 to the employee and requires that defendants provide pregnant employees at the Orlando facility with light duty or transitional work on the same basis as employees who are injured on the job.

EEOC v. RockAuto, LLC, No. 3:18-cv-00797 (W.D. Wis. June 11, 2021)

The EEOC alleged in this ADEA suit that an online auto parts supplier denied a 64-year-old applicant a supply chain manager position at its Madison, Wisconsin, headquarters due to his age. The applicant had many years of experience in supply chain management and relevant bachelor's and master's degrees. Upon receiving his application, defendant asked him for the year he received his bachelor's degree and rejected him the day after he provided that information. Defendant interviewed and hired significantly younger individuals, who lacked the 64-year-old applicant's experience and credentials. Following a two-day trial, the jury returned a verdict for the EEOC. The court awarded the rejected applicant $109,304 in backpay and $14,613 in interest and granted EEOC extensive injunctive relief.

EEOC v. Wal-Mart Stores East L.P., No. 17-C-70 (E.D. Wis. July 15, 2021)

The EEOC alleged in this ADA lawsuit that a national retailer denied an employee a reasonable accommodation, discharged her, and refused to rehire her due to her disability. The employee, who has Down syndrome, was hired in 1999 as a sales associate at defendant's Supercenter in Manitowoc, Wisconsin. She worked a regular schedule from 12 p.m. to 4 p.m., 3 to 4 days a week. In November 2014, defendant instituted a computerized scheduling system that changed the employee's hours to 1 p.m. to 5:30 p.m. The employee took the bus to work, and the change in schedule

disrupted her commuting routine and interfered with her regular mealtime, causing her to become ill. Defendant denied the employee's request to return to her former schedule, and after disciplining her for attendance violations, discharged her in July 2015 for excessive absenteeism. The employee's termination letter stated she was eligible for rehire, but defendant denied a request by her mother and sister to rehire her and permit her to work the 12 p.m. to 4 p.m. schedule. Following a four-day trial, the jury returned a verdict for EEOC, awarding the former employee $50,000 in compensatory damages and $125 million in punitive damages. (The applicable statutory cap for total damages is $300,000.)

EEOC v. Lonza America, Inc., f/d/b/a Arch Chemicals, Inc., No. 1:20-cv-00311 (E.D. Tenn. July 22, 2021)

The EEOC alleged in this ADA lawsuit that a supplier of swimming pool and spa sanitizers and related treatment products subjected a chlorinator operator at its Charleston, Tennessee, plant to an unlawful medical examination and discharged him because of his disability. In 2013, the employee began a medically assisted treatment (MAT) program for opioid dependency, for which he was prescribed the opioid medication Suboxone. In a random drug test at work in 2017, the employee tested positive for a controlled substance. Defendant suspended him for violating its work rules and required that he see a clinical psychologist. The employee explained he was participating in a MAT program and provided a copy of his prescription for Suboxone along with a doctor's note. Defendant refused to return the employee to work unless he discontinued use of the legally prescribed medication and discharged him in December 2017. Defendant sold the Charleston plant and no longer employs the individuals involved in the chlorinator operator's discharge. A one-year consent decree provides the former employee $50,000 in backpay and $100,000 in compensatory damages.

EEOC v. Professional Transportation, Inc., No. 1:20-cv-00745 (S.D. W. Va. Aug. 5, 2021)

The EEOC alleged in this ADA lawsuit that a provider of transportation services with locations throughout the United States denied an individual a position because of her disability. In early 2019, the individual applied for a van driver position at defendant's Bluefield, West Virginia, branch and was offered the job subject to a drug test. She told defendant's branch manager she was receiving Suboxone, an opioid prescription medication used to treat opioid addiction. The branch manager then informed defendant's human resources director, who reviewed the manufacturer's information on the potential side effects of Suboxone and disqualified the applicant without requesting any information from her or her health provider on the medication's effects on her ability to work as a van driver. An 18-month consent decree provides the rejected applicant $20,000 in backpay and $40,000 in compensatory damages. The

decree permanently enjoins defendant from discriminating against any individual for receiving, or having received, medical treatment for a drug addiction/substance use disorder, or for having, or having a history of, a drug addiction/substance use disorder and enjoins retaliation.

D. Selected Appellate and Amicus Decisions

In addition to its nationwide litigation program at the district court level, OGC represents the agency in federal courts of appeals, and participates as amicus curiae in private actions in federal courts of appeals and, on occasion, in federal district courts and state courts. Notable appellate and amicus decisions in FY 2021 include:

EEOC v. West Meade Place, LLP, 841 F. App'x 962 (6th Cir. 2021)

The EEOC alleged in this ADA suit that a healthcare facility denied a laundry assistant leave as a reasonable accommodation for her anxiety disorder, and discharged her due to her disability. The district court granted summary judgment to defendant on the ground that the EEOC could not show the employee was disabled under the ADA. The EEOC appealed, and the Sixth Circuit reversed, holding that a jury could conclude that the employee met the ADA's "regarded as disabled" definition. The court of appeals said that a reasonable jury could find that the decisionmaker who terminated the employee believed she had an impairment, citing evidence of the employee's anxiety disorder manifesting in periodic flareups and of mistreatment by other employees triggering the employee's flareups. The court said that a regarded as disabled claim requires only a "perceived" impairment, and that the employer's view of the extent of the effect of the perceived impairment on the employee's life activities is irrelevant. As to the second element of a regarded as disabled claim – that the employer took an adverse action based on an actual or perceived impairment -- the court found there was evidence permitting the conclusion that defendant would not have terminated the employee but for her admission of an anxiety disorder and her leave request, saying that the district court erroneously relied almost exclusively on evidence favoring the employer while ignoring contradictory evidence that favored the Commission.

Exby-Stolley v. Board of County Commissioners, 979 F.3d 784 (10th Cir. 2020) (en banc)

In this disability discrimination case, in which the Commission and the Department of Justice's Civil Rights Division jointly filed an amicus curiae brief, the Tenth Circuit held that the district court erred in instructing the jury that an adverse employment action is an element of an ADA failure to accommodate claim. The court of appeals said that the term "adverse employment action" does not appear anywhere in the text of the ADA, and is not "synonymous with the statutory language 'terms, conditions, and privileges

of employment.'" The court said that its own precedents have presented ADA failure to accommodate claims without mentioning an adverse employment action requirement, and distinguished its contrary Title VII precedent, recognizing that failure to accommodate is a "freestanding claim" under the ADA. The court said that the statute imposes an affirmative obligation on employers to provide reasonable accommodations, and that this requirement would be significantly frustrated by including an adverse employment action as a necessary element of the claim. The court added that it was permissible for courts to instruct juries that a plaintiff must establish that a failure to provide reasonable accommodation was "in regard to" terms, conditions, or privileges of employment," but not to equate that language with an adverse employment action requirement. The court favorably cited the Commission's ADA regulations, the interpretive guidance to the regulations, and agency policy guidance on reasonable accommodation, saying that the Commission's position on the issue was significant and its regulations were entitled to a great deal of deference.

Christian v. Umpqua Bank, 984 F.3d 801 (9th Cir. 2020)

Agreeing with arguments raised by the Commission as amicus curiae in this Title VII hostile work environment case, the Ninth Circuit reversed the district court's grant of summary judgment to the defendant. The female plaintiff worked as a universal associate at defendant bank and alleged that a male customer subjected her to sex-based harassment. The court of appeals concluded that a reasonable jury could find the customer's conduct severe or pervasive, saying that his bizarre and erratic behavior persisted for many months after the plaintiff asked him to stop, and that her colleagues' concern for her safety and their repeated warnings to be careful bolstered the reasonableness of her reaction to his conduct. Echoing the Commission's arguments, the court said that the district court erroneously failed to consider certain actions by the customer, underscoring that a hostile work environment consists of "all the circumstances," including incidents that do not involve physical proximity or verbal communication, and conduct directed at other persons of which the employee becomes aware. The court also agreed with the Commission that the lower court erred in disregarding incidents that occurred prior to a several months' long gap in the plaintiff's interactions with the customer, because the incidents involved similar conduct by the same individual and occurred relatively frequently.

Regarding employer liability for the customer's conduct, the court concurred with the Commission that a reasonable jury could find that the company ratified or acquiesced in the customer's harassment by not taking steps to implement its decision to bar the customer from the branch after the earliest incidents. The court said that "inaction" wasn't reasonably calculated to end the harassment, and that it was unreasonable to place the burden on the employee to address the harassing behavior, citing the

employer's suggestion that she "hide in the break room" when the customer visited her branch.

Thompson v. Fresh Products, LLC, 985 F.3d 509 (6th Cir. 2021)

The district court held in this ADA and ADEA case that the plaintiff's claims under both statutes were time-barred due to a contractual provision requiring her to bring any claims or lawsuits against her employer within six months of the employment action at issue. The Sixth Circuit rejected the district court's conclusion that the plaintiff's claims were time-barred by the contract but affirmed the district court's summary judgment ruling on other grounds. Agreeing with the Commission's arguments as amicus curiae, the court of appeals said that considerations that guided its decision in a Title VII action, *Logan v. MGM Grand Detroit Casino*, 939 F.3d 824 (6th Cir. 2019), applied with equal force under the ADA and ADEA. The court said that because the ADA expressly incorporated Title VII's procedures, limitations period, and remedies, the court's holding in *Logan* that Title VII's self-contained limitations period constituted a nonwaivable substantive right applied to the ADA as well. The court also tracked the Commission's ADEA argument, holding that although the ADEA does not incorporate Title VII's procedures and time limitations, it is like Title VII in the respects that *Logan* deemed significant, including a self-contained limitations period and an emphasis on a pre-suit cooperative process. The court also agreed with the Commission's argument that the ADEA's prohibition on waivers that are not knowing and voluntary supported the conclusion that as a substantive right, the ADEA's self-contained limitation period could not be prospectively waived.

Martinez v. UPMC Susquehanna, 986 F.3d 261 (3d Cir. 2021)

The plaintiff in this case, an orthopedic surgeon, alleged that defendant violated the ADEA by terminating him at age 70 and replacing him with two "significantly younger" doctors. The district court dismissed the plaintiff's complaint, holding he had not alleged sufficient facts to support an inference of age discrimination. The Third Circuit, noting the Commission's amicus curiae participation and thanking it for "its excellent briefing and argument," reversed and remanded. The court of appeals said the plaintiff's use of the phrase "significantly younger" was a factual allegation, not a legal conclusion, and was sufficient to state a claim without additional specifics about the comparators' ages or specialties. The court noted that such "commonsense allegations" may be used in other types of discrimination cases; for example, alleging in a Title VII action that a comparator "is of a different race or national origin." The court said the plaintiff's complaint was sufficient to provide the notice required under Fed. R. Civ. P. 8(a), as it alleged who fired the plaintiff; when and how; the names of his replacements; and that the replacements were significantly younger.

Roberts v. Glenn Industrial Group, Inc., 998 F.3d 111 (4th Cir. 2021)

In this Title VII sexual harassment action, the district court granted summary judgment to the employer, holding that the male plaintiff could not establish that harassment he experienced from his male supervisor was based on sex, because the conduct did not fall under any of the three situations described in *Oncale v. Sundowner Offshore Services, Inc*, 523 U.S. 75, 80-81 (1998). The district court also found that certain instances of physical abuse from the supervisor were not of a sexual nature, and therefore not relevant. Adopting the positions the Commission advanced as amicus curiae, the Fourth Circuit vacated the grant of summary judgment. The court said that nothing in *Oncale* indicated that the Supreme Court intended the three evidentiary routes it cited to be the only ways to show that harassment by a person of the same sex could constitute sex-based discrimination. The court of appeals referred to the failure to conform to sex stereotypes and discrimination based on sexual orientation or transgender status as among other methods of proving that same-sex harassment was "based on sex." In addition, the court found that the district court erred when it disregarded evidence of the supervisor's physical assault merely because the abuse was "not overtly sexual." The court said the district court instead should have examined more broadly whether the incidents were "part of a pattern of objectionable, sex-based discriminatory behavior."

III. Litigation Statistics

A. Overview of Suits Filed

In FY 2021, the EEOC's field legal units filed 116 merits lawsuits. Merits suits include direct suits and interventions alleging violations of the substantive provisions of the Commission's statutes and suits to enforce settlements reached during the EEOC's administrative process. All FY 2021 filings were direct suits. Thirteen filings were systemic suits and 32 were non-systemic suits that sought relief for multiple individuals. The field legal units also filed eight actions during the fiscal year to enforce subpoenas issued during administrative charge investigations.

1. Filing Authority

In EEOC's National Enforcement Plan, adopted in February 1996 and reaffirmed in the Commission's Strategic Enforcement Plan for Fiscal Years 2017-2021, the Commission delegated litigation filing authority to the General Counsel in all but a few areas, allowing the General Counsel to initiate litigation without prior Commission approval. On March 10, 2020 and again on January 13, 2021, the Commission modified the delegation of litigation authority to the General Counsel. Pursuant to the most recent modified delegation, the General Counsel must submit all district office litigation

recommendations to the Commission either for a vote (for cases that would have been subject to a vote under the Strategic Enforcement Plan for Fiscal Years 2017-2021) or for a 5-day review period (for other cases) to determine which recommendations require a vote by the Commission. The Commission voted to reject 10 litigation recommendations under the modified delegation procedure during the fiscal year. The chart below shows the number of suits filed during the year that were authorized by the General Counsel and the number approved by a Commission vote.

FY 2021 Suit Authority		
	Count	Percent of Suits
General Counsel	86	74.1%
Commission	30	25.9%

2. Statutes Invoked

Of the 116 merits suits filed, 61.2% contained Title VII claims, 37.1% contained ADA claims, 3.4% contained ADEA claims, 2.6% contained EPA claims, and 4.3% were filed under more than one statute. (Merits suits include direct suits and interventions alleging violations of the substantive provisions of the statutes enforced by the Commission and suits to enforce administrative settlements. Statute numbers in the chart below exceed the number of suits filed and percentages total over 100 because suits filed under multiple statutes ("concurrent" cases) are included in the totals of suits filed under each of the statutes.)

Merit Filings in FY 2021 by Statute		
	Count	Percent of Suits
Title VII	71	61.2%
ADA	43	37.1%
ADEA	4	3.4%
EPA	3	2.6%
Concurrent	5	4.3%

3. Bases Alleged

As shown in the next chart, sex (44.8%), retaliation (37.1%), disability (34.5%), and race (17.2%) were the most frequently alleged discriminatory bases in EEOC suits. Bases numbers in the chart exceed the total suit filings because suits often contain multiple bases.

FY 2021 Bases Alleged in Suits Filed		
	Count	Percent of Suits
Sex	52	44.8%
Retaliation	43	37.1%
Disability	40	34.5%
Race	20	17.2%
Religion	5	4.3%
National Origin	5	4.3%
Age	3	2.6%
Equal Pay	3	2.6%
Color	1	0.9%

4. Issues Alleged

As shown in the chart below, discharge was the most frequently alleged issue (76.7%) in EEOC suits filed, followed by harassment (27.5%), hiring (23.3%), and reasonable accommodation (21.6%). (Counts of discharge include constructive discharge and layoff.)

FY 2021 Issues Alleged in Suits Filed		
	Count	Percent of Suits
Discharge	89	76.7%
Harassment	32	27.5%
Hiring	27	23.3%
Disability Accommodation	25	21.6%
Terms/Conditions	7	6.0%
Assignment	5	4.3%
Wages	5	4.3%
Prohibited Medical Inq./Exam	4	3.4%
Discipline	3	2.6%
Religious Accommodation	2	1.7%
Recordkeeping	2	1.7%

B. Suits Filed by Bases and Issues

1. Sex Discrimination

As shown below, 83.3% of sex discrimination claims included a harassment allegation; 47.9% contained a discharge allegation.

Sex Discrimination Issues		
	Count	Percent
Harassment	40	83.3%
Discharge	23	47.9%
Hiring	7	14.6%
Wages	4	8.3%
Assignment	2	4.2%
Terms/Conditions	2	4.2%
Intimidation	1	2.1%
Demotion	1	2.1%

2. Race Discrimination

As shown in the next chart, harassment was the most frequent allegation (90%) in race discrimination claims; discharge was alleged in half of the claims.

Race Discrimination Issues		
	Count	Percent
Harassment	18	90.0%
Discharge	10	50.0%
Assignment	1	5.0%
Training	1	5.0%
Terms/Conditions	1	5.0%
Wages	1	5.0%

3. National Origin Discrimination

Harassment was an allegation in four of the five national origin discrimination claims.

National Origin Discrimination Issues		
	Count	Percent
Harassment	4	80.0%
Discharge	2	40.0%
Hiring	1	20.0%
Other Language/Accent Issue	1	20.0%
Assignment	1	20.0%

4. Religious Discrimination

Discharge was an allegation in four of the five religious discrimination claims.

Religious Discrimination Issues		
	Count	Percent
Discharge	4	80.0%
Reasonable Accommodation	2	40.0%
Harassment	1	20.0%

5. Age Discrimination

Discharge was alleged in all three age discrimination claims.

Age Discrimination Issues		
	Count	Percent
Discharge	3	100.0%
Harassment	1	33.3%
Constructive Discharge	1	33.3%
Layoff	1	33.3%

6. Disability Discrimination

Discharge and failure to accommodate were the most frequent allegations in disability claims (62.5% each), followed by hiring (40.0%).

Disability Discrimination Issues		
	Count	Percent
Discharge	25	62.5%
Reasonable Accommodation	25	62.5%
Hiring	16	40.0%
Prohibited Medical Inq./Exam	4	10.0%
Harassment	2	5.0%
Recordkeeping Violation	2	5.0%

7. Retaliation

Discharge was by far the most frequent allegation in retaliation claims.

Retaliation Discrimination Issues		
	Count	Percent
Discharge	35	81.4%
Harassment	8	18.6%
Terms/Conditions	4	9.3%
Hiring	3	7.0%
Discipline	3	7.0%
Assignment	2	4.7%
Intimidation	1	2.3%
Reasonable Accommodation	1	2.3%
Suspension	1	2.3%
Training	1	2.3%
Wages	1	2.3%

C. Bases Alleged in Suits Filed from FY 2017 through FY 2021

The table below shows the bases on which EEOC suits were filed over the last 5 years.

Bases Alleged in Suits Filed FY 2017 – FY 2021 Percent Distribution												
FY	Sex - Female	Sex - Preg.	Sex - Male	Sex - LGBT	Race	Color	Nat'l Orig.	Relig.	Disab.	Gen Info.	Age	Retal.
2017	22.8%	7.6%	7.1%	3.3%	11.4%	1.1%	4.3%	6.5%	40.8%	1.6%	6.5%	29.3%
2018	26.1%	9.5%	3.5%	1.0%	8.0%	0.5%	4.0%	4.5%	42.2%	0.0%	4.5%	25.6%
2019	29.2%	8.3%	4.9%	0.0%	11.1%	0.0%	2.8%	4.9%	36.8%	0.0%	4.2%	32.6%
2020	25.8%	9.7%	2.2%	2.1%	14.0%	1.1%	4.3%	5.4%	31.2%	0.0%	7.5%	28.0%
2021	33.6%	6.9%	3.4%	0.9%	17.2%	0.9%	4.3%	4.3%	34.5%	0.0%	2.6%	37.1%

D. Suits Resolved

In FY 2021, the Office of General Counsel resolved 138 merits lawsuits, obtaining $33,973,795 in monetary relief.

1. Types of Resolution

As the next chart indicates, 92.7% of EEOC's suit resolutions were settlements, 5.8% were determinations on the merits by courts or juries, and 1.4% were voluntary dismissals. (The figures on favorable and unfavorable court orders do not take appeals into account.)

FY 2021 Types of Resolutions		
	Count	Percent
Consent Decree	127	92.0%
Favorable Court Order	4	2.9%
Unfavorable Court Order	4	2.9%
Voluntary Dismissal	2	1.4%
Settlement Agreement	1	0.7%
Total	138	100%

2. Monetary Relief by Statute

Of the 138 merits suits resolved during the fiscal year, most contained Title VII claims or ADA claims. (Statute numbers in the chart below exceed the number of suits resolved and the percentages total over 100 because suits resolved under multiple statutes ("concurrent" cases) are also included in the totals of suits resolved under each statute.)

FY 2021 Resolutions by Statute		
	Count	Percent Suits
Title VII	82	59.4%
ADA	34	24.6%
ADEA	10	7.2%
EPA	2	1.4%
Concurrent	10	7.2%

As shown in the next chart, Title VII suits accounted for almost 83% of the monetary relief obtained in FY 2021, while ADA suits accounted for 9%, and ADEA suits accounted for 3.6% of relief recovered. Recoveries in concurrent suits are not included in the totals for the particular statutes.

FY 2021 Monetary Relief by Statute (rounded)		
	Relief (millions)	Relief (percent)
Title VII	$28.2	82.9%
ADA	$3.0	9.0%
ADEA	$1.2	3.6%
EPA	$.02	0.7%
Concurrent	$1.5	3.9%
Total	$33.9	100%

E. Appellate Activity

OGC filed 4 briefs on appeal in Commission cases in FY 2021, 3 as appellant and 1 as respondent, and filed 24 briefs as amicus curiae in private suits. Represented by the

Solicitor General, the EEOC filed one brief in response to a petition for certiorari in the U.S. Supreme Court. The EEOC prevailed in two of three merits cases decided on appeal in FY 2021. At the end of FY 2021, the EEOC had 7 cases pending in courts of appeals in EEOC suits and was amicus curiae in 21 pending cases.

F. Attorney's Fees Awards

The only attorney's fee award for or against the EEOC in FY 2021 was an award to the EEOC under Fed. R. Civ. P. 37(b)(2)(A) for defendant's violation of a discovery order in *EEOC v. Green Lantern, Inc., d/b/a Mr. Dominic's on Main*, No. 6:19cv-06704 (W.D.N.Y.), a case alleging the sexual harassment and resulting constructive discharge of a female employee and the retaliatory discharge of an employee for opposing sexual harassment. The court has not yet determined the amount of fees.

G. Resources

1. Staffing

As shown in the next chart, the number of field attorneys increased from last fiscal year.

OGC Staffing (On Board)

Year	Appellate Attorneys*	Field Attorneys*
2017	14	175
2018	13	195
2019	13	175
2020	13	159
2021	12	175

* Includes Supervisory Appellate Attorneys, Regional Attorneys and Supervisory Trial Attorneys

2. Litigation Budget

The EEOC's litigation funding for FY 2021 was close to that of FY 2020 and has not varied substantially over the past 5 fiscal years.

Litigation Support Funding (Millions)

FY	Funding
2017	$3.42
2018	$3.68
2019	$3.60
2020	$3.68
2021	$3.72

H. EEOC 10-Year Litigation History: FY 2012 through FY 2021

	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19	FY20	FY21
All Suits Filed	155	149	168	174	114	201	217	157	97	124
Merits Suits	122	131	133	142	86	184	199	144	93	116
Suits with Title VII Claims	66	77	77	83	46	107	111	87	59	71
Suits with ADA Claims	45	49	49	52	36	76	84	55	32	43
Suits with ADEA Claims	12	7	11	13	2	12	10	7	7	4
Suits with EPA Claims	2	5	2	7	5	11	5	7	1	3
Suits with GINA Claims	0	3	2	1	2	3	0	0	0	0
Suits filed under multiple	3	9	7	14	5	24	10	12	6	5
Subpoena and Preliminary Relief Actions	33	18	35	32	28	17	18	13	4	8
All Resolutions	280	228	144	193	171	125	156	180	176	140
Merits Suits	251	213	136	157	139	109	141	173	165	138
Suits with Title VII Claims	159	137	87	86	84	57	82	96	99	82
Suits with ADA Claims	72	60	47	64	48	48	55	78	58	34
Suits with ADEA Claims	29	17	11	12	12	3	10	6	11	10
Suits with EPA Claims	2	4	5	1	7	4	9	6	5	2
Suits with GINA Claims	0	1	1	1	4	1	1	0	1	0
Suits filed under multiple	11	6	13	6	16	4	16	13	8	10
Subpoena and Preliminary Relief Actions	29	15	8	36	32	16	15	7	11	2
Monetary Benefits (in millions)[2]	$43.2	$39.0	$22.5	$65.3	$52.2	$42.3	$53.6	$39.1	$106.2	$33.9
Title VII	$34.2	$22.4	$15.3	$56.9	$36.8	$21.7	$21.5	$25.8	$72.6	$28.2
ADA	$5.5	$14.0	$16.6	$6.3	$12.1	$7.1	$21.8	$8.5	$15.7	$3.0
ADEA	$2.6	$2.1	$8.4	$.81	$.94	$12.1	$3.9	$0.9	$16.3	$1.2
EPA	0	$.24	$.56	0	$.04	$0.2	$0.1	$0.2	$0.016	$0.02
GINA	0	0	0	0	0	$0.1	0	0	0	0
Suits filed under multiple statutes[3]	$0.9	$.24	$6.5	$1.3	$2.3	$1.1	$6.3	$3.7	$1.5	$1.5

[1] Suits filed or resolved under multiple statutes are also included in the tally of suits filed under the particular statutes.

[2] The sum of the statute benefits in some years will be different from total benefits for the year due to rounding.

[3] Monetary benefits recovered in suits filed under multiple statutes are counted separately and are not included in the tally of suits filed under the particular statutes.