



**OFFICE OF THE ATTORNEY GENERAL  
ANNUAL REPORT  
FISCAL YEAR 2010-2011**

**At a Glance**

**GEORGE JEPSEN,**

*Attorney General*

**NORA DANNEHY,**

*Deputy Attorney General*

*Established – 1897*

*Statutory authority: Conn. Gen. Stat. §§3-124 to 3-131*

*Central Office: 55 Elm Street, Hartford, CT 06106*

*Average number of full-time employees: 310*

*Recurring General Fund operating expenses: \$27,779,000*

*Revenues Generated: \$476,913,475*

**Mission**

Among the critical missions of this office are to represent and vigorously advocate for the interests of the state and its citizens, to ensure that state government acts within the letter and spirit of the law, to protect public resources for present and future generations, to preserve and enhance the quality of life of all our citizens, and to ensure that the rights of our most vulnerable citizens are safeguarded.

**Statutory Responsibility**

The Attorney General is the chief civil legal officer of the state. The Attorney General's Office serves as legal counsel to all state agencies. The Connecticut Constitution, statutes and common law authorize the Attorney General to represent the people of the State of Connecticut to protect the public interest.

**REVENUE ACHIEVED BY THE OFFICE OF THE ATTORNEY GENERAL**

During the 2010-2011 fiscal year, **\$476,913,475** was generated by the Attorney General's Office, as described below:

**A. Revenue Generated for the General Fund**

Tobacco Settlement Fund Collections	\$121,421,995
State Child Support Collections	38,969,358
Tax Collection	4,978,547
Health Care Fraud Recovery	70,937
Recovery for Environmental Violations	1,715,594
Consumer Protection Penalties, Costs and Forfeitures	2,567,948



## **PUBLIC SERVICE PROVIDED BY THE OFFICE OF THE ATTORNEY GENERAL**

The Office of the Attorney General is divided into 15 departments, each designated to represent agencies which provide particular categories of service to State residents. The Attorney General also participates in the legislative process, maintains an active communication with citizens and investigates, in conjunction with the State Auditors, whistleblower complaints. The overall work completed by this office in fiscal year 2010-2011 is summarized as follows:

Court cases completed	15,946
Court cases pending	35,652
Legal documents examined	7,632
Administrative proceedings	2,467
Appeals completed	143
Appeals pending	210
Formal opinions issued	5

### **LEGISLATION**

During the 2011 legislative session, the Attorney General proposed and supported legislation to protect consumers, homeowners, and children. Among other things, the Attorney General obtained legislative authority to enforce consumer protection provisions of the recently enacted Dodd Frank Wall Street Reform and Consumer Protection Act. As a result of this legislation, the Attorney General will now have clear authority to enforce new federal laws and regulations designed to protect consumers from unfair, deceptive or abusive mortgage or mortgage broker practices, check cashing and payday lending practices, debt collection practices, and prepaid debit card practices.

The Attorney General also supported legislation extending greater protections to condominium owners. Among other things, that legislation prohibits: (1) executive board members from accepting things of value in exchange for votes; (2) management companies or their representatives from campaigning for any person seeking election to an executive board; and (3) clauses in management service agreements that require condominium associations to indemnify for losses arising out of a management company's negligence or willful misconduct. The legislation also requires condominium associations to afford notice and hearings to unit owners prior to commencing legal action and permits unit owners to insist on such hearings as an alternative to going to court to prosecute claims against an association or board.

The Attorney General also supported and helped craft legislation strengthening school bullying laws. That legislation promotes awareness, education, and training in order to prevent bullying and its tragic consequences. It also expands the scope of schools' jurisdiction to address bullying outside of schools and makes it clear that activity conducted over the internet or cell phones, oftentimes referred to as "cyber-bullying," constitutes bullying for purposes of the state's anti-bullying laws.

The Attorney General, along with the State Auditors, also supported legislation reforming and streamlining the state's whistleblower statutes. That legislation: (1) requires state agencies to post notice of the provisions of the state's whistleblower laws in a conspicuous place that is easily accessible to employees; (2) extends the time for whistleblowers to file complaints

concerning retaliatory action as well as the period during which alleged misconduct against a whistleblower is deemed presumptively retaliatory; (3) eliminates the Attorney General's power to investigate claims of retaliation and, instead, makes clear that such claims should be filed with the CHRO and/or pursuant to the provisions of applicable collective bargaining agreements; and (4) gives the State Auditors the power to reject complaints on a number of grounds, thereby freeing them to focus their valuable resources on those claims that fall clearly within their jurisdiction and warrant further investigation.

Finally, the Attorney General, along with Office of the Child Advocate, supported and helped craft legislation that aims to prevent instances of child abuse and neglect perpetrated by public school employees. Among other things, the new law: (1) expands the categories of individuals who must report known or suspected cases of child abuse or neglect; (2) requires the Department of Children and Families ("DCF"), in consultation with the State Department of Education ("SDE"), to craft a model mandated reporter policy for local and regional school boards to use for training school personnel; (3) establishes additional steps to be followed when an alleged perpetrator is a school employee, including notification of certain school personnel and SDE; and (4) requires school boards to require applicants for positions in public schools to submit to a check of the DCF child abuse registry. This law was passed in direct response to a 2010 joint report issued by the Office of the Attorney General and the Office of Child Advocate calling for improved protections for children when allegations are made that school system personnel have abused or neglected children.

## **ANTITRUST AND COMPETITION ADVOCACY DEPARTMENT**

The Antitrust Department's primary responsibility is to administer and enforce the Connecticut Antitrust Act. The Department has the authority to enforce major provisions of the federal antitrust laws as well. The Department also relies on other state laws, including the Connecticut Unfair Trade Practices Act, to ensure the Attorney General's overall responsibility to maintain open and competitive markets in Connecticut. Utilizing these statutes, the Department investigates and prosecutes antitrust and other competition-related actions on behalf of consumers, businesses and governmental entities. In addition, this Department provides advice and counsel on proposed legislation and various issues regarding competition policy. The Attorney General currently serves as the Chair of the Antitrust Committee of the National Association of Attorneys General and remains active within that organization.

During the past year the Department continued to build on the successes it has achieved over the last few years in industries that are vitally important to consumers. In that regard the Department has conducted investigations, commenced legal action and obtained settlements in the insurance, reinsurance, municipal bond derivatives and trash industries, among others. All told, the Department's initiatives are focused on securing restitution for injured consumers, including state agencies and programs, small businesses and individuals, and deterring anticompetitive conduct.

In this fiscal year, the Department continued its emphasis on investigating and prosecuting anticompetitive and illegal practices engaged in by insurance and reinsurance carriers and brokers. The practices at issue include bid rigging, price-fixing, steering of business to preferred insurers in return for lucrative undisclosed compensation, and other anticompetitive

and illegal behavior. Such practices have cost Connecticut citizens - - both individuals and corporations, as well as Connecticut municipalities and state agencies - - in the form of higher premiums for their insurance. The work of the Attorney General's Antitrust Department in the past year resulted in restitution to the State of Connecticut and its consumers for violations of Connecticut law.

On December 30, 2010, the Attorney General entered into a \$2 million settlement with Liberty Mutual Insurance Company ("Liberty"), resolving claims that it conspired with brokers to rig bids for insurance contracts and paid secret kickbacks to brokers for preferential treatment. The restitution from the settlement will go to the state's general fund.

Coming shortly on the heels of the settlement with Liberty, the Attorney General announced on January 31, 2011 a \$4.25 million settlement with reinsurance broker Guy Carpenter & Company, LLC ("Guy Carpenter") and Excess Reinsurance Company ("Excess Re"), ending a landmark antitrust case that began in October 2007. Reinsurance is purchased by insurance companies to cover exposure to claims on the policies they write. Because the cost of reinsurance is typically passed on to consumers, anti-competitive practices by reinsurers drive up prices to individuals and businesses purchasing the coverage. Anti-competitive practices can also hurt other reinsurance companies seeking to compete for the business in an open market. The settlement resolves claims that Guy Carpenter orchestrated a series of conspiracies in the reinsurance industry that illegally inflated insurance and reinsurance costs nationwide. Under terms of the agreement, Guy Carpenter and Excess will pay the state \$4.25 million to settle the lawsuit. In addition, Guy Carpenter will undertake significant nationwide business reforms, including enhanced disclosure and a formalized system for obtaining competitive quotes to ensure its clients receive the best rates and terms for insurance.

In the Spring of 2008, the Attorney General, along with a number of other state Attorneys General, formed a task force to investigate allegations that certain large financial institutions, including national banks and insurance companies, and certain brokers and swap advisors, engaged in various schemes to rig bids and commit other deceptive, unfair and fraudulent conduct in the municipal bond derivatives market. Municipal bond derivatives are contracts that tax-exempt issuers use to reinvest proceeds of bond sales until the funds are needed, or to hedge interest-rate risk. Connecticut leads the task force.

The first settlement in the ongoing municipal bond derivatives investigation occurred on December 7, 2010, when the Attorney General and nineteen other states entered a \$67 million agreement with the Bank of America. Under the agreement, Bank of America will pay restitution to state agencies, municipalities and nonprofits throughout Connecticut and nationwide who were harmed by this scheme and cooperate in the ongoing investigation. Building on Bank of America's cooperation, on May 4, 2011, the Attorney General and the state task force entered into its second settlement in the ongoing investigation; a \$90.8 million agreement with multinational Swiss bank, UBS AG ("UBS"). Under the settlement, led by the Connecticut Attorney General and joined by 23 other states and the District of Columbia, UBS agreed to pay \$63.3 million in restitution to state agencies, municipalities, school districts and not-for-profit entities nationwide that entered into municipal derivative contracts with UBS, or used UBS as its broker for such transactions, between 2001 and 2004. In addition, UBS agreed to pay a \$2.5 million civil penalty and \$5 million in fees and costs of the investigation to the settling states.

The market for trash removal services in Connecticut has long been dominated by a handful of powerful companies. Throughout the 1990s and first half of this decade, the market in Southwestern Connecticut was controlled by James Galante through his web of interconnected businesses. In 2006, the federal government indicted Galante on various criminal charges alleging that he masterminded a criminal enterprise bent on stifling competition for trash hauling that resulted in higher prices for trash removal for his commercial and municipal customers. Following Galante's conviction in 2008, the Attorney General filed a lawsuit against him in October 2009 in an effort to recover the illegal profits Galante obtained through the inflated prices he charged his small business customers.

On April 14, 2011, the Attorney General settled his unfair trade practices and antitrust lawsuit against Galante. The lawsuit alleged that in 2002 and 2004, Galante ordered his employees at AWD and Thomas to raise prices by 10 percent for certain commercial customers under the false representation that they were mandatory increases for disposal-site costs. The lawsuit also alleged two incidents of bid-rigging by American Disposal Services of Connecticut, another Galante-owned company, in attempts to secure waste-hauling contracts. Under terms of the settlement, Galante will pay the state \$600,000 to be distributed to an estimated 500 commercial customers of Galante's former companies: Automated Waste Disposal, Inc. and Thomas Refuse Services Inc.

Merger enforcement has long been a high priority within the Attorney General's antitrust enforcement regime and this year was no exception. In March 2011, the Attorney General, working with the U.S. Department of Justice and other state Attorneys General, initiated an investigation of AT&T's proposed \$39 billion merger with T-Mobile USA. If consummated, the merger will create the biggest wireless carrier in the United States. The federal/state investigation will focus on whether the merger of two of the nation's four largest wireless carriers will substantially lessen competition by increasing prices and reducing choices for cell phone users. The investigation is expected to last several months. One of the primary goals of the Antitrust Department is ensuring that innovative products have the ability effectively compete in what are often fast-paced and burgeoning markets. Electronic books ("eBooks") and electronic book readers ("eReaders") are two such areas of growth. In a relatively short period of time, the sales of eBooks have outpaced the sales of physical or hardcopy books. One reason for this growth was the introduction in January 2010 of Apple Corp's iPad, one of the most popular consumer electronic products - - computer tablets - - which support the use of eBooks.

In January 2010, right before the launch of the iPad, five of the country's largest eBook publishers announced that they were switching from the traditional wholesale model of selling books - - where books are sold to retailers who set the price for consumers - - to an "agency model", where the publishers use the retailer as their agent but retain control of pricing. Virtually overnight, sales of New York Times bestseller eBooks jumped by \$3 to \$5 dollars per book. In August 2010, the Attorney General announced an investigation into the agency model to determine whether it violated antitrust laws by inhibiting competition in eBooks. The investigation is continuing.

## CHILD PROTECTION DEPARTMENT

The Child Protection Department of the Attorney General's Office is responsible for representing the Connecticut Department of Children and Families (DCF) in state and federal court proceedings brought in the interest of abused and neglected children. DCF's most prominent mandate is to investigate reports of child abuse or neglect and, based on the outcome of the investigation, to provide the proper protection for the children and to assist the families in retaining or regaining the care and custody of their children by enhancing safety and adequate parenting skills. DCF's interventions in serious cases of abuse or neglect are always the subject of judicial scrutiny. The vast majority of civil child protection cases before the Superior Court for Juvenile Matters are initiated by DCF through neglect petitions, application for orders of temporary custody, review of permanency plans, petitions for termination of parental rights, and other proceedings. The Child Protection Department handles the largest caseload in the office and appears regularly in all sixteen juvenile courts statewide, as well as in federal court and before the state appellate and supreme courts. In addition, this department defends DCF in all administrative appeals to the Superior Court.

The appellate caseload handled by this department is vast. In the year 2011, the Appellate Court implemented administrative measures to expedite the appellate process of child protection appeals. As a result, many appeals were disposed of much more expeditiously than in past years. This department was successful in representing DCF in numerous appeals before the Connecticut Appellate and Supreme Courts. Of particular note are several positive outcomes in the following appeals concerning abused and neglected children:

In *In re Matthew F.*, 297 Conn. 673 (2010); the Supreme Court held that the Superior Court for Juvenile Matters is not divested of jurisdiction over an individual committed to DCF merely because he had turned eighteen. However, the Court held that the lower court can exercise its jurisdiction over such young individual only if he complies with the statutory requisites namely, being a committed child before his or her eighteenth birthday and being enrolled in a full time education program. *Matthew F.*'s appeal was dismissed because he failed to meet the second predicate. The holding in *Matthew F.*, led to the affirmation of the trial court's ruling that it is without jurisdiction when asked to commit an individual as a neglected child after his or her eighteenth birthday. These cases will be revisited by the Supreme Court who certified the jurisdictional question for further review. *In re Jose B.*, 125 Conn. App. 572 (2010), *cert. granted*, 300 Conn. 916 (2011); *In re Jessica M.*, 125 Conn. App. 584 (2010), *cert. granted*, 300 Conn. 917 (2011).

We successfully challenged a trial court's denial of a neglect petition and a petition for termination of parental rights in *In re Zamora S.*, 123 Conn. App. 103 (2010). In that case the trial court denied the neglect petition after finding that only the father neglected the child. The Appellate Court reversed explaining that neglect adjudication is not a judgment that runs against a person named as a respondent (usually a parent). Rather, it is a finding concerning the status or condition of the child even if only one parent created the condition. The Appellate Court also reversed the trial court's conclusion that we had failed to prove by clear and convincing evidence that the parents were living together. The Appellate Court held that the Petitioner is not required to prove each and every subordinate fact by the clear and convincing standard. The Court reasoned that just as in criminal cases, only a fact essential to the applicable statutory element must be proven by the elevated standard of proof.

The office successfully defended a trial court's decision to sustain an order of temporary custody. In *In re: Paul O.*, 125 Conn. 212 (2010); the Appellate Court rejected the challenge to the trial court's ruling concluding that the combination of evidence as to the woeful state of her residence and the mother's history of mental health were sufficient basis for the conclusion that the child was in immediate physical danger. The Court rejected the claim that the mother's history of mental illness was irrelevant stating that it impacted on her ability to function as a parent.

The Appellate Court upheld numerous decisions to terminate parental rights. Noteworthy are the decisions that properly consider the child's age and needs both in the adjudicatory and dispositional phases. The Court held that an adjudication that a parent had failed to rehabilitate is appropriate even in cases where the parent made progress in addressing issues of concern. The Court explained that the linchpin to a determination that rehabilitation has occurred necessarily includes a finding that the parent can begin or resume parenting within a reasonable time. What constitutes a reasonable time depends on the child's age and needs for permanency as well as the need to avoid prolonged foster care. Thus, as commendable as her progress may have been, the Court found that the parent's efforts had come too late under the circumstances of that case. *In re Dylan C.*, 126 Conn. App. 71 (2011); *In re Gianni C.*, 129 Conn. 227 (2011). In several other cases, the Appellate Court upheld judgments terminating parental rights finding it to be in the best interest of the child even though the child may have had a loving bond with the parent. The Court explained that when only termination of parental rights can put the child on the road to stability he craves and deserves, termination of parental rights will be in the child's best interest notwithstanding the loving bond with the parent. *In re Rafael S.*, 125 Conn. App. 605 (2010); *In re Allison M.*, 127 Conn. App. 197 (2011); *In re Mia M.*, 127 Conn. App. 363 (2011).

Finally, in *In re Joshua S.*, 127 Conn. App. 723 (2011); the Court dismissed an appeal from the trial court's ruling denying foster parents' challenge to the trial court's earlier decision to transfer the guardianship of their former foster child to his maternal great grandmother. The Court held that foster parents' do not have a party status to invoke appellate jurisdiction because they lack a colorable claim to intervene in the proceeding as a matter of right. The Court reasoned that unlike biological or adoptive parents, foster parents do not enjoy a liberty interest in the integrity of the family unit as to a foster child.

Over the last fiscal year, 4606 child protection cases were filed within the Superior Courts for Juvenile Matters state wide. The trial court sustained 1498 emergency custody orders (OTCs) and vacated 95 OTCs. 1308 children were committed; 1336 children remained with their families under the court's protective supervision and 387 children had parental rights terminated. The department fully tried 540 court cases and settled 5725, out of which 990 cases were settled during trial. Most of these cases remain open however, within the continuing court jurisdiction, until the child achieves permanency through adoption or transfer of guardianship or until the child is safely returned home or ages out of DCF care.

During this fiscal year, 3439 cases were closed, with 583 cases withdrawn, 32 cases dismissed, 368 children adopted, 408 children placed with their parents or relatives as guardians and 519 children who turned 18. Currently pending in court are cases involving 7322 children, with 1503 termination cases filed, 95 coterminous petitions, 2690 neglect petitions and 3712 neglect petitions with Orders of temporary custody.

## COLLECTIONS AND CHILD SUPPORT DEPARTMENT

The Collections/Child Support Department is dedicated to the expeditious recovery of monies due to the State and the establishment of orders for the support of children. Its major client agencies are the Department of Administrative Services/Collection Services in matters involving the recovery of reimbursable public assistance benefits, other state aid and care, and costs of incarceration, and the Bureau of Child Support Enforcement within the Department of Social Services in matters for the establishment of child support orders. Additionally, the Department provides legal services in connection with the enforcement of child support orders at the request of the Support Enforcement Services division of the Judicial Branch. Department staff also provide a full range of litigation services for the collection of debts, other than child support, owed to the Departments of Social Services, Revenue Services, Correction and Higher Education, as well as the Unemployment Division of the Labor Department, John Dempsey Hospital, the Second Injury Fund, the Connecticut State University System, the Office of the Secretary of the State, the State Elections Enforcement Commission and various other state agencies, boards and commissions on a case-by-case basis.

In fiscal year 2010-2011 Department attorneys recovered more than fourteen million (\$14,000,000.00) dollars in cash payments on debts owed to the state.

The Department's activities in the establishment of child support orders traditionally produce large caseloads. In fiscal year 2010-2011 just under 11,000 cases were opened in all child support categories and slightly more than 8,500 files were closed during the period. These cases occurred in both the Superior Court and the Family Support Magistrate division and involved the establishment of orders for support of children wherever they or the custodial parent may be. Department attorneys actively argued cases on behalf of children who resided not only in the State of Connecticut, but also on behalf of children who resided in other states and countries, pursuant to the Uniform Interstate Family Support Act. In addition to their functions establishing paternity and support orders for children, the Department's attorneys participated in probate and superior court matters in order to protect the support rights of children involved in proceedings brought by parents seeking to terminate their parental rights.

Coincident with their child support responsibilities, the Department attorneys were also engaged in a wide variety of other litigation activities during the fiscal year in addition to those that resulted in the recovery of significant sums on behalf of state agencies. Accordingly, a Department attorney prevailed in a case decided by the Connecticut Appellate Court. And in a case of first impression having precedential effect upon the recovery of public assistance benefits, one of the Department attorneys successfully argued and obtained an administrative ruling establishing that a father's statutory obligation to reimburse the state for the public assistance received by his child is not dependent upon a prior legal determination of paternity if there is substantial evidence clearly establishing the parent/child relationship. See Thomas v. State of Connecticut, Superior Court, Judicial District of New Britain, Docket No. CV-10-6005570-S.

The litigation activities of the Department's attorneys include protecting the creditor rights of various state agencies in federal bankruptcy court proceedings. During this fiscal year the Department's attorneys managed over 600 active cases that included bankruptcy proceedings not only in Connecticut, but throughout the country. The Department's bankruptcy litigation resulted in over five million (\$5,000,000.00) dollars in recoveries, including \$1,850,000.00 recovered from an on-going case successfully litigated by a Department attorney last year

resulting in additional corporate tax liabilities of \$11,000,000.00. Journal Register East, Inc., Chapter 11, Case No. 09-10794, S.D.N.Y. And in Affinity Health Care Management, Inc., Chapter 7, Case No. 06-30034, D.Conn. a Department attorney prevailed in upholding the full amount of the Department of Revenue Services' creditor claims for pre-petition provider taxes owed by four nursing homes resulting in the collection of over \$460,000.00 in delinquent taxes.

Continuing with an initiative commenced four years ago, a Department attorney worked in conjunction with members of the Office of the Secretary of the State to recover payment of fees, penalties and interest due from foreign corporations and other foreign business entities doing business in Connecticut without first having complied with the statutory registration requirements for legally conducting business in Connecticut. This initiative resulted in the collection of \$1,169,133.33 in fees, penalties and interest during the 2010-2011 fiscal year.

The Department concluded 1,987 litigation matters involving the recovery of debts owed to the numerous state agencies, boards and commissions for which collection services were provided during this fiscal year. In addition to the more routine debt collection cases, Department attorneys litigated numerous cases involving significant payments on debts owed to the state. In United States vs. Jaeger, et al a Department attorney successfully argued the legal enforceability of the state agency's statutory real property liens and recovered \$207,415.40 in delinquent tax obligations. And in Estate of Canady the Department recovered \$200,000.00 in accident-related medical and other public assistance benefits. In Estate of Faier a member of the Department successfully established the enforceability of the state's statutory claim and, as a consequence, recovered \$250,000.00 for reimbursement of care and support provided by the Department of Children and Families. In Special Needs Trust f/b/o Santiago a Department attorney recovered \$577,238.55 for the reimbursement of public assistance benefits and in Special Needs Trust f/b/o Martinez, reimbursement of public assistance benefits totaling \$449,101.52 was successfully recovered by a member of the Department. In addition, there were numerous other cases litigated by Department attorneys, each resulting in recoveries in excess of \$100,000.00 on behalf of state agencies.

## **CONSUMER PROTECTION DEPARTMENT**

The focus of this Department is consumer protection through counsel and representation of the Department of Consumer Protection, consumer education and complaint mediation, consumer protection investigations, appearances before state and federal agencies on consumer matters, and litigation under various state and federal laws with a major reliance on the Connecticut Unfair Trade Practices Act (CUTPA).

### **Consumer Education & Mediation**

We continue to further our core mission by opening the lines of communication with the community and consumers that we serve in order to educate consumers, reduce victimization and mediate disputes. This year we attended senior and safety fairs, throughout the state in order to raise awareness within the community about consumer issues, including how to avoid cutting edge scams, and what resources are available for consumers that have been victimized and how consumers can avoid being victimized again in the future.

We remain involved in Triad, a group comprised of representatives from law enforcement, government agencies, the business community and seniors. Triad works to reduce

criminal victimization of seniors, raise awareness with seniors and those working directly with seniors on community specific crimes and crime prevention, and provide information to help educate law enforcement on how to work more effectively with seniors. The 9<sup>th</sup> Annual Triad Conference featured as its guest speaker, Manhattan District Attorney Elizabeth Loewy. As the attorney in charge of the New York County Elder Abuse Unit, she brought global attention to the sensitive issue of financial exploitation of seniors in the trial involving the late Brooke Russell Astor. The number of towns participating in Triad continues to expand.

Attorney General George Jepsen has invited state residents to participate in a free, four-part lecture series called “Consumer University,” which offers useful information about how to avoid becoming a victim of scam artists and financial fraud.

In addition, as part of the Attorney General’s focus on consumer mediation, our Department, which consists of attorneys, volunteer advocates and other staff, responded to 5,276 consumer complaints during this fiscal year. Over \$2,500,000 was refunded or credited to Connecticut consumers due to the mediation efforts of the Department.

### **Multi-States**

Our office along with forty-nine Attorneys General reached a settlement with DIRECTV, resolving allegations that it engaged in deceptive and unfair sales practices by: not clearly disclosing pricing limitations on DIRECTV; enrolling consumers in additional contracts or contract terms without clearly disclosing the terms; enrolling consumers in additional contracts, without their permission when replacing defective equipment; not clearly disclosing to consumers that they would automatically renew a seasonal sports package; and offering cash back to consumers when the company provided bill credits instead.

Connecticut and 39 other states reached a \$21 million settlement with Dannon, resolving allegations that it exaggerated, in television, Internet, and print ads, as well as on product packaging, the health benefits of its Activia yogurt and DanActive dairy drink. Dannon claimed that Activia promoted digestive health because it includes a bacterial strain with “probiotic benefits” that Dannon trademarked under the name “*Bifidus Regularis*.” The states claimed that, in fact, the name “*Bifidus Regularis*” was entirely concocted by Dannon. The company allegedly made other unsubstantiated claims about Activia, as well as unlawful and unsubstantiated claims about “immunity” and cold and flu prevention benefits associated with DanActive dairy drinks. The settlement prohibits Dannon from making unsubstantiated claims about Activia and DanActive preventing, treating, curing or mitigating disease. Dannon must also provide competent and reliable scientific evidence to support claims about health benefits, performance, efficacy or safety of its probiotic food products. Connecticut’s share of the settlement was \$425,000.

Connecticut and 36 other Attorneys General reached a \$68.5 million settlement with AstraZeneca Pharmaceuticals LP, of Delaware, arising from alleged improper marketing of the anti-psychotic drug Seroquel. It represents the largest, multistate, consumer-protection based settlement with a pharmaceutical company. The Attorney Generals alleged that AstraZeneca engaged in unfair and deceptive practices when it marketed Seroquel for unapproved or off-label uses, failed to adequately disclose the drug’s potential side effects to health care providers, and withheld negative information contained in scientific studies concerning the safety and efficacy of Seroquel. AstraZeneca agreed not to promote Seroquel in a false, misleading or deceptive

manner, including for “off-label” uses, which are not approved by the U.S. Food and Drug Administration. Along with other prohibitions and requirements, the agreement specifically requires AstraZeneca to: publicly post its payments to physicians on a website; have policies in place to ensure that financial incentives are not given to marketing and sales personnel for off-label marketing; have policies in place to ensure that AstraZeneca sales personnel do not promote to health care providers who are unlikely to prescribe Seroquel for an FDA-approved use; and cite to Seroquel’s FDA-approved indications when referencing selected symptoms, rather than promoting Seroquel by highlighting symptoms only. Connecticut’s share of the settlement was \$1,234,106.

In addition, Connecticut and 37 other states reached a \$40.75 million settlement with pharmaceutical companies GlaxoSmithKline, LLC of Philadelphia and SB Pharmco Puerto Rico, Inc., an indirect subsidiary of GlaxoSmithKline plc, over alleged substandard manufacturing processes. The Attorneys General alleged the companies engaged in unfair and deceptive practices when they manufactured and distributed certain lots of four drugs because substandard manufacturing processes were used to produce these lots between 2001 and 2004. The adulterated drugs were produced at the companies’ production facility in Cidra, Puerto Rico, which has been closed since 2009. The lots in question do not involve drugs that are currently available for sale on the market. The settlement covers all drugs that were once made at the Cidra facility, regardless of where these drugs are now produced. Specifically, the companies may not make claims about the drugs that are false, misleading or deceptive as a result of how the drugs are made. In addition, the companies agree not to represent that the drugs have characteristics, benefits, uses, qualities or ingredients they do not have, because of the way the drugs are manufactured. Nor may the companies make representations about the drugs that are likely to cause confusion or misunderstanding related to the source, sponsorship, approval or certification of the drugs, because of how the drugs are made. Connecticut’s share of the settlement was \$756,280.

### **Financial, Real Estate & Investment**

Our Department obtained two default judgments, one against FHA All Day.Com and the other against Lucius Couloute, foreclosure rescue operations that took upfront fees but provided no services in exchange.

The Department has brought a predatory lending complaint against VRM Mortgage Co., Inc. and others, including a real estate business, mortgage broker and tax preparer. The complaint alleges that defendant Roman Realty, owned by defendant Victor Roman, referred prospective homeowners to VRM Mortgage Co., also owned by Mr. Roman, for mortgage brokering services. The complaint further alleges that VRM’s loan originators fabricated information it submitted on loan documents, often identifying borrowers as “self-employed” when they actually were not and inflating their incomes on stated-income loan applications so the borrowers would qualify for mortgages. The defendants were allegedly assisted in the scheme by defendant Jose Flores, a tax preparer who submitted so-called ‘accountant’s letters’ to VRM purportedly verifying the borrowers’ self-employed status. These letters, many of which were fraudulent, allegedly were transmitted to lenders in support of the loan applications. The defendants’ victims were predominantly Hispanic, and representatives of Roman Realty and VRM would often translate documents for consumers who did not understand English. Flores was paid a fee by VRM for each letter he submitted. Roman Realty received commissions for

sales to consumers who would not have otherwise qualified for a mortgage and VRM received substantial origination fees. This case is currently in the discovery phase.

### **Other Unfair & Deceptive Trade Practices Cases**

Our office sued Best Buy Co., Inc. et al. arising out of allegations about its use of in-store kiosks that purportedly displayed Best Buy's internet website. The State claimed that from Nov. 2001 to March 2007, Best Buy maintained kiosks in its CT stores that displayed a website that looked exactly like its Internet website, BestBuy.com. The kiosk website could be accessed by consumers by clicking an icon labeled "BestBuy.com," and some of the kiosks had signs over them reading "Our Biggest Store/BestBuy.com" and "Research and Buy Online." The kiosk website was different from the internet website, however, in one significant way: the kiosk website displayed in-store, rather than internet, prices. To the extent that Best Buy's internet price for a product might be lower than the store price—which was sometimes the case—consumers would not be able to view the true internet price on the kiosks. The State alleged that Best Buy's conduct was deceptive inasmuch as it expressly represented to consumers that they could access BestBuy.com in its stores and failed to disclose that the prices displayed on the kiosks were not the actual BestBuy.com prices (and could be higher). This case was resolved by Stipulated Judgment entered by the Court on December 14, 2010. Best Buy made a payment to the State in the amount of \$399,000 and paid restitution to eligible consumers. The Judgment also includes injunctive provisions prohibiting Best Buy from representing that its in-store kiosks display internet prices, if that is not the case.

Our office filed suit against Monica, LLC d/b/a Omegastores.com, et al, an internet retail business located in CT engaged in the sale of electric bicycles, scooters and log-splitters. The defendants sell their products through an internet website, omegastores.com. From 2002 to 2007, the CT Department of Consumer Protection, the Office of the Attorney General and the CT Better Business Bureau received about 70 complaints from consumers all over the country about Omegastores' business practices. The bulk of the complaints were from consumers who claim they were shipped damaged or defective products and were not issued refunds when they tried to avail themselves of Omegastores' warranty and return policy. The State alleged that Omegastores failed to adequately package its products (which are heavy and prone to damage if not properly packaged), thereby increasing the likelihood of damage during shipping. The State also alleged that Omegastores failed to honor a 30-day 'risk free try-out' period that it offered for some models of log splitters. This matter was settled by Stipulated Judgment entered on November 10, 2010. The defendants agreed to pay \$15,000 in restitution, and further agreed to numerous injunctive provisions. The injunctive provisions require the defendants to package their products in a manner that will allow consumers to return them in the same packaging without the need to provide extra padding. The Stipulation also requires clear and conspicuous disclosures reasonably adjacent to any offers—including the 'risk free try-out' offer—that contain limitations or exceptions.

We brought an action against JJD, Inc. d/b/a Gregorio Pool and Spas, et al. ("Gregorio"), a pool construction and maintenance company, based on complaints we received regarding shoddy construction and installation, poor maintenance and sundry other contract disputes. The complaint alleges that Gregorio misrepresented to consumers that it performed pool installation work in a workmanlike and timely manner, when it did not, and that Gregorio often assigned work that requires a license to unlicensed workers. The State settled this matter by a Stipulated

Judgment which requires Gregorio to pay a sum of \$20,000 to the State to resolve consumer claims, and further prohibits Gregorio and its owner, Jonathon DeMichiel, from engaging in the pool installation and construction business in CT. The settlement further requires the defendants to release several consumer complainants from any claims they may have against the complainants.

We reached a settlement with Health Net, resolving allegations that it did not promptly notify consumers after it allegedly failed to secure private patient medical records and financial information. Connecticut received \$250,000.

We entered into an agreement with Google, Inc. over the company's objection to a Civil Investigative Demand requiring it to produce data it collected from unsecured wireless networks while using their "Street View" cars. The agreement will allow Google and Connecticut, and the 40-state coalition it is leading, to begin negotiations to resolve the data collection issue without going to court to enforce the Civil Investigative Demand.

We obtained a judgment for \$105,000 against CVS Pharmacy LLC, resolving allegations that they sold or offered to sell products after their expiration or "sell by" date. For at least three years, CVS will offer consumers a \$2 discount coupon toward any purchase, for each expired over-the-counter drug, baby food or formula, egg or dairy product a consumer finds on store shelves and turns in to cashiers.

It's Just Lunch was a dating service that allegedly entered into contracts that failed to comport with Conn. Gen. Stat. § 42-321 in that they failed to include the required statutory notice of cancellation; required a doctor's note in order to terminate and contained a notice of cancellation without an address for It's Just Lunch, as mandated by the statute. Working with our office and the Department of Consumer Protection the company agreed to enter an agreement that requires It's Just Lunch to utilize a standard contract in Connecticut; comply with Conn. Gen. Stat. § 42-321 and pay \$20,000 to the State of Connecticut.

We settled an action against Gabriel Medical, a health care clinic that had overcharged consumers for influenza vaccine. Consumers received refunds for overpayment in a total amount of \$1,166.

Our office has appeared in the Ch. 7 bankruptcy cases filed by Bernie's Fuel Oil ("Bernie's Fuel"), and its owner Daniel Groben ("Groben"), filed in April of 2010. Bernie's Fuel was a licensed home heating oil dealer that served Southeast Connecticut. It defaulted on hundreds of prepaid and fixed price home heating oil contracts for both the 2009-2010 and 2010-2011 home heating oil seasons. We are investigating possible violations of the Connecticut Unfair Trade Practices Act by Groben, specifically whether he sold prepaid contracts when knew or reasonably should have known that the company was not going to be able to perform.

The Rugged Bear Company was a retailer of children's clothing with outlets in multiple states. After it filed for bankruptcy protection, we worked with the debtor to ensure, among other things, that store closing sales were conducted in an appropriate manner and that consumers were able to use gift cards and merchandise credits. We further played an active role in ensuring that consumers' personal information was protected from improper disclosure.

Our office conducted an investigation into the business practices of the Water's Edge Resort, a timeshare complex located in Westbrook, Connecticut. Concerns were raised when Water's Edge allegedly attempted to unilaterally prohibit timeshare owners from transferring certain of their common area rights to third party purchasers, unless the purchase was brokered

by Water's Edge. Water's Edge entered into an agreement whereby it agreed to cease such practices and comply with the law on a going-forward basis and whereby two consumers obtained restitution in the amount of \$1,000.00 each.

We also reached a settlement with Stephen Pawlak, Jr. and Stephen Pawlak III d/b/a Bond Dinettes, Inc., resolving allegations that they failed to deliver purchased furniture in a timely manner and charged for fuel after guaranteeing free delivery.

### **Utility Cases**

In DPUC Docket No. 09-12-05, Application of the Connecticut Light and Power Company to Amend its Rate Schedules, the Connecticut Light and Power Company ("CL&P") sought a total rate increase of \$177.6 million that would be collected over two years commencing July 1, 2010. The Attorney General strongly opposed this request, asking the Department of Public Utility Control ("DPUC") to instead reduce CL&P's rates, which the DPUC could do without affecting necessary increases in reliability project spending. The DPUC granted CL&P a rate increase of \$101.9 million, or \$75.7 million below the amount that the Company had sought. Among the major adjustments that contributed to the reduction was an allowed return on equity of 9.4% rather than the 10.5% sought by CL&P.

In DPUC Docket No. 10-12-02, Application of Yankee Gas Services to Amend its Rate Schedules, the Yankee Gas Services Company ("Yankee") initially proposed a rate increase of \$78.5 million (8.5%). During the course of this proceeding, however, Yankee reduced the size of its proposed rate hike to roughly \$68 million. The Attorney General argued that the DPUC should reject this Application and instead reduce rates by at least \$5 million per year. The major elements of this proposed reduction were reducing the authorized ROE from Yankee's proposed 10.1% to 8.5% as well as reducing spending on pipe replacements that the Company had failed to justify and making other necessary expense reductions. The DPUC in fact rejected the Company's request and imposed a rate reduction in the amount of \$5 million, as the Attorney General suggested.

In DPUC Docket No. 09-12-11, Application of the Connecticut Water Company for Amended Rates, the Connecticut Water Company ("CWC") sought a rate increase of \$19 million, or roughly 30%, with a proposed ROE of 11.3%. The Attorney General argued that the DPUC should reject this application. The Department allowed a rate increase of \$6.4 million and an authorized ROE of 9.75%.

## **EMPLOYMENT RIGHTS DEPARTMENT**

This department defends state agencies and state officials in employment related litigation and administrative complaints and provides legal advice and guidance to state agencies on employment issues. We are currently defending the state in approximately 118 employment cases in the state and federal courts, as well as more than 140 complaints before the Connecticut Commission on Human Rights and Opportunities and the Equal Employment Opportunities Commission.

During the past year, the department successfully defended state agencies in several significant cases. In addition, we prevailed in numerous other cases in the state and federal courts. Significantly, we were able to obtain favorable rulings on 6 summary judgment motions that were filed, eliminating the need for trials in those cases. We also filed an additional 19 such motions, which are pending rulings by the courts. We also are awaiting rulings on 5 additional motions which were filed in the prior fiscal year. We obtained verdicts in favor of state agencies in 4 cases that were tried in the courts and are awaiting rulings in 3 other such cases. In addition we prevailed in 2 cases that were tried in the Office of Public Hearings at the Commission on Human Rights and Opportunities. In several other cases, we were able to achieve settlements on terms that were favorable to the state, saving the state millions of dollars. We routinely appear on behalf of state agencies before the Commission on Human Rights and Opportunities at fact-finding sessions and public hearings.

During the past year, we have also defended approximately 10 appeals in the Court of Appeals for the Second Circuit and in the Connecticut Appellate Court. In addition, we are working on approximately 8 pending appeals in the state and federal appellate courts, and awaiting 1 decision in the State Supreme Court.

The department regularly provides legal advice and counsel, both orally and in writing, to state agencies on a variety of employment matters, as employment law is continuing to evolve. During the past year we participated in several training sessions and seminars for state employees on employment related issues. We continue to assist the Permanent Commission on the Status of Women in training employees who have been designated to represent their agencies in discrimination complaints filed with the Commission on Human Rights and Opportunities and the Equal Employment Opportunities Commission, pursuant to a 2003 statute. In addition, we continue to provide training to new state managers through a program provided by the Department of Administrative Services.

## **ENERGY DEPARTMENT**

In fiscal year 2010-2011, the Energy Department represented the Department of Public Utility Control (DPUC) (now the Public Utilities Regulatory Authority) and the Connecticut Siting Council in several legal matters at the state and federal level. The Department defends challenges to the Siting Council's decisions on placement of facilities, and to rulings by the DPUC on issues regarding electric, gas, and water rates, transfer of assets, acquisition of control, safety, service and consumer billing issues.

Over the past year, the Energy Department successfully defended Siting Council decisions regarding the placement of cell towers, and presented cases that further developed principles of administrative law. With respect to the DPUC, the Department prevailed in various state and federal challenges to the agency's statutory interpretations, as well as the scope of its jurisdiction over telecommunications matters. Finally, the Department participated in and monitored various proceedings pending before the Federal Energy Regulatory Commission and the Federal Communications Commission that impact ratepayers in Connecticut.

## ENVIRONMENT DEPARTMENT

During the past fiscal year, the Environment Department had several significant victories in anti-pollution cases and obtained civil penalties for environmental violations. In *McCarthy v. Pilot Travel Centers*, we sued Pilot Travel Centers for numerous violations of the Underground Storage Tank regulations, which had caused water pollution at Pilot's travel center in Milford. We obtained a judgment of \$850,000 in penalties and a withdrawal of Pilot's reimbursement claims from the Underground Storage Tank Petroleum Clean-Up Fund. In addition, Pilot must remediate the pollution it caused, upgrade its tank system, and install continuous monitoring equipment at its facility.

We also brought an action against Phoenix Soil, LLC for violations of its air permit at its soil treatment facility in Waterbury. This year we obtained a judgment requiring Phoenix Soil to abide by the terms of its permit, and to pay \$50,000 in penalties for its air permit violations.

Ending our long and persistent battle to have a dam repaired by an individual hiding behind corporate shields, we obtained a judgment in the case of *Marrella v. Vincent Celentano and Cel-Mor Investments, Inc.* In 1983 Mr. Celentano had constructed a dam and detention basin in Naugatuck to control runoff from one of his housing developments. The dam and detention basin were ineffective. DEP issued an emergency order to repair the dam; however, Mr. Celentano failed to stabilize the dam. Instead, Mr. Celentano began a series of corporate transfers designed to shield himself from personal liability. This office worked with DEP to enforce the orders, first obtaining a judgment against the corporation to which Mr. Celentano transferred the dam, and later, when that assetless corporation did not comply with the judgment, issuing an order to Mr. Celentano individually under the responsible corporate officer doctrine. This latter order was ultimately upheld by the Supreme Court in a landmark decision extending the responsible corporate officer doctrine to all environmental enforcement cases. When Mr. Celentano did not comply with the order upheld by the Supreme Court, we filed suit in Superior Court in 2009 against him individually. Following more efforts by Mr. Celentano to shield himself from liability, we finally obtained judgment in June 2011 against him personally. This judgment requires Mr. Celentano to repair the dam and detention basin and to post a \$300,000 performance bond to cover the work. The judgment also assesses a \$45,000 civil penalty.

In *McCarthy v. M & J Developers*, we succeeded in protecting an endangered plant species from destruction. We sued M & J Developers for violating the stormwater general permit and the Connecticut Environmental Protection Act by failing to adhere to a plan to transplant the species to prevent its destruction during construction. We obtained a judgment requiring the defendant to transplant the species and to pay a \$15,000 penalty.

In *Cadlerock Properties Joint Venture, L.P. v. McCarthy*, we successfully defended an inverse condemnation action brought against the DEP by the recipient of a pollution abatement order who contended that the issuance of the order and the recording of it on the land records as required by law amounted to a taking of the polluted property without compensation. The trial court ruled for the DEP, finding no taking. The plaintiff has appealed, and the case is now pending in the Appellate Court.

We brought several actions this past year to enforce environmental laws. One such case is *Marrella v. Covanta Projects of Wallingford Limited Partnership*. Covanta operates a waste-

to-energy plant in Wallingford. We alleged that Covanta violated its permit by emitting dioxin, a hazardous air pollutant and probable carcinogen. Covanta has voluntarily shut down the unit that is the subject of our lawsuit until DEP approves its restart.

This year we had a significant victory in our battle against climate change. We, along with a coalition of states, had sued the Environmental Protection Agency (“EPA”), seeking to have greenhouse gases from the electricity generating industry regulated. The EPA settled the case, agreeing to propose regulations that are expected by the fall of 2011. Because the EPA is now committed to regulating greenhouse gases from electricity generating facilities, the United States Supreme Court recently ruled in *Connecticut v. AEP* that our public nuisance action against the largest domestic power producers has been displaced by federal action. The Supreme Court left undecided our state common law claims, making it possible for us to pursue those claims if the EPA fails to take effective action.

Also in the arena of air pollution enforcement, we carried on our litigation against the Midwest power plants that violated the Clean Air Act by making major modifications at their aging facilities without installing pollution controls. Prevailing winds blow much of this pollution into Connecticut. We completed the liability trial against Allegheny Energy in the fall of 2010, and are awaiting the court’s decision.

In 2005, Allegheny Energy sought to preemptively enjoin the Attorneys General of Connecticut, New York and New Jersey from enforcing the Clean Air Act against Allegheny Energy and its subsidiaries. Along with our co-defendant states, we moved to dismiss the action. In August of 2010, the court granted our motion and dismissed the case.

We also continued our litigation involving the issues of piercing the corporate veil and the applicability of an injunction to a non-party to an environmental case. Both of these actions have arisen in the context of enforcement of a 2001 judgment we had obtained in the Hamden/North Haven “Tire Pond” enforcement action. We obtained judgments piercing the corporate veil to pursue collection of the 2001 judgment from a shell corporation run by the defendant and from the defendant’s wife. We obtained another judgment against a tenant who is blocking the DEP’s closure of the Tire Pond and refuses to move. Both cases are pending in the Supreme Court, awaiting assignment for oral argument.

We continued to assist the DEP as it works with the Olin Corporation to remediate the Newhall neighborhood in Hamden under a Consent Order. With our legal assistance, the neighborhood is being cleaned-up and the contamination is being removed.

Our representation of the DEP in bankruptcy proceedings continues to prevent polluters from avoiding their environmental liability by filing bankruptcy. The most significant case this past year was *In re: Chemtura Corp.*, involving the giant chemical company, which attempted to use the bankruptcy process to shed its environmental clean-up obligations nationwide. Working with sister states, the EPA, and the United States Attorney’s Office for the Southern District of New York, we obtained a resolution that included the uninterrupted and continued clean-up of the two Connecticut Superfund sites where Chemtura was a contributing responsible party.

In our representation of the Department of Agriculture (“DOA”), we successfully protected several animals, rescuing them from abuse and neglect. Through court actions in which we sought to remove ownership and control of neglected animals from their abusers, the state took ownership of horses, goats, dogs, cats and rabbits for placement in appropriate situations.

We carried on our protection of the development rights acquired by the DOA through its Farmland Preservation Program. This past year, we assisted the DOA in preserving 1,486 acres of farmland by acquiring the development rights to the land.

In addition to all of the above, we continue to provide a full range of legal services to both DEP and DOA, including contract review, opinions, defense of Claims Commissioner matters, legal advice, and counsel.

## **FINANCE DEPARTMENT**

The Finance Department provides legal services to state agencies that regulate insurance, banking, and securities, as well as the Department of Economic and Community Development, the Department of Revenue Services, the Division of Special Revenue and the Office of Policy and Management. Legal issues involving state regulation of the financial services and insurance industries form a major part of this department’s work. The complexity and new challenges in these two specific areas have increased markedly with enactment of two landmark federal laws: the Dodd-Frank Act, regulating financial services, and the Patient Protection and Affordable Care Act, regulating the health care industry.

With the difficult economic climate and the continuing severe decline in the national housing market, many Connecticut homeowners continue to have difficulty paying their mortgages and are facing the threat of foreclosure. As a result, the Finance Department has continued to devote significant resources to assisting individual consumers with complaints against banks and mortgage companies or who may be facing foreclosure. Together with the Department of Banking’s Foreclosure Assistance Hotline, Finance Department attorneys attempt to mediate informally a resolution of payment disputes, to assist in obtaining loan modifications, including facilitating application and acceptance to the federal Making Home Affordable Modification Program (HAMP), and offer other help to distressed homeowners. This work has become particularly pressing as the downturn in the economy has caused many Connecticut homeowners to lose jobs and income. The Finance Department attempts to assist these Connecticut citizens at a time when they are under serious stress and lack the ability to obtain private legal assistance. Over the past year, the Finance Department has offered assistance to several hundred Connecticut citizens who have contacted the office in these difficult circumstances.

Additionally, in October of 2010, it became clear that many national loan servicing companies had filed in courts across the country, including in Connecticut, thousands of foreclosure affidavits that were illegally signed outside the presence of a notary and by persons with no knowledge of the facts stated in the affidavits. In order to combat this nationwide problem, the Attorneys General of every state in the nation came together to form a multi-state task force to investigate these so-called “robo-signing” practices, as well as other potentially illegal practices by some loan servicers. The Connecticut Attorney General is a member of the

Executive Committee of this multi-state task force and is represented on a day-to-day basis by attorneys from the Finance Department. The multi-state Foreclosure Executive Committee has met on a daily basis for much of the last year and is coordinating its investigation and enforcement efforts with the U.S. Department of Justice, U.S. Department of Housing and Urban Development, and other federal authorities. The multi-state task force's investigation and enforcement efforts in this area are continuing.

The Finance Department works closely with the state agencies it represents. The Department successfully defended the Department of Insurance's administrative decision approving the merger of two large health insurers in Connecticut. The Department also worked closely with the Department of Banking, providing legal advice and analysis regarding the Department of Banking's approval of the merger of First Niagara Bank and NewAlliance Bank of New Haven. Department attorneys successfully defended the Department of Revenue Services in two important cases before the Connecticut Supreme Court which upheld the Department of Revenue Service's assessment of a taxpayer who failed to retain proper tax records and limited the ability to appeal imposition of Connecticut's petroleum tax to only the person actually paying the tax. The Finance Department continues to be involved in providing legal advice and defending in court its client agencies' decisions regarding licensees under their respective jurisdictions.

When requested, the Department provides legal advice and opinions to its client agencies on the meaning and application of Connecticut law. For example, Department attorneys drafted a legal opinion for the Department of Banking concluding that recent amendments to Connecticut's out-of-state small lender law did not violate the Commerce Clause of the U.S. Constitution so long as some part of the loan transaction occurred within Connecticut. The Finance Department has also advised the Department of Banking on new legal requirements stemming from the federal SAFE Act regulating licensure of mortgage brokers and new state laws regulating the conduct of debt negotiators or adjusters. Department attorneys provide frequent assistance and advice to the Department of Economic and Community Development (DECD) regarding the grant and aid programs administered by DECD, and to the Division of Special Revenue regarding its regulation of lotteries and gaming in Connecticut.

The Finance Department is responsible for enforcement of the Master Settlement Agreement (MSA) between the states, including Connecticut, and various participating tobacco product manufacturers, as well as related tobacco issues. The Department works to ensure that Connecticut receives the monetary payments it is owed by tobacco manufacturers. Department attorneys are currently representing Connecticut in the nationwide arbitration of a dispute over approximately \$1.1 billion in MSA payments that tobacco manufacturers claim they do not owe the states. Connecticut has approximately \$117 million at stake in the proceeding.

## **HEALTH AND EDUCATION DEPARTMENT**

The Health and Education Department provides legal services and representation to a broad spectrum of state agencies, which include the University of Connecticut, the Connecticut State University System, the Connecticut Community College System, the State Department of Education and all other state agencies that have an educational purpose. This Department also represents the Department of Public Health, the Department of Social Services, the Department

of Mental Health and Addiction Services, the Office of Health Care Access, the Psychiatric Security Review Board, the Department of Developmental Services, the Department of Veterans' Affairs, the Commission on Medical and Legal Investigations overseeing the Office of the Chief Medical Examiner and the sixteen health licensing boards and commissions.

The Department's workload addresses the entire spectrum of litigation in federal and state courts for these clients including but not limited to class action lawsuits, administrative appeals, regulatory enforcement actions, non-employee discrimination claims, civil rights actions, probate proceedings, bankruptcy and receivership actions. The Department also is involved in a variety of administrative proceedings representing the adjudicating agency (e.g. licensing boards), the prosecuting agency (e.g. day care and health care facility prosecutions) and defending agencies in proceedings before the Office of the Claims Commissioner, the Freedom of Information Commission and the Commission on Human Rights and Opportunities,. The Department advises and counsels client agencies on wide spectrum of issues. These include, *for example*, regulatory issues for health care facilities and professions, emergency medical services, child day care services and environmental health such as public water supply, lead paint, and asbestos; Medicaid and other welfare programs such as Food Stamps, SAGA, WIC, HUSKY, Charter Oak Healthcare; nursing home rates; health care facility certificates of need; HIPAA, FERPA and confidentiality of medical records; gestational carrier agreements; stem cell and human subjects research, scientific misconduct, civil commitment law, medical/psychiatric treatment at state facilities, NCAA requirements, property acquisitions, state contract law, ADA accommodations for students and faculty, college tenure, federal higher education law, and oversight of public and private educational entities. The Department also reviews and approves for legal sufficiency regulations and contracts for its client agencies. Last fiscal year the Department reviewed approximately 3100 contracts and 18 sets of regulations.

As in past years, the Department was very busy with nursing home issues. In addition to substantial involvement in financially stabilizing a nursing home that had filed for bankruptcy under chapter 11, the Department was instrumental in securing receivers to operate the five nursing homes. In addition, the Department worked extensively with the four nursing homes operated by Affinity Healthcare to reorganize with the necessary assurances and changes in operations to make the facility financially sound and be discharged from bankruptcy. During the past year, the Department assisted the Department of Social Services to secure recovery of approximately \$3 million in Medicaid advances to distressed nursing homes.

In Connecticut Association of Health Care Facilities v. Rell, the for-profit nursing home association claimed that the state method for setting rates for nursing homes violated federal law. The Department secured a ruling from the Court of Appeals affirming the order of the federal district court dismissing all but one claim and denying a request for preliminary relief on the basis that the complaint lacked a likelihood of success. The plaintiffs had sought a seven percent increase in the Medicaid rate paid to nursing homes. The successful defense of the trial court decision allows Connecticut to save approximately \$100 million in yearly increased expenditures that would otherwise have been required if the nursing home industry had prevailed.

In Pham v. Starkowski, the Connecticut Supreme Court overturned a trial court ruling regarding the legislature's repeal of a special medical assistance program that aided lawfully-admitted aliens who were ineligible for Medicaid benefits. The Connecticut Supreme Court found that the state did not "discriminate" by elimination of the alien-only benefit program, and

further finding that the state was not responsible for the federal statutory bar that prevents these aliens from participating in the federal program. Approximately \$10 million in annual cost savings were achieved as a result of the decision.

In P.J. v. Connecticut State Department of Education, the plaintiffs alleged that the State had violated a 2002 settlement agreement that addressed improvement in opportunities for intellectually disabled children to be educated in regular classrooms with their non-disabled peers. After a two week trial, the federal district court ruled for the State and denied all relief to the plaintiffs. While the matter is on appeal, the successful defense of the State avoided potentially millions of dollars in additional expenditures sought by the plaintiffs.

The Department worked with the Department of Public Health to further its role as a health regulatory and enforcement agency. These activities included, among others, securing a cease and desist order and a civil penalty against an unlicensed clinical laboratory and obtaining a one month suspension, a two year probationary period and civil penalty against an ambulatory surgery center. We were also successful in defending a number of challenges on appeal to the regulatory authority of DPH and decisions of the licensing boards for health care professionals. For example, in Spitz v. Board of Examiners of Psychologist, the Department successfully defended before the Appellate Court the Board's decision imposing disciplinary action on the licensee for an improper relationship with a patient. In Jones v. Connecticut Medical Examining Board, the Appellate Court also upheld the Board's decision to impose disciplinary action on the licensee for failure to comply with the standards of practice in the diagnosis and treatment of two children.

In Giammatteo v. Newton et al, the Department secured a complete dismissal of a federal civil rights complaint against the Board of Examiners for Physical Therapy, former board members, the Department of Public Health and its Commissioner and its in-house prosecutors related to proceedings against a licensed physical therapist. The complaint sought both injunctive relief and damages.

The Department continued to provide legal services on a broad array of issues to the Connecticut State University System during this past year. Some of these issues included challenges to bid issuance and contract awards, real property matters, requests for access to student information and records, admissions and financial aid issues, acquisition, maintenance and disclosure of student records, due process rights, campus security, student misconduct, issues arising under the Freedom of Information Act, and the applicability of newly-enacted legislation. In addition to providing advice and guidance to the Chancellor, System Office senior staff and university presidents on a wide variety of issues, noteworthy was significant drafting and revision of contracts including contracts related to student affiliations, international programs, use of facilities and other revenue-generating activities.

The Department also provides services in a wide variety of legal matters involving the University of Connecticut. This responsibility continues to increase as the University grows and higher education matters become more complex. Counsel is provided on issues including public safety, security, liability, data transfer, risk management, Title IX and VI compliance, FOIA and trade secrets, and intellectual property rights. The Department attorneys expend substantial time on legal review, negotiation and approval of highly complex transactions and contracts. These range from negotiation and execution of multi-million dollar sponsorship-rights agreement for

the university's athletics department to separation of an outpatient physical therapy services clinic from a local hospital to become an independent teaching and treatment facility at the university. Of particular note was the extensive legal work on the Storrs Center Development Project that will result in a mixed-use, pedestrian-oriented, sustainable college town center, providing the University community with new retail, restaurant, office, residential and green public spaces and conservation areas to include a 135-acre wildlife sanctuary. The Department provides representation on behalf of the University before administrative agencies such as the Office of the Claims Commissioner, the Freedom of Information Commission and the Commission on Human Rights and Opportunities, as well as in state and federal court.

The University of Connecticut Health Center continues to present a broad array of challenging legal issues that arise from the operation of an academic health center with a budget approaching \$800 million. Significant legal advice was given in the areas of human resources, human subjects research, scientific misconduct, medical treatment, HIPAA compliance including the HITECH amendments, the hospital's medical staff, medical and dental student and residency programs, and the Health Center's Correctional Managed Care program. In addition, our office appeared regularly at probate hearings relative to the John Dempsey Hospital's two locked psychiatric wards, engaged in a broad range of lease and contract negotiations, reviewed over 400 contracts, and appeared before multiple administrative agencies including the Claims Commissioner, the Freedom of Information Commission and the Commission on Human Rights and Opportunities, where we are currently defending fifteen (15) cases. In addition, we continue to be active in advising the Health Center's rapidly growing Office of Audit, Compliance and Ethics to ensure full compliance with all federal and state laws and regulations. This includes ongoing advice related to both the Stark physician self referral law and the federal anti-kickback statute. We continued to be successful in litigation avoidance relative to the hospital, the medical school, the dental school and the research enterprise. We are also assisting the Health Care Fraud Department in representing the John Dempsey Hospital in both negotiations and a lawsuit against managed care companies that have failed to timely and adequately reimburse the hospital for services rendered to covered patients. Finally, we have spent considerable time providing advice to the Health Center relative to the legislation creating the Connecticut Bioscience initiative which includes authorizing the construction of a new hospital bed tower, collaborative ventures with area hospitals and the transfer of the John Dempsey Hospital's Neonatal Intensive Care Unit to the Connecticut Children's Medical Center.

The members of the Health and Education Department within the Office of the Attorney General work diligently to provide the legal services required by the many agencies we represent and advise. At the end of the 2011 fiscal year, this Department had 133 state and federal court cases pending at the trial or appellate level, as well as 147 administrative proceedings pending before various state agencies.

## **HEALTH CARE FRAUD/WHISTLEBLOWER/HEALTH CARE ADVOCACY DEPARTMENT**

The Health Care Fraud/Whistleblower/Health Care Advocacy Department had another busy, important and successful year.

The Health Care Fraud Unit achieved an outstanding result in its case against McKesson Corporation. McKesson paid \$24 million to settle a case in which it was alleged that McKesson had conspired to inflate the reported average wholesale price of numerous pharmaceutical products creating a larger “spread” between the costs to the Department of Social Services administered Connecticut Medical Assistance Plan (including Medicaid) and the actual charges to health care providers, resulting in artificially inflated drug costs.

The McKesson case contributed to recoveries of approximately \$30 million during this fiscal year, bringing the Unit’s total recoveries to \$150 million in fourteen years. The majority of the dollars recovered continue to be in settlements involving the pharmaceutical industry.

The Health Care Fraud Unit also prosecuted administrative cases on behalf of the Department of Social Services resulting in providers being suspended from participation in the Medicaid program. During this fiscal year this included the following suspensions: (1) Douglas Macko, DMD agreeing to be suspended from participation in Medicaid for ten years on the eve of an administrative hearing on charges that Macko engaged in billing fraud, and (2) Earle Lerner and several Marathon Healthcare companies being suspended from Medicaid for ten years following a contested administrative hearing on charges including the allegation that Lerner had submitted false and misleading information to DSS in seeking Medicaid payments.

During fiscal year 7/1/10 to 6/30/11, our department conducted on-going constituent services regarding HIPAA inquiries and complaints, and undertook certain significant enforcement efforts.

Among the notable enforcement actions entailing significant litigation, investigations and negotiated Assurance of Voluntary Compliance (“AVC”) agreements are the following:

- The federal court stipulated judgment in Attorney General et al. v. HealthNet of the Northeast et al., which was filed in federal court on July 6, 2010, was the landmark settlement of the first civil lawsuit brought by a state Attorney General under HIPAA. The case entailed a significant data breach of protected health information of thousands of Connecticut residents resulting in a stipulated judgment that included a detailed corrective action plan, protections against identity theft, and a civil monetary payment of \$250,000. This case was also utilized as the centerpiece in national training of Attorneys General conducted by the U.S. Department of Health and Human Services/Office of Civil Rights.
- The Griffin Hospital AVC reached on March 15, 2011 which involved a significant data breach of protected health information triggered by a former physician who illegally accessed the hospital’s computer health information system. The AVC provided for a detailed corrective action plan and monetary payment (\$10,000).
- The Yale University AVC reached on February 14, 2011 also involving a significant data breach of unencrypted protected health information which occurred with a stolen lap top. This matter entailed a significant investigation and negotiations of a corrective action plan and monetary payment (\$10,000).

The Whistleblower Unit reported on several major investigations. We investigated allegations the Secretary of the State improperly used office resources to compile a database for use in her political campaigns. We determined the Secretary used this database for legitimate office related purposes, including tracking and performing constituent services. We further determined this database could be useful to the Secretary in political campaigns, and further observed that the state law prohibiting state employees from using office resources for political purposes does not apply to employees not in the classified service, including the Secretary and her Executive Assistants. We repeated our recommendation that the General Assembly apply this statutory prohibition to all state employees, including elected officials and their executive staffs. We also concluded the Secretary's compilation of certain information in this public database such as information about an individual's religion and ethnicity was improper.

The Whistleblower Unit also investigated and reported on allegations that the DMV failed to properly act on violations of law by a driving school known as the Academy of Driving. The investigation detailed how in the past DMV took minimal action on some alleged violations by the Academy, but since 2008 DMV did investigate and permanently revoked the Academy's license to operate as a driving school, permanently revoked the Academy owners' school instructor licenses, and permanently barred the owners from participating in the driving school business. The report concluded by offering recommendations for corrective actions by DMV to insure thorough, consistent, and timely investigation and disposition of complaints against driving schools.

During this fiscal year the Attorney General and Child Advocate issued a joint report following an investigation concerning the manner in which the child protection system addresses allegations that school system personnel have abused and neglected children. The report identified a number of areas where systemic changes should be made to better protect children. The General Assembly passed Public Act 11-93 to implement the legislative recommendations of the report. All of the legislative recommendations of the report were accepted by the General Assembly.

The Whistleblower Unit also investigated and reported on allegations that the Office of Governor M. Jodi Rell misused state funding to obtain advice and focus groups for political election campaign purposes by arranging a "no bid" contract with a UConn professor to conduct a government efficiency study. The investigation found that competitive bidding was not required by state law for the work on this study, laws prohibiting certain political activity on state time were not implicated because they did not apply to the state employees involved, and that UConn and the professor had in fact worked on the government efficiency study and delivered reports to the Governor's Office and the Office of Policy and Management. UConn and the State Elections Enforcement Commission investigated and addressed related allegations that UConn employee policies were violated and state election laws broken, respectively. The whistleblower investigation report concluded that the Office of Policy and Management should give UConn direction concerning an unobligated balance of \$69,865.12 that remained in UConn's accounts from the funds for the government efficiency study.

The Health Care Advocacy Unit ("HCAU") has continued to assist patients and their doctors by resolving disputes with managed care in fiscal year 2011. In addition to a number of

successes obtaining coverage for treatments for conditions such as cancer, pulmonary diseases, gastrointestinal disorder, and infectious diseases, the HCAU has also helped citizens resolve disputes with health care providers, including disagreements involving alleged balance billing. During fiscal year 2011, HCAU has continued to be instrumental in compelling the withdrawal of a number of private collections suits in which it determined that illegal balance billing was occurring. In fact, due to its positive interaction with collection attorneys, the HCAU now routinely receives referrals in cases where health insurance may have been improperly withheld. The HCAU also had great success in thwarting, through formal interventions in rate hearings, two separate substantial rate increases proposed by Anthem Blue Cross and Blue Shield - the first which was prohibited by the Insurance Commissioner from occurring during a policy period and resulted in the halving of the requested increase, and the second which resulted in complete denial by the Commissioner of the request. Assistance for senior citizens who are having trouble with their Medicare benefits continues to be an area of focus for the HCAU, as well. The HCAU continues to work with the Child Advocate to ensure that children in this state receive the healthcare they require. It has also helped consumers during fiscal year 2010 recover approximately 1.1 million dollars, derived primarily from illegally billed services and improperly denied claims.

## **PUBLIC SAFETY DEPARTMENT**

During the last fiscal year, this department represented the Department of Public Safety, including the Division of State Police, the Division of Fire, Emergency and Building Services; the Military Department; the Department of Correction; the Department Emergency Management and Homeland Security, The State Marshal's Commission and the Department of Consumer Protection Liquor Control Division. It also provides legal services and representation to a number of associated boards, commissions and agencies, including the Division of Criminal Justice, the Division of Public Defender Services, the Office of Adult Probation, the Governor's Office (Interstate Extradition), the Statewide Emergency 9-1-1 Commission, the State Codes and Standards Committee, the Crane Operator's Examining Board, the Board of Firearms Permit Examiners, the Commission on Fire Prevention and Control, the Board of Pardons and Paroles, Police Officer Standards and Training Council, and the Office of Victim Services. Within the last year, the department has also been assigned litigation matters involving the Department of Consumer Protection, the Department of Mental Health and Addiction Services, the Department of Environmental Protection and the Department of Children and Families.

With the recent reorganization of state agencies, this department will represent the entities consolidated into the newly formed Department of Emergency Services and Public Protection, which will include the State Police and the former Department of Homeland Security, as well as the regulatory and litigation work generated by the building and fire code entities that have been transferred to the Department of Construction Services.

**Department of Correction** Although we provide legal services to and represent a variety of state entities in the areas of public safety and criminal justice, a substantial portion of our work involves representing the many interests and obligations of the Department of Correction. Much of this work is done in defense of the state in lawsuits brought by and on behalf of prisoners. We continue to defend a large number of lawsuits challenging conditions of confinement in state correctional facilities and the administration of community programs, and our pending

corrections cases in the district court alone continue to represent more than 10% of the federal court docket. These lawsuits collectively seek millions of dollars in money damages and seek to challenge and restrict the statutory authority and discretion of the Department of Correction. Our efforts in defense of these cases save the State of Connecticut millions of dollars in damages claims, and preserve the state's authority in administering an extremely difficult prison population free of costly and onerous court oversight as has been the experience in other states. In addition, this department has assisted in the recoupment of thousands of dollars in costs of incarceration.

In the last fiscal year, our department has spent considerable time and effort defending increasingly complicated medical malpractice claims. The inmate population is an exceptionally difficult one to care for, and inmates often come into custody with a myriad of complex medical and mental health needs. As a result, we increasingly find ourselves defending cases ranging from misdiagnosis of cancer (Escalera v. State of Connecticut) or viral infection resulting in blindness and loss of organ function (Byrd v. Gilbert) to methadone overdose while in custody (Charette v. State). In addition, we continue to defend a number of medical malpractice and civil rights cases arising from suicides committed by persons in custody. We continue to work with the Department of Correction, the University of Connecticut Health Center and outside medical and mental health experts to defend litigation and identify systemic deficiencies in an effort to improve medical care and reduce the state's exposure to substantial damages awards.

A great number of inmate claims addressing conditions of confinement continue to be brought as habeas corpus cases, and in that forum we continue to defend inmate challenges to prison conditions and the application of the "good time" statutes to multiple sentences. With the recent passage of a "Risk Reduction Earned Credit" program, designed to further reduce the inmate population, we anticipate a significant increase in habeas litigation challenging the grant, denial and taking away of prison credits. Since this is an entirely new means of earning early release from prison, there will be a need to define the parameters of that discretion in the appellate courts, as was our experience with similar such programs in the past. Just a week into the fiscal year, we are already receiving complaints about the administration of the program.

During this past fiscal year, we continued to experience an increase in proceedings related to Freedom of Information requests from inmates for such materials as sewer plans for prisons, personnel files of DOC employees, photos and police reports listing the victims of several inmates' crimes, and other documents that the Commissioner of Correction has determined to present a risk of harm in the prison environment and/or prison employees. Several statutory changes over the last three legislative sessions have given the DOC several exemptions to disclosure, but to defend the applicability of these exemptions requires us to present expert testimony at many of these administrative proceedings. This continues to be a fertile area for litigation, and requires a substantial commitment from our department.

In addition to our litigation commitments, we continue to advise the Commissioner of Correction on a myriad of legal issues, including: implementation of the new Risk Reduction Earned Credit program, the opening of a statutorily required, residential treatment program for sex offenders, preparation for possible executions of death sentences and the management of death row and other high profile inmates, maintaining appropriate services for mentally ill offenders, developing and maintaining appropriate administrative directives, working with federal authorities to effectuate the deportation of offenders who have been ordered to leave the

United States, and implementing safety and security procedures that protect staff and the public while also accommodating evolving constitutional standards as articulated in developing case law. Our attorneys also provide instruction at the DOC training academy on legal issues arising in corrections. These issues will continue to challenge us as budget constraints take a toll on the correctional system.

**Board of Pardons and Paroles** We continue to defend a number of cases involving the Board of Pardons and Paroles. These cases involve challenges to the Board's authority relative to the granting, rescission and revocation of paroles. With the pressure on DOC and BOPP to reduce the inmate population, we will continue to work on protocols designed to safeguard against release of offenders who are likely to reoffend. In addition, we will begin working on expanding compassionate parole release for offenders with serious medical needs that can be more appropriately managed in the community. Our department continues to provide the Board with training on legal issues involving its hearing procedures and developing legal trends.

**Department of Public Safety (Now The Department of Emergency Services and Public Protection – DESPP)** We have the responsibility for the defense and representation of almost all the lawsuits involving the State Police seeking money damages, the exception being those lawsuits involving cruiser accidents that are covered by the state's fleet insurance policy. Our caseload of police litigation continues to grow in both number and complexity, and include false arrest and excessive force cases, wrongful death claims arising from police shootings and contract claims arising from the agency's relationships with outside service providers. In the past year, we successfully litigated a number of cases in federal court and received favorable decisions in many of those cases. In addition to our litigation efforts, we meet regularly with State Police command staff and counsel to review the agency's policies and procedures and to address legal issues relating to release of confidential information, compliance with subpoenas and relations with other agencies.

We continue to represent the Department of Public Safety and its successor agencies in administrative appeals involving the State Building Code and Fire Safety Code, and to review regulations implementing the various building codes. We also routinely appear on behalf of the department in state and federal court and before the Freedom of Information Commission to address the many different statutory provisions that mandate confidentiality, and even erasure, of police records. Lastly, we continue to review and provide advice to the department on a number of contracts and memoranda of understanding for the department, in particular, resident trooper agreements between the department and more than forty municipalities around the state. As budget constraints impact upon state and municipal law enforcement agencies, the resident trooper program will continue to be a critical component of community law enforcement, making legal issues arising from the program all the more important to the participating towns and DESPP.

**Board of Firearms Permit Examiners** During the past year, we provided legal advice and representation to Board of Firearms Permit Examiners on a number of issues. We have handled several appeals to the Superior Court from the Board's decisions, including mandamus actions compelling towns to issue permits in accordance with the orders of the Board. Our department also continues to field many public inquiries related to the concealed and open carrying of firearms under Connecticut law. We continue to work with the Board and the Department of Public Safety to enforce the firearms laws of the State of Connecticut.

**Liquor Control Division** During the past year, we have handled a number of administrative appeals involving the Liquor Control Division. In addition, we provided the Division with advice on a number of legal issues concerning enforcement of the liquor law.

**State Marshal Commission** We provided legal advice to the State Marshal Commission on several matters during the past year. This work has continued even though the responsibilities of the Commission were consolidated with the Department of Administrative services at the end of the legislative session. Our efforts on behalf of the marshals has included assisting the Commission in responding to complaints regarding state marshals, developing protocols and appropriate training for marshals who have authority to serve criminal process, and guidelines for serving process on behalf of pro se litigants. Lastly, we have collaborated with the Commission in developing legislation to improve the state marshal system.

**Division of Criminal Justice and Division of Public Defender Services** We have appeared and defended numerous cases involving the Division of Criminal Justice and the Division of Public Defender Services. These cases often raise constitutional questions and governmental immunity, and relate to the core duties of prosecutors throughout the criminal justice process. In addition, we work closely with the Office of the Chief State's Attorney and the several State's Attorneys in areas of overlapping jurisdiction, such as complex habeas corpus matters in state and federal courts and issues arising from death penalty cases.

**Military Department** Our department continues to work closely with the Military Department on a variety of issues, including: litigation arising from construction projects in and around Camp Hartell and claims from one of the ceremonial military units that wishes to operate independent of the authority of the Military Department. We also review a number of military department contracts.

**Prosecution of Home Contractors** During the past fiscal year, the office was actively involved in proceedings against unlicensed home improvement contractors for a multitude of crimes including failure to obtain proper licensing, refusing to refund deposits, and with the consent of local prosecuting authorities, felonies such as larceny and related crimes against the elderly. The State of Connecticut, between 7/1/10 – 6/30/11, convicted or placed in pretrial diversion programs 89 contractors, resulting in nearly \$527,000 in restitution to consumers. Two contractors are now serving jail time. Several of the office's attorneys are designated as special assistant state's attorneys in these cases.

## **SPECIAL LITIGATION AND CHARITIES DEPARTMENT**

This Department represents the Governor, the Judicial Branch, the General Assembly, the Secretary of the State, the Treasurer, the Comptroller, the Auditors of Public Accounts, the State Elections Enforcement Commission, the Office of State Ethics, the State Properties Review Board, the Judicial Review Council, the Judicial Selection Commission, the Office of Protection and Advocacy for Handicapped and Developmentally Disabled Persons, the Accountancy Board, the Office of the Child Advocate, the Office of the Victims Advocate, the Commission on Children, the Latino and Puerto Rican Affairs Commission, and the Office of the Chief Child Protection Attorney. In addition, through its Public Charities Unit, the Department protects the

public interest in gifts, bequests and devises for charitable purposes, and in cooperation with the Department of Consumer Protection, enforces state laws regulating charities and professional fundraisers who solicit from the public.

In the past year, the Department represented the State's interests in a number of important cases, including: defended the constitutionality of the State campaign finance laws in the federal courts; defended several elections cases litigated on an expedited basis, including a challenge to the constitutionality of the statutory requirements for Attorney General and claims regarding disbursements made to candidates under State campaign financing laws; continued the defense of the changes to the State's bottle deposit law from claims of unconstitutional takings; litigated claims against the U.S. Secretary of Education to enforce express mandates of the No Child Left Behind Act prohibiting her from imposing education requirements on the State without providing adequate funding to pay for them; and defended the Governor and the legislature in constitutional challenges to the enactment of the state budget.

In the area of charitable trusts and gifts, the Department conducted investigations and brought actions against several individuals and entities to ensure that charitable gifts are used for the purposes for which they were given. Those actions included a lawsuit against a former investment officer for Wesleyan University for unlawful diversion of endowment assets; an action against a fundraising professional who unduly influenced an elderly donor suffering from dementia to change the beneficiaries of her retirement account from charities to her; the recovery of title to a church that had been fraudulently altered and pledged as collateral for a loan; and an action against a New York charity for its attempt to claim title to land in Litchfield on which the Connecticut Junior Republic has offered services to Connecticut youth for nearly 100 years. The Department also took measures with a variety of entities to ensure that charitable funds are protected from misuse. The Department continues to facilitate modifications regarding management or use of charitable assets in *cy pres* or equitable deviation proceedings where it becomes impossible to carry out the specific intent of the donor, and works with municipalities and charities to ensure the protection of hundreds of acres of parks, open space, and ecosystems dedicated to conservation and wildlife refuge purposes.

The Department represents the interests of the State in matters related to federal tribal recognition and in litigation involving land claims brought by groups claiming Indian ancestry. The Department succeeded in defending the decision of the U.S. Department of Interior to deny federal tribal recognition to the Schaghticoke Tribal Nation in appeals through the federal courts. The Department also provides advice to numerous state agencies regarding issues of Indian law and issues connected to the two federally recognized Indian tribes in Connecticut and the operation of their casinos.

The Department plays a leading role in the preparation of appeals throughout the Office. This year, the Department's attorneys briefed and argued a number of cases involving constitutional and other issues involving important state policy in the State Supreme Court, the United States Supreme Court, the Second Circuit Court of Appeals, and other courts. The Department plays an important role in the Office's participation as *amicus curiae* in cases before the federal and state courts.

## TORTS/CIVIL RIGHTS DEPARTMENT

The Torts/Civil Rights Department defends state agencies and employees in tort and tort-like civil rights actions, including high exposure personal injury and wrongful death actions. A substantial number of cases arise from alleged injuries at the state educational facilities, such as the vocational high schools and state colleges, and allegations involving children in the care of the Department of Children and Families (“DCF”). The origin of the remainder of cases is spread among many agencies and reflect the varied activities and services in which the state is involved - from providing direct treatment to those with mental illness or mental retardation, to operating schools and colleges, having recreational parks and swimming areas, being a landowner and controlling many buildings and other premises, obtaining custody of abused/neglected children, or holding those arrested by police in Judicial cells. Many of these cases seek large sums in damages from state taxpayers’ funds. Department attorneys have saved the State millions of dollars by obtaining favorable judgments and settlements for the State in the courts and at the Claims Commission.

We have aggressively pursued indemnification and hold harmless provisions in contracts between the state agencies and contractors providing services who under their contracts were responsible for the activities resulting in the personal injury actions. Where state contractors and/or their insurers have not quickly stepped up to defend and indemnify the State in these actions, we have sought and obtained compensation for our attorneys’ time and for expenses. In several cases we have collected many thousands of dollars in attorney’s fees from contractors which delayed for a considerable time in representing and indemnifying the State.

In the past year, we obtained some notable legal decisions:

- In Hernandez v. State of Connecticut, the trial court dismissed a facial constitutional challenge to the bail bond system on the basis that the plaintiff’s claims were moot.
- The Claims Commissioner denied the claim of a student who was assaulted by a guest of another student at a campus party. After hearing, the Claims Commissioner found that UCONN did not have any reason to believe that the student would be attacked.
- The Claims Commissioner, after hearing, denied a claim by a vocational high school student who violated safety instructions by placing his body weight on a pane of glass which broke causing him injuries.
- The Claims Commissioner denied a claim by a UCONN Health Center patient who slipped and fell in a patient bathroom because the facility had no notice of the presence of water and it appeared that the patient was responsible for the spilled water.
- The claims of two passengers in a motor boat operated by someone who was intoxicated and speeding and who crashed into another boat were denied. It was alleged that DEP was negligent in its oversight of the lake and the fishing tournament there. The State’s motion to dismiss was granted on the basis of the lack of private duty involved in DEP’s regulatory function.
- The Claims Commissioner granted the State’s motion for summary judgment denying a claim by the estate of a pedestrian in a parking lot who was run over by a driver backing up.

The Department was successful in the vast majority of the many slip and fall actions filed. In addition, favorable settlements were reached in various personal injury cases. Further, when any dangerous condition or practice is revealed during our representation, the Department advises agencies regarding the need for physical or policy changes to increase safety.

## **TRANSPORTATION DEPARTMENT**

The Transportation Department (“Department”) of the Office of the Attorney General provides representation for the following state agencies: Department of Transportation ("DOT"); Department of Public Works ("DPW")<sup>1</sup>; Department of Administrative Services ("DAS"); Department of Motor Vehicles ("DMV"); Department of Information Technology ("DOIT"); Department of Economic and Community Development, Housing Matters ("DECD"); the Department of Environmental Protection (“DEP”) real property matters, and the Connecticut Historical Commission. In addition, the Transportation Department provides representation for various occupational licensing boards within the Department of Consumer Protection ("DCP"). The representation of the foregoing state agencies/boards includes, but is not limited to, counseling and advice on legal issues, the prosecution or defense of lawsuits or claims in both federal and Connecticut courts, and before various administrative entities, including the defense of claims filed with the Office of the Claims Commissioner pursuant to Chapter 53 of the Connecticut General Statutes.

As a result of the large number of public works projects undertaken by the State during any given year, and the broad scope and complexity of many of these projects, there is a continuing need for the attorneys in the Transportation Department to provide legal assistance to the DOT, DPW, DAS and all other state agencies including the Joint Committee on Legislative Management (“JCLM”), the administrative arm of the General Assembly, and the State Contracting Standards Board on public contracting issues; this Department also provides counsel on and drafting of many of the state’s transactional matters. Other legal assistance is provided in the resolution of bid protests, the interpretation of contract language, and other problems that eventually arise during the course of large construction and statewide procurement projects.

This past year’s activities have been concerned with the prosecution and defense of several major lawsuits and appeals. Of note is the state’s recent settlement of the matter State of Connecticut v. Lamar Central Outdoor, LLC et al, involving the unauthorized clear cutting of at least 84 mature trees on DOT property. An arborist expert retained by the State estimated that the cost to replace the trees and other plantings was in the range of \$180,000 dollars. The in-kind settlement reached with Lamar calls for Lamar to replant the area using the State’s arborist’s detailed replanting plan and with continuing oversight by DOT landscape staff.

Another settlement of significance and approved by the Governor is that which was reached by DOT and Exxon/Mobil regarding Exxon/Mobil’s environmental responsibilities at the various service plaza locations along the I-95 corridor, I-395 and the Merritt Parkway as its

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<sup>1</sup> At the urging and recommendation of Governor Malloy, the Legislature in its last session has consolidated several of the agencies represented by the Transportation Department. DPW will be merged into DAS except for its construction responsibilities which will be handled by a new state agency, the Department of Construction Services. DOIT in its entirety will also be merged into DAS. The Historic Commission will become part of DECD. The Transportation Department will continue its representation of these new entities as well as its current client agencies.

contract expires with the DOT and it is replaced by Project Service LLC. In late 2009, Project Service LLC, a partnership between Subway sandwich shops and the Carlyle Group, signed a 35-year deal to revamp and operate the service plaza facilities and, through subcontractors, provide food and fuel. Exxon/Mobil has agreed to pay DOT \$18 million of the cost to clean up fuel and other contamination on the properties it has operated since 1982. Project Service LLC, the new rest stop vendor will handle cleanup of the sites as part of a five and a half year process of redeveloping and upgrading the sites.

The Transportation Department is pursuing damages in the following ongoing cases: State of Connecticut v. Lombardo Bros. et al., involving the construction failures of the façade and massive leaks at the UCONN Law Library. State of Connecticut v. Bacon Construction et al., involving the construction failures resulting in the massive leaks at many of the prison's buildings at York Women's Prison in Niantic. These cases are currently on appeal which could significantly impact their prosecution as well as other construction cases since the issues involve the applicability of statutes of limitation and repose in construction cases, as well as the interpretation of a key term in Connecticut General Statute § 4-61, all matters of first impression for the Court. Also on appeal is the matter of State of Connecticut v. CPC, in which the Department of Information Technology accused CPC of fraudulently concealing CPC's omission of a part required by contract to be included in the purchase of nearly 10,000 computers for use by State agencies. Finding the jury award to be excessive the trial court set aside the jury's damages award of \$18 million and reduced it to \$1.5 million.

Procurement issues, bid protests and responsibility determinations of apparent low bidders on DOT and DPW construction projects and DAS procurement awards continue. Currently outstanding is the court side challenge by the apparent second low bidder, SDE Interchange Joint Venture to DOT's award to the low bidder, O&G Joint Venture for the contract award on the next phase of construction of the Q Bridge.

Despite the best efforts of all involved, some construction problems simply cannot be resolved to the satisfaction of the parties and thus claims for money damages are made against the State. The attorneys in the Transportation Department assist agency personnel with early analysis and settlement negotiations in an attempt to quickly resolve outstanding disputes and minimize the potential adverse financial impact of such claims on the public treasury. Nevertheless, a certain number of claims, both legal and monetary end up in court or arbitration as was the case in the matter of White Oak v. DOT, a Bridgeport bridge repair project which was one of several large construction projects improving and widening the I-95 corridor. The arbitration panel awarded White Oak \$8.4 million in damages. An appeal has been taken and this will likely be decided by the Connecticut Supreme Court since it involves jurisdictional interpretation issues pursuant to Conn. Gen. Stat. §4-61.

During this past year, ten construction-related claims filed with DOT were resolved. Of the ten, DOT recouped \$800,000 on one; and three were defeated in the Claims Commissioner's Office, in the amounts of \$21,397.25, \$35,616.43, and \$1,226,355.48. Settlements of the claims filed with DOT were reached as follows:

- (1) Claim of \$2,371,984 settled for \$800,000;
- (2) Claim of \$917,634 settled for \$127,000;
- (3) Claim of \$715,250 settled for \$294,631.12;

- (4) Claim of \$1,141,541.74 settled for \$350,280;
- (5) Claim of \$298,127 settled for \$85,185.46; and
- (6) Claim of \$864,521.74 settled for \$740,000.

The total money recouped or saved during this past year for these construction-related claims is \$5,782,384.52. There were others filed during and before that time that are still ongoing.

Among many of the cases this Department handles are all matters involving the Department of Motor Vehicles including all drunk driver cases and cases involving complaints regarding dealers and repairers, the emissions program as well as safety inspections. The successful defense of these cases results in keeping the roads safe from drunk drivers.

The Department is also responsible for handling Historic Commission matters and now and then is called upon to seek the court's protection of historic properties which face destruction by owners or developers. See C.G.C. §22a-19a. The case of CT Historic Commission v. Town of Wallingford established an historic preservation precedent. The Court made it easier to save historic buildings listed on the National Register of Historic Places from unreasonable demolition. The case represents the first permanent injunction issued by a Connecticut court to prevent the destruction of an historic structure. Quite significantly, the Court ruled that selling a historic building (instead of demolishing) is a prudent and feasible alternative to its destruction. This ruling should have a profound effect on any future historic preservation cases. As a follow up to our handling of the preservation of the Grumman St. John House, part of the Norwalk Inn in Norwalk in which this Department succeeded in getting the court to order the Inn to fix the damages resulting from its purposeful neglect of the house, settlement has resulted in the owners agreeing by court stipulated judgment to permanently preserve the historic structure at 93 East Ave.

The Transportation Department is also responsible for handling housing matters for the DECD as well as all employee housing matters throughout the state and the many foreclosures in which the state has an interest in the property. We have issued Notices to Quit to state employees as well as non employees in order to transition non rent paying employees to rent payers and to evict non employees. Most of these matters have resulted in amicable settlements.

Our DOT representation also covers all matters relating to eminent domain and rights-of-way issues and surplus property divestitures (also including DPW surplus property); any issues as to properties and facilities including all I-95 and the Merritt Parkway service plaza facilities; aviation and ports; public transit; rails; the State Traffic Commission; Siting Council issues relating to the use of DOT's rights of way by transmission facilities, and telecommunication facilities; and all environmental matters including permitting, salt shed and maintenance facilities located throughout the State. We disposed of 5 eminent domain appeals by trial, 16 eminent domain appeals by stipulated judgment, 2 withdrawn appeals, 3 voucher approvals, and received 22 new appeals during the last fiscal year. There are currently 61 eminent domain appeals in litigation. The litigation outcomes of the concluded appeals resulted in savings to the State of \$1,986,210.00. We also counseled the DOT regarding the divestiture of 79 surplus properties.

During the preceding year we have been advising DOT extensively on the extension and renewal of the air carrier agreements in place at Bradley Airport.

Finally, in conjunction with agency staff, we have been assisting with the development of various master contracts for use in all areas of contracting at both the DOT and DPW with the goal of streamlining the approval processes.

The Transportation Department also represents DEP in property matters. Of particular significance are the provision of legal services to DEP in connection with the procurement of conservation easements, resulting in the dedication of thousands of acres to public recreation; and the provision of legal advice on complex property law issues. These conservation easements equal the value of the grants that DEP gave out for land purchases by other entities, specifically municipalities and land trusts. The easements and purchase prices of all land that DEP bought directly for the State total \$13,318,460. These services included 91 conveyances of real property, 1 lease, 24 open space grant agreements, 34 conservation easements, and a total of 11 easements and other agreements.

Our representation of DPW also consists of construction matters as well as handling a large amount of leasing, property management, and environmental challenges on citing issues. As previously stated, some construction problems simply cannot be resolved to the satisfaction of the parties and thus claims for money damages are made against the State. During the last fiscal year DPW had several open claims involving millions of dollars; most of those claims are still outstanding. A construction claim by general contractor Angeliades in the amount of \$3,125,000 was settled in June for \$1,280,000 saving the state \$1,845,000; the Conn. Gen. Stat. §3-7 approval process is underway. Also, we defeated a construction claim against the state in the Superior Court in the amount of \$25,000. In addition, we have regularly provided advice and assistance to DPW in negotiating away potential claims before specific amounts are calculated and submitted; these discussions usually ended in no claim being advanced.

In the areas of leasing, property management and environmental challenges during the past year we provided DPW with legal counsel and review of 11 leases, 27 license agreements, and 75 contracts. This is exclusive of DPW real estate transactions in the form of deeds (7); easements (2); agreements (30); and "other" (4).

In addition to the noted construction, contracting, and real property matters, the Transportation Department is deeply involved in various environmental matters associated with public works projects, roads and bridges projects, and other activities of our client agencies. A major continuing responsibility is to provide appropriate legal assistance and guidance to these agencies to ensure that there is compliance with applicable federal and state environmental laws in the planning of projects and the operation of state facilities. In particular, to assist these agencies in their efforts to comply with the requirements of the National Environmental Policy Act ("NEPA"), the Connecticut Environmental Policy Act ("CEPA") and other federal and Connecticut regulations that have been enacted to balance the need to develop our state economy and governmental services with the need to protect the air, water and other natural resources of the state. In this regard, the Department assists the agencies in preparing and obtaining required environmental permits (e.g., wetland permits) from both Connecticut and federal regulatory agencies – e.g., the Connecticut Department of Environmental Protection and the United States Army Corps of Engineers and defends our client agencies in court when environmental challenges are brought.

## WORKERS COMPENSATION/LABOR DEPARTMENT

A significant accomplishment of attorneys and staff in the Workers Compensation/Labor Department for the fiscal year ending June 30, 2011, was in the area of revenue generated for special funds with state employee third party recovery collection increasing 83% over the prior fiscal year, unpaid wage and unemployment tax collection increasing 178% and Second Injury Fund collection increasing 480%. Given the budget difficulties currently facing state government, the importance of these considerable increases in revenue by the department cannot be overstated.

In District Lodge 26 of the Int'l Ass'n of Machinists and Aerospace Workers v. United Technologies Corporation, Pratt & Whitney, 610 F.3d 44; 2010 U.S. App. LEXIS 13919 (July 8, 2010), the United States Court of Appeals for the Second Circuit affirmed the judgment of the U.S. District Court for the District of Connecticut which held that Pratt & Whitney violated its collective bargaining agreement with the union by transferring jobs outside the State of Connecticut without making every reasonable effort to preserve the work in the bargaining unit, as required by the contract. The district court issued an injunction prohibiting the employer from transferring the jobs until the expiration of the contract in December, 2010. The State of Connecticut filed two amicus briefs in support of the union in the District Court, and the Attorney General participated in oral argument before the court. The District Court's holding was based on the employer's not acting in good faith with regard to its substantive obligation to make every reasonable effort to preserve the work but regarding its obligations as procedural only, requiring notice and meeting with the union over its planned transfer of work. The State of Connecticut directly participated in the discussions between the employer and union in that process, and the employer's lack of good faith in responding to the State's offer of financial concessions was a distinct basis of the District Court's decision. Pratt & Whitney appealed that decision to the U.S. Court of Appeals for the Second Circuit. We filed an amicus brief on behalf of the state and the Attorney General participated in the oral argument. The grounds of the Second Circuit's decision were the employer's analyzing its options in terms of its own business judgment rather than alternative evaluations that might preserve the work and its failure to assign extra value to preserving the work in its analysis prior to meeting with the union. On July 8, 2010, the Second Circuit issued an opinion affirming the judgment of the District Court.

In Jason Roberts, Inc. v. Administrator, Unemployment Compensation Act, 127 Conn. App. 780 (April 12, 2011), the Appellate Court held that a franchise agreement was not exempt from the Unemployment Compensation Act. Accordingly, the definition of employment in Conn. Gen. Stat. Sec. 31-222(a)(1)(B)(ii) of the Unemployment Compensation Act, the so-called ABC test, applied exclusively to determine employee status for purposes of the Act, notwithstanding the additional existence of a franchise agreement.

In Rodriguez v. E.D. Construction, Inc., 126 Conn. App. 717 (February 22, 2011), cert. denied, 301 Conn. 904 (2011), the Appellate Court affirmed the judgment of the Compensation Review Board which affirmed the trial commissioner's dismissal of the plaintiff's workers' compensation claim on grounds that he was an independent contractor rather than an employee of the defendant roofing contractor, thereby depriving the commissioner of subject matter jurisdiction over the claim. In its opinion, the Appellate Court reaffirmed its holding in Chute v. Mobil Shipping & Transportation Co., 32 Conn. App. 16, cert. denied, 227 Conn. 919 (1993), that the fundamental distinction between an employee and an independent contractor depends upon the existence or nonexistence of the right to control the means and methods of work.

Chute, 32 Conn. App. at 19-20. The case is noteworthy in that a) the plaintiff sustained catastrophic injuries that left him in a coma for more than 2 months and resulted in serious burns over 90% of his body which necessitated the amputation of an arm and left his other arm with significant permanent impairment; b) the medical bills alone exceeded \$1.2 million; and c) the defendant did not have workers' compensation insurance coverage, thereby exposing the Second Injury Fund to potential liability of more than \$2 million had the commissioner found that the plaintiff was an employee of the defendant. Given what was at stake, our participation in the proceedings began with the plaintiff's deposition in 2005, followed by 9 formal hearing held over years and appellate proceedings lasting more than 4 years.

### **AFFIRMATIVE ACTION**

The Office of the Attorney General is firmly committed to equal employment opportunity. Nearly 56% of the full-time attorney workforce consisted of women and minorities. Women and minorities comprised 62% of entry level attorneys and 48.3% of middle and high level attorneys.

### **VOLUNTEER PROGRAMS**

The Office of the Attorney General welcomes volunteers who desire to help and assist the people of Connecticut. People are invited to participate either through our Volunteer Advocate Program or through our Volunteer Internship Program. In this past fiscal year, volunteers have played a key role in achieving the public service goals of the Attorney General.

During this fiscal year, 14 volunteer consumer advocates helped this office assist consumers in resolving problems they encountered when purchasing goods and services and helped them obtain the refunds or bill credits to which they were entitled.

In addition, interns played a valuable role in serving the state and its people. While most of the interns are law school students, high school, college and graduate school students also participate in the internship program. Interns are given an inside view of the state's largest public interest law firm, learn valuable skills and assist in critical investigations and legal actions undertaken by the Attorney General.

During this past fiscal year, 105 students took part in our internship program, each working approximately 8 weeks. The total cost to this office for those two programs was approximately \$500.00 for incidental expenses.