

**OFFICE OF THE ATTORNEY GENERAL  
ANNUAL REPORT  
FISCAL YEAR 2012-2013**

**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: **316***

*Recurring General Fund operating expenses: **\$29,027,000***

*Revenues Generated: **\$ 537,224,571***

**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 2012-2013 fiscal year, \$ **537,224,571** was generated by the Attorney General's Office, as described below:

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

Tobacco Settlement Fund Collections	\$ 123,666,176
State Child Support Collections	36,186,195
Tax Collection	13,859,378
Recovery for Environmental Violations	192,976
Consumer Protection Penalties, Costs and Forfeitures	8,934,968
Charitable Trusts/Solicitations—Civil Penalties	1,950
Department of Social Services Collections/Civil	1,086,845
Global Civil Settlements/DSS	27,897,281
Department of Banking Penalties	13,179
Department of Administrative Services Collections	6,190,368
Antitrust Fees, Costs & Civil Penalties	619,595
SOS, DOC, OSE, UConn (misc.)	1,340,095
Miscellaneous Collections	
DMHAS	380,000
State of CT v. Lender Processing Services	1,887,519
SEEC Campaign Finance Penalties	2,225
Worth Construction v. DPW	222,000
Other	18,825
<b>Total Revenue Generated for General Fund</b>	<b>\$ 222,501,424</b>

### **B. Revenue Generated for Special Funds**

John Dempsey Hospital	\$ 253,195
Second Injury Fund	152,326
Workers' Comp re State Employees	472,658
Unpaid Wage and Unemployment Tax	465,593
Department of Social Services IV-D Liens	156,206
SEP's	287,500
CT Environmental Benefit Project	360,000
Air Emission Monitoring	651
EDB Fund	1,232,111
<b>Total Revenue Generated for Special Funds</b>	<b>\$ 3,380,241</b>

**C. Revenue Awarded or Paid to Consumers and Businesses**

Consumer Protection Restitution AVC & Litigation	\$ 557,500
Consumer Assistance Unit Mediations	1,607,793
Child Support Collections for Connecticut Families	205,143,275
Child Support Collections for Custodial Parents Outside of CT	17,597,895
Federal Energy Tariffs Refunds/Reductions	82,800,000
Consumer Restitution from Home Improvement Contractors	238,839
Consumer Restitution (Other)	621,892
Antitrust Restitution	1,576,233
Security Deposit Cases	26,354
Insurance Coverage/Healthcare Advocacy	1,138,817
Illegal Billing – Medicaid	56,158
<b>Total Revenue Generated for Consumers and Businesses</b>	<b>\$ 311,364,757</b>
<b>TOTAL REVENUE ACHIEVED</b>	<b>\$ 537,224,571</b>

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

The Office of the Attorney General is divided into 14 departments, each of which represents agencies that provide particular categories of service to State residents. In addition, the Attorney General recently created a multi-disciplinary Privacy Task Force that is charged with promoting the protection of personal data and investigating alleged violations of federal and state laws requiring protection of personal data and information. The responsibilities and achievements of each department and the Privacy Task Force are described in detail below. 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 2012-13 is summarized as follows:

Trial Court Cases	
Instituted	17,216
Completed	13,654
Pending	24,370
Appeals	
Instituted	128
Completed	139
Pending	141
Administrative proceedings	
Instituted	2129
Completed	1396
Pending	2203
Antitrust Investigations	
Instituted	3
Completed	4
Pending	17
Consumer Investigations	
Instituted	71
Completed	195
Pending	102
Fraud Investigations	
Instituted	110
Completed	39
Pending	72
Whistleblower Investigations	
Instituted	76
Completed	47
Pending	40

Legal documents examined	10,135
Formal opinions issued	4

## LEGISLATION

During the 2013 legislative session, the Attorney General proposed and supported a number of pieces of legislation that will protect consumers and homeowners, and help prevent prescription drug abuse. Among other things, the Attorney General proposed legislation that will better protect consumers from the pernicious effects of antitrust violations. The purpose of Connecticut's Antitrust Act is to ensure a competitive marketplace for goods and services in the state. Competition is upended when businesses and individuals engage in conduct that thwarts the competitive process. The end result of anticompetitive conduct is usually higher prices for consumers, including state purchasers, large and small businesses and, of course, individual families. During the course of antitrust investigations, the Office obtains information, including documents, transcripts of oral testimony, and answers to interrogatories. Under the Connecticut Supreme Court's 2010 decision in *Brown & Brown v. Blumenthal*, 297 Conn. 710 (2010), however, our lawyers were prohibited from sharing any such information with anyone other than the person or entity who provided the information. This made it very difficult to conduct thorough antitrust investigations because our Office often was trying to determine whether the person or entity providing the information was conspiring or otherwise communicating with a third party in violation of our antitrust laws. In 2013, the Attorney General proposed, and the General Assembly passed, legislation that will improve the efficacy of the Office's antitrust investigations. Specifically, the Antitrust Act was amended to permit the Attorney General or his designee to use confidential information obtained during an investigation when obtaining oral testimony from a third party if we reasonably determine that it is necessary in order to adduce evidence of a suspected antitrust violation and reasonably believe that the person providing oral testimony: (1) Is an author or recipient of the confidential material, (2) has read the confidential material, or (3) is otherwise aware of the substance of the confidential material. The permissible use of confidential material in connection with the taking of oral testimony does not apply to investigations of proposed mergers or acquisitions. In addition, no copy or original of the confidential material described or shown to a person providing oral testimony may be retained by such person.

The Attorney General also proposed legislation that will improve the Office's ability to thoroughly and efficiently review proposed conversions of non-profit hospitals to for-profit hospitals. Under state law, the Attorney General is required to conduct a thorough legal and financial review of a proposed agreement to purchase a nonprofit hospital's assets. Absent consent of all parties to the proposed agreement, we are required to complete our review within 120 days. Our review requires us to deny an application if we determine, among other things, that: the transaction is illegal; the nonprofit failed to perform adequate due diligence when it entered the proposed agreement; the nonprofit failed to disclose conflicts of interest; the nonprofit hospital will not receive fair market value for its assets; any person manipulated the fair market value in a manner that caused the value of the assets to decrease; the financing of the transaction by the nonprofit would place its assets at an unreasonable risk; or any management

contract is not for reasonable fair value. In addition, we must review all charitable gifts and bequests made to the nonprofit hospital to ensure that the proposed agreement does not result in the use of any such gifts or bequests in a manner that is inconsistent with donor intent. Recognizing that in order to complete this review the Attorney General must engage the services of outside experts and consultants, the General Assembly passed a law in 2003 that permitted the Attorney General to bill a for-profit purchaser up to \$300,000.00 in fees for outside experts and consultants. Since that time, however, inflationary pressures along with the increasing size, scale and complexity of such transactions has rendered this amount potentially insufficient. As a result, the Attorney General proposed, and the General Assembly passed, legislation permitting the Attorney General's Office to bill a purchaser up to \$500,000.00 per transaction. This increased amount will ensure that our Office has adequate resources to perform this critical review within the statutory deadline.

The Attorney General also supported legislation prohibiting price gouging during severe weather event emergencies proclaimed by the Governor. During a proclaimed weather emergency, the new law prohibits distributors and sellers from selling or offering to sell for an unconscionably excessive price, goods and services vital and necessary for consumer health, safety, or welfare and used, bought, or rendered primarily for personal, family, or household purposes. Goods and services include lodging, snow removal, flood abatement, and post-storm cleanup or repair services. Whether a price is unconscionably excessive is based on several factors, which a defendant may rebut. A seller who violates the act commits an unfair trade or deceptive practice (CUTPA) violation and each day the violation occurs or continues is a separate offense.

Lastly, the Attorney General supported legislation aimed at curbing prescription drug abuse. The new law expands the Department of Consumer Protection's (DCP) electronic prescription drug monitoring program by requiring prescription information reporting by (1) out-of-state pharmacies that ship, mail, or deliver prescription drugs into the state and (2) any other drug dispensing practitioner. Existing law already required pharmacies and out-patient pharmacies in hospitals or institutions to report. By law, the program collects information on schedules II through V controlled substances. The new legislation allows the DCP commissioner to identify additional products to include in the program. It also requires covered pharmacies and practitioners to report prescription information to DCP weekly, instead of twice monthly, as under prior law. In addition, the new law prohibits any person or employer from preventing a prescribing practitioner or pharmacy from requesting controlled substance prescription information from DCP. Finally, the legislation requires practitioners who distribute, administer, or dispense controlled substances, or who seek to do so, to register for access to the electronic prescription drug monitoring program.

## **DEPARTMENTS**

### **ANTITRUST AND GOVERNMENT PROGRAM FRAUD DEPARTMENT**

During this fiscal year, the Attorney General merged two important affirmative civil enforcement departments: the Antitrust Department and the Health Care Fraud and Whistleblower Department. This step was taken to enhance the efficiencies that can be realized by combining departments whose primary mission is affirmative civil enforcement. The new combined department, which has been operating since October 2012, is now known as the Antitrust and Government Program Fraud Department.

The department has responsibility for administering and enforcing the Connecticut Antitrust Act, and has authority to enforce major provisions of the federal antitrust laws as well. It 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 to the Attorney General 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.

The primary focus of the department's health care fraud efforts is to detect, investigate and prosecute health care provider fraud that results in financial loss to the State of Connecticut's medical assistance programs. The department develops cases independently and in conjunction with other state and federal law enforcement and regulatory agencies. The Connecticut State False Claims Act, which makes the submission of a false claim to a medical assistance program administered by the Department of Social Services illegal, is the department's primary tool to fight healthcare fraud.

The department also investigates information communicated to the Auditors of Public Accounts or the Attorney General regarding corruption, unethical practices, violation of state laws or regulations, mismanagement, gross waste of funds, abuse of authority and danger to the public safety occurring in any state agency or large state contractor.

#### **Antitrust Enforcement**

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, and obtained settlements in the municipal bond derivatives, healthcare, eBook and online retail stock brokerage industries, among others. The department's initiatives are focused on identifying and deterring anticompetitive conduct and

securing restitution for injured consumers, including state agencies and programs, small businesses and individuals.

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.

To date, the task force has entered into settlements with five financial institutions: Bank of America, UBS AG, JP Morgan Chase & Co. (“JPMC”), Wachovia Bank N.A. and GE Funding Capital Market Services, Inc. (“GE Funding”). In Fiscal Year 2013, both UBS AG and JPMC paid restitution to certain Connecticut state agencies, municipalities, school districts and not-for-profit entities affected by the illegal schemes. In March 2013, UBS AG issued checks representing restitution of approximately \$541,000 to ten Connecticut entities as part of the 2011 multistate settlement. In July 2012, JPMC sent restitution payments totaling \$1,035,233.12 to ten Connecticut entities harmed by the schemes. The task force’s investigation is ongoing.

One of the primary goals of the department is ensuring that innovative products have the ability to 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 seen increased tremendously, in part because of the introduction in January 2010 of Apple Inc.’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 then 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.

On April 11, 2012 the Attorney General’s investigation resulted in 16 states, led by the Texas and Connecticut Attorneys General, filing an antitrust lawsuit in federal court alleging that Apple Inc., and publishing companies Macmillan Publishers Ltd., Penguin Group (USA), Inc. and Simon & Schuster engaged in an anticompetitive price-fixing scheme for marketing electronic books. In August 2012, the Attorney General announced that Hachette Book Group, Inc. and HarperCollins Publishers L.L.C. - - two publishers not sued in April - - along with Simon & Schuster, agreed to pay a total of more than \$69 million to consumers to resolve their role in the alleged price fixing scheme. In February 2013, Macmillan Publishers Ltd, signed a preliminary memorandum of understanding to settle the claims asserted in Connecticut’s lawsuit. Macmillan agreed to pay consumers \$12 million restitution and will allow retailers to compete for business by discounting Macmillan’s books. Finally, in May 2013 - - two weeks before the eBook trial was to commence - - the last publisher, Penguin Group (USA), Inc., agreed to settle

the charges by paying \$75 million to compensate affected eBook consumers nationwide. Penguin also agreed to allow retailers that purchase its books the freedom to discount.

To date, the Attorney General and partner states have settled with the five alleged conspiring publishers for a total of \$164 million for consumers nationwide. In addition to granting eBook retailers greater freedom to reduce the prices of eBook titles, the settlements are expected to provide Connecticut eBook purchasers approximately \$3 million in aggregate restitution from the five settling publishers. The trial against Apple Inc., took place in June, with a Connecticut Assistant Attorney General giving the opening statement for the litigating states. On July 10, 2013, the Court found Apple liable for conspiring to raise the retail price of eBooks. A trial on damages will follow.

Merger enforcement has long-been a high priority in the Attorney General's antitrust enforcement efforts and this year was no exception as the trend of consolidation in the healthcare industry continued. The department continues to be involved in reviewing proposed mergers to determine whether they will substantially lessen competition for medical services and ultimately raise the prices of those services in the geographic areas the respective health systems serve.

Ensuring open and competitive financial markets for small investors is another of the Attorney General's most important antitrust enforcement initiatives. In keeping with that priority, in June 2011 the Attorney General launched an investigation of possibly collusive conduct by several retail securities brokers and firms that assist the brokers in executing their orders on an exchange, which may have hindered competition in the retail brokerage industry.

The first phase of the investigation resulted in agreements with two online retail brokers: Scottrade, Inc. and TD Ameritrade. Both companies agreed to cooperate in the investigation and to create and implement antitrust compliance policy and training programs for their respective employees. In August 2012, the Attorney General reached agreement with the final two subjects of the investigation: E\*Trade and TradeKing. Under the agreements, both online retail brokers E\*Trade and TradeKing agreed to make monetary payments to Connecticut and its two partner states totaling \$200,000 and create and implement an antitrust compliance policy and training program for their respective employees.

The Attorney General believes that efforts to enhance the public's understanding of the work of his office are of paramount significance. In the context of antitrust enforcement, the department provides education and training to public entities and business professionals to help them detect and deter antitrust schemes aimed at taxpayer or corporate funds. In March 2012, the Attorney General hosted the first in a series of antitrust seminars. The March event, entitled "Price Fixing, Bid Rigging & Market Allocation Schemes: What They Are and What to Look For and How to Prevent Them," was designed for state and municipal purchasing authorities. The seminar drew nearly 200 participants representing more than 25 state or quasi-public agencies, the Connecticut university system and nearly 40 municipalities and school boards. The office made two subsequent presentations during Fiscal Year 2013. In addition, department staff conducted antitrust seminars for the Government Finance Officers Association of Connecticut and the Connecticut Association of School Business Officials in November 2012 and to the Public Purchasing Association of Connecticut in May 2013. In total, the Attorney General

estimates the outreach effort has provided antitrust awareness training to approximately 300 Connecticut purchasing officials.

### **Health Care Fraud Matters**

The Health Care Fraud Unit completed several settlements this past fiscal year that provided restitution to the State's Medical Assistance Program and consumers.

The department continued to participate in numerous multi-state settlements, largely concerning the impact of problematic marketing practices of the pharmaceutical industry on the Medicaid program. In July 2012, the Attorney General, a number of states and the federal government agreed to settle the largest healthcare fraud settlement in U.S. history. Under the terms of the settlement, GlaxoSmithKline (GSK) agreed to pay \$3 billion to resolve allegations that the company engaged in various illegal schemes related to the marketing and pricing of drugs it manufactures, among them the depression-treatment drugs Paxil and Wellbutrin and a diabetes drug, Avandia. Connecticut's net state share of the settlement, after federal reimbursement, was \$5.7 million.

In October 2012, the office joined other states and the federal government to settle allegations that Boehringer Ingelheim Pharmaceuticals, Inc. (BIPI), paid kickbacks and engaged in off-label marketing campaigns that improperly promoted four drugs: Atrovent, Combivent, Micardis and Aggrenox. BIPI, whose U.S. headquarters is in Ridgefield, Connecticut, agreed to pay the states and the federal government \$95 million, of which \$34,468,649.22 was allocated to the Medicaid program to resolve civil allegations that the company unlawfully marketed the four drugs, and thereby caused false claims to be submitted to the government health care programs. Connecticut's Medicaid program will receive \$460,222, the state's share of which is \$243,123. In addition, Connecticut will recover \$107,232 for other state healthcare programs.

On May 14, 2013, the Attorney General entered a \$500 million multistate settlement with Ranbaxy, a generic pharmaceutical manufacturer based in India. The settlement resolves allegations that Ranbaxy introduced adulterated drugs into interstate commerce and, as a result, false or fraudulent claims were submitted to Connecticut's Medicaid programs. Of the \$500 million in national recovery, \$266,729,715 is for state Medicaid programs. Connecticut's Medical Assistance Program received approximately \$1 million.

In March 2013, the Attorney General represented the Department of Social Services in a settlement resolving claims that certain patients who are enrolled in the Medical Assistance Program were inappropriately billed by Connecticut Behavioral Health Associates (CBHA) for opioid dependence detoxification treatment. Under the agreement, CBHA will make \$512,224 in refunds to about 400 patients who were directly billed by CBHA for services from October 2006 to September 2011.

In fiscal year 2012, the Attorney General filed the first case under the new Connecticut False Claims Act. The case involved allegations of substantial Medicaid fraud by numerous individuals and entities associated with a number of dental practices. On June 3, 2012, the Attorney General entered into a settlement with one of the principal alleged conspirators, Gary Anusavice of North Kingstown, R.I., and six of his management and

consulting companies. Under the settlement, Anusavice agreed to pay the state \$9.9 million, which represents treble damages under the Connecticut False Claims Act and restitution under the Connecticut Unfair Trade Practices Act. The agreement also bars Anusavice and the named companies from participating in any health care-related business in Connecticut, or engaging in any other business with state agencies for at least 10 years after Anusavice completes his incarceration resulting from a parallel federal criminal prosecution. Anusavice agreed to cooperate in the Attorney General's ongoing litigation against the remaining defendants.

### **Whistleblower Matters**

The department, in cooperation with the Auditors of Public Accounts, continued to investigate a variety of complaints alleging corruption, unethical practices, mismanagement, gross waste of funds and abuse of authority.

### **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 investigations, to provide the proper protection for children and to assist families in retaining or regaining the care and custody of their children by enhancing the safety of children's family environments and improving parenting skills. DCF's interventions in serious cases of abuse or neglect are always the subject to judicial scrutiny. The vast majority of civil child protection cases before the Superior Court for Juvenile Matters are initiated by DCF through neglect petitions, applications for orders of temporary custody, review of permanency plans, petitions for termination of parental rights, adoptions and other civil proceedings. DCF is also responsible for children and youths found guilty of committing acts of delinquency and committed to the DCF Commissioner. The cases of committed delinquents are subject to permanency plan review on an annual basis and at times, motions to extend commitment heard by the criminal session of the Superior Court for Juvenile Matters. Attorneys in the Child Protection Department regularly represent DCF in all fourteen juvenile courts statewide, as well as in federal court, and handle a large number of appeals to the state Appellate and Supreme Courts. In addition, this department defends DCF in all administrative appeals to the Superior Court.

The Child Protection Department was successful in representing DCF in numerous appeals before the Appellate and Supreme Courts. Of particular note are several positive outcomes in the following appeals concerning abused, neglected, and delinquent children and youths. In addition, recent rules changes have expedited the appeal process, to the benefit of abused and neglected children.

In *In re Justice W.*, 308 Conn. 652 (2012), we successfully argued to the Supreme Court that the statute setting the period of a delinquency commitment requires the trial court to commit a juvenile for an indeterminate period up to eighteen months. The Court explained that the

legislative intent and statutory scheme involving delinquents is designed to provide these juveniles with guidance and rehabilitation, and to protect the community rather than merely to punish, and that the statute provides DCF the authority to determine the actual length of the otherwise indeterminate commitment capped by the statute at eighteen months.

In two companion cases, *In re Shaun S.*, 137 Conn. App. 263 (2012) and *In re Severina D.*, 137 Conn. App. 283 (2012), the court upheld order of temporary custody against various claims that the court failed to weigh the facts properly.

In *In re Emoni W.*, 305 Conn. 723 (2012), the Supreme Court held that the Interstate Compact on the Placement of Children (ICPC) governing child protection matters does not apply to a non-custodial parent who resides out of state and demands custody of his children after their removal by an OTC from the custody of the other parent. However, the high court held that the out-of-state noncustodial parent must appear at the preliminary hearing, answer questions and agree to reasonable conditions on the placement of the child. The Supreme Court ruled further that where there is evidence before the trial court that the noncustodial parent is unfit, the court should not place a child with that parent without ordering an investigation into the parent's fitness.

In *In re Jason B.*, 137 Conn. 408 (2012), the Appellate Court rejected a challenge to the trial court's decision terminating the parental rights of the mother based on the claim that the court improperly drew a prejudicial inference from the mother's failure to testify at trial. The Court ruled that the trial court did not make such an adverse inference but rather made adverse findings based on the weight of the evidence.

In *In re Jeffrey M.*, 307 Conn. 640 (2013), the Supreme Court upheld our position that once a delinquent minor is committed to the DCF Commissioner, the trial court cannot order the direct placement of that minor in a facility out of state without the Commissioner's consent.

In *In re Jah'za G.*, 141 Conn. App. 15 (2013), the court affirmed that a trial court may properly consider factual determinations from a prior trial.

Finally, in *Matthew M. v. DCF*, 143 Conn. App. 813 (2013), the Appellate Court affirmed the trial court's decision in an administrative appeal substantiating physical neglect of a child and the placement of the father on the department's central abuse and neglect registry. The court rejected a claim that the notice issued by DCF violated the father's due process rights. The court also held that the presence of children in the zone of danger during a violent altercation between their parents is evidence of physical impact sufficient to prove physical neglect.

## **COLLECTIONS/CHILD SUPPORT DEPARTMENT**

The Collections/Child Support Department is dedicated to the expeditious recovery of monies owing to the State, as well as the establishment of orders for the support of children. The department represents the Department of Administrative Services/Collection Services in matters involving the recovery of debts owed to the state, including reimbursable public assistance benefits, other state aid and care, and costs of incarceration. The department also represents the

Bureau of Child Support Enforcement within the Department of Social Services (DSS-BCSE) in matters involving 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 Connecticut Judicial Branch (SES). Department staff also provide a full range of litigation services for the collection of monies owed to state agencies, including 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 2012-2013, department attorneys recovered more than \$58 million in cash payments on debts owed to the state. The department's activities in the establishment of child support orders continue to create exceptionally large caseloads. In fiscal year 2012-2013, more than 10,000 cases were opened in all child support categories. These cases are handled in both the J.D. Superior Court-Family Division and the Family Support Magistrate division, and involve the establishment of paternity and/or orders for support of minor children.

The State of CT-Title IV-D partnership, comprised of the Attorney General's office, DSS-BCSE, and SES, successfully enforced/collected in excess of \$250 million. That amount includes funds collected by the enforcement efforts of the State of CT Title IV-D partnership and paid directly to custodial parents and to the state General Fund.

Department attorneys actively argued cases on behalf of children who resided in the State of Connecticut, as well as children residing in other states and cooperating 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 appeared and successfully argued hundreds of cases in Probate Court and Superior Court-Juvenile Court, to protect the State's interest and to preserve children's legal right to receive financial support from their parents. The Probate Court matters generally involve non-custodial parents seeking to terminate their own parental rights or the custodial parent seeking to terminate the rights of the non-custodial parent. These matters are often transferred or appealed to Superior Court. .

In addition to their responsibilities in the child support area, department attorneys were engaged in a wide variety of other collection-related litigation activities. During this fiscal year, the department's attorneys managed a large case load of active cases, including bankruptcy proceedings in Connecticut and throughout the country. The Department concluded more than 1,500 litigation collection 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.

Many of the department's debt collection cases involving resulted in significant payments on debts owed to the state. The department successfully closed at least six collections cases in which the State collected over \$100,000 per case, and a total in excess of \$2 million. The largest of these resulted in the recovery of \$760,955 for a debt owed to the State for public assistance. In another matter, the department was instrumental in a settlement resulting in collecting an

assistance debt of \$294,000.00. That settlement also resulted in hundreds of acres of land being protected as open space within the Towns of Sprague/Franklin.

Working in cooperation with the Secretary of the State's Commercial Recording Division department staff also successfully collected \$1.3 million in penalties/fines from out of state businesses that failed to register with Secretary.

The Department also pursues collection efforts and otherwise seeks to protect the creditor rights of various state agencies in bankruptcy court proceedings. In this fiscal year, the Department's bankruptcy litigation resulted in millions of dollars in recoveries. The department successfully completed a collection matter in federal bankruptcy court on behalf of the Department of Revenue Services (DRS) against the Tribune Television Company, a subsidiary of The Tribune Company which also owns the Hartford Courant. Department staff oversaw the final collection of the DRS tax claim for a total payment in excess of \$12 million dollars, one of largest bankruptcy payments ever collected by the office.

## **CONSUMER PROTECTION DEPARTMENT**

The Consumer Protection Department's focus is on consumer protection through representation of the Connecticut Department of Consumer Protection, consumer education and complaint mediation, 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).

### **Mediation**

As part of the Attorney General's focus on consumer mediation, the department includes a Consumer Assistance Unit (CAU). The CAU is dedicated to assisting individuals in resolving consumer complaints and enforcing laws designed to protect the public from deceptive or unfair practices. During the past fiscal year CAU staff responded to 3,015 consumer inquiries. Over \$1,607,793 was refunded or credited to Connecticut consumers due to the mediation efforts of the Department.

### **Consumer Education**

Department staff continues to further its core mission through consumer education efforts. For example, staff members have attended various fairs and forums geared towards senior citizens. At such events, seniors are provided information to assist them in avoiding fraud. In addition, the department represents the Attorney General on the Connecticut Triad Advisory Board and in Triad related activities. Triad is a national initiative of law enforcement agencies, senior citizens, and community groups working together to reduce crimes against seniors and provide information about scams targeting the elderly and resources available for those who have been victimized. In January 2013, the department hosted a Triad conference called "No Excuse for Financial Abuse," focused on protecting seniors from financial abuse. Department staff and other members of the law enforcement community, including the FBI, spoke about common scams targeting seniors and how to protect against them.

In addition, staff participated in a National Public Service Campaign called “Stop the Texts Stop the Wrecks,” designed to discourage young adults from texting and driving.

### **Multistate Activities**

The department participated in a multistate investigation involving allegations that Abbott Laboratories promoted Depakote (a drug approved by the FDA for seizure disorders and mania associated with bipolar disorder) for unapproved uses by making false and misleading statements about the safety, efficacy, dosing, and cost-effectiveness of Depakote for some of these other uses; improperly marketed the product for use in nursing homes; and offered and paid illegal remuneration to health care professionals and long-term care pharmacy providers to induce them to promote and/or prescribe Depakote. The settlement prohibits the company from making false or misleading claims about Depakote and promoting Depakote for off-label uses. The agreement ensures that financial incentives on sales do not promote off-label uses. Connecticut received approximately \$6 million from settlement.

The department also worked with the office’s Antitrust and Government Program Fraud Department in achieving a settlement with GlaxoSmithKline, LLC (GSK) for allegedly engaging in unfair and deceptive practices in the marketing and use of the diabetes drug Avandia. The settlement resolved the State’s claim against the company under the Connecticut Unfair Trade Practices Act and requires GSK to post summaries of all company-sponsored observational studies or meta-analysis designed to inform the effective, safe and/or appropriate use of its diabetes drugs. GSK will post summaries of any company-sponsored clinical trials of diabetes products within eight months of the primary completion date, and must register and post all company-sponsored clinical trials as required by federal law. Connecticut’s share of the settlement was \$1,668,482. This recovery is in addition to the Medicaid fraud settlement recovery with GSK discussed in the Antitrust and Government Program Fraud section of this report.

The department was also involved in the investigation of allegations that Janssen Pharmaceuticals, Inc. and others improperly marketed the antipsychotic drugs Risperdal, Risperdal Consta, Risperdal M-Tab and Invega for off-label use to treat Alzheimer’s disease, dementia, depression, and anxiety, even though the U.S. Food and Drug Administration had not approved the drug for these purposes and Janssen had not shown that Risperdal was safe and effective in treatment of these conditions. As part of the settlement, Janssen has agreed to change how it promotes and markets its atypical antipsychotics and has agreed to refrain from any false, misleading or deceptive promotion of the drugs. Connecticut’s share of the settlement was \$3,539,549.

The department represented the State of Connecticut in the nine-state executive committee that investigated unintended acceleration issues and negotiated a settlement agreement with Toyota Motor Sales, USA, Inc. (Toyota). The states alleged that Toyota engaged in unfair and deceptive practices when it failed to timely disclose known safety defects with accelerator pedals, which caused unintended acceleration. The Executive Committee ultimately reached a \$29 million multistate settlement agreement with Toyota. Of the total \$29 million to the 30 participating states, Connecticut will receive approximately \$1.4 million.

The Consumer Protection Department participated in a multistate investigation alleging that Sketchers USA, Inc., the makers of rocker-bottom Shape-Ups, Tone-Ups and the Sketchers Resistance Runner athletic shoes, made health-related claims in the marketing, packaging, advertising and selling of those shoes that were not adequately substantiated at the time the claims were made. The investigation resulted in a settlement that prohibits Sketchers from making these claims without adequate substantiation and provided consumer refunds for a portion of the purchase of Shape-Ups, Tone-Ups or the Sketchers Resistance Runner athletic shoes. Sketchers also paid \$88,000 to the State.

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

Beginning in June 2012, the department spearheaded the investigation of Precious Cargo Daycare & Learning Center and its owners after the daycare abruptly closed its Branford facility, leaving approximately 100 families without daycare services for which they had prepaid. Under the settlement, Precious Cargo and its owners will pay a total of \$55,000 for consumer restitution, of which \$30,000 has already been remitted to the state. The remaining \$25,000 will be paid over two years. Additionally, the defendants are prohibited from operating a daycare facility for a period of 5 years and also paid \$159,818 to the Department of Revenue Services to resolve outstanding claimed wage withholding tax liability to the State.

The department reached voluntary compliance agreements with several alleged members of the “Women’s Gifting Tables” pyramid scheme that the state alleged violated the Connecticut Unfair Trade Practices Act. As a result of the settlement, the participants forfeited \$202,500 to the State.

The department continues to prosecute a joint enforcement action with the Federal Trade Commission in federal court in Connecticut for alleged CUTPA violations relative to the sale of weight-loss supplements. The original defendants—LeanSpa, LLC; Nutraslim, LLC; Nutraslim UK, Ltd.; and Boris Mizhen—are alleged to have used various deceptive practices in the sale of their products, including the use of fake internet news sites that purported to objectively tout the benefits of their products; bogus “trial offers;” and various deceptive representations regarding the efficacy of their products. In late 2012, the State and the FTC named LeadClick Media, Inc. and Richard Chiang as additional defendants for their alleged role in posting the fake internet news sites. The court ordered the appointment of a temporary receiver to operate the LeanSpa/Nutraslim/Nutraslim UK businesses during the pendency of the litigation and an asset freeze for all assets of these defendants and Boris Mizhen. By court order in January 2013, the asset freeze was extended to certain other assets held in the name of Angelina Strano, Mizhen’s spouse, and controlled by Mizhen. That order was affirmed by the Second Circuit Court of Appeals in June 2013.

The department concluded a sovereign enforcement action against various defendants alleged to have submitted false information to lenders in connection with offering mortgage brokerage services. In May 2013, the State entered into a stipulated judgment with the defendants VRM Mortgage Co., Inc., Roman Realty, Inc., Victor Roman, Jose Flores and Tony Mojica that, in addition to containing broad injunctive relief, prohibits VRM, Roman and Mojica from engaging in the mortgage brokerage business in Connecticut and prohibits Flores and

Mojica from engaging in any business that comes within the jurisdiction of the Connecticut Department of Banking. Roman, Flores and Mojica were ordered to pay \$2,750, \$2,500 and \$1,000 to the State, respectively.

Department staff also concluded an investigation concerning an advertising mailing sent out by Chase Volvo, an automobile dealership. The mailing allegedly purported to offer to purchase the recipients' vehicle for a price range set forth in the mailing, but when a consumer attempted to sell her vehicle to Chase, she was offered a price lower than the offered price. Chase Volvo agreed to a settlement requiring payments of \$2,500 to the State \$10,000 to the consumer.

### **Utility Cases**

On April 9, 2013, the Attorney General filed a petition with the Connecticut Public Utilities Regulatory Authority ("PURA") asking that additional sanctions be imposed on the Connecticut Light and Power Company ("CL&P") for impairing and impeding the PURA's investigation into the company's restoration efforts following the October 2011 Nor'easter. That storm interrupted electrical service to over 800,000 customers in Connecticut, many for as long as 11 days. The Attorney General alleged that CL&P failed to disclose important information to PURA in that case relating to the company's commitment to the Governor, municipal leaders and the people of the State that it would restore 99 percent of all homes and businesses in each town that it served by midnight on November 6, 2011. The documents not produced were relevant to whether CL&P knew that estimate was unattainable.

In July 2012, the PURA agreed with the Attorney General that CL&P customers should not have to pay for repairs and remediation to the Waterbury, Connecticut underground electric distribution system that were the result of poor workmanship by CL&P's contractors and inadequate supervision by the company. PURA also ordered additional inspections of that underground system and improved supervision of contractors. The PURA's decision followed a lengthy proceeding which began in 2006 after three fires damaged the underground system in Waterbury. Following an initial investigation, PURA ordered CL&P to upgrade its underground system to use safer and more reliable cables and equipment. After that upgrade was completed, additional inspections revealed shoddy work and additional problems.

### **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. Department staff are currently defending the State in approximately 100 employment cases in the state and federal courts, as well as more than 110 complaints before the Connecticut Claims Commissioner, Connecticut Commission on Human Rights and Opportunities and the Equal Employment Opportunity Commission.

During the past year, the department successfully defended state agencies in numerous cases in the state and federal courts. Significantly, we were able to obtain favorable rulings on two summary judgment motions that were filed in federal court and two summary judgment

motions that were filed in state court, eliminating the need for trials in those cases. In an additional three cases, summary judgment was granted in part and denied in part. We also filed approximately 13 additional summary judgment motions, which are pending rulings by the courts. We also are awaiting rulings on several additional motions filed in the prior fiscal year.

During this past fiscal year, the department obtained verdicts in favor of state agencies in two of the three jury trials that department staff handled. Although a jury found against the defendant in one such case, post-trial motions seeking judgment for the defendant or a new trial are currently pending.

Proceedings at the CHRO Office of Public Hearings resumed after being suspended for much of last fiscal year. The department completed three public hearings and is awaiting rulings in those cases. Public hearings in four other cases are continuing and should be completed by the end of 2013. An additional three cases, which were trial ready, were settled for nominal value on the eve of trial. In several other cases at various stages of litigation, department staff was able to achieve settlements on terms that were favorable to the state, saving the state many thousands of dollars. In cases in which department staff prevailed, over \$3,300 in reimbursed court costs was collected. Department staff also routinely appeared on behalf of state agencies before the Commission on Human Rights and Opportunities at mediation and fact-finding sessions. As a result of those efforts, several cases at both the CHRO and Equal Employment Opportunities Commission (EEOC) were resolved with favorable settlements.

The Employment Rights Department is currently working on approximately 10 appeals pending in the state and federal courts. During the past fiscal year, department staff, with the assistance of the Special Litigation Department, completed approximately seven appeals in the Court of Appeals for the Second Circuit and 5 appeals in the Connecticut Appellate Court. In one notable case, *Dorcas White v. Department of Children and Families*, 136 Conn. App. 759, the Connecticut Appellate Court affirmed the Superior Court's ruling finding that the accidental failure of suit statute could not be used to allow plaintiff to bring untimely claims that she failed to bring in a previous federal court action. In that case, the plaintiff had previously brought a civil action against the DCF in the federal district court. That court granted summary judgment in favor of DCF and the plaintiff appealed to the Court of the Appeals for the Second Circuit, which affirmed the district court ruling. Ms. White then brought an action in state court alleging that it fell under the accidental failure of suit statute. The court granted our motion to dismiss and the plaintiff appealed. Ms. White's petition for certification to the Connecticut Supreme Court was denied.

In another matter, *Easterling v. Department of Correction*, staff represented the DOC in negotiating a tentative settlement of a class action lawsuit that was brought by and on behalf of female applicants for Correction Officer positions, who failed a portion of a physical fitness test that had been used as part of the selection process in 2004 and 2006. The parties began lengthy settlement discussions after a federal district judge ruled that the fitness test had a disparate impact on female candidates in violation of Title VII of the Civil Rights Act. The settlement received legislative approval and the Court will conduct a fairness hearing in the near future.

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 department staff participated in training sessions and seminars for state employees on a variety of employment related issues. We continued to assist in required training for 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. Other training is also planned in the area of disability law and requests for accommodations.

## **ENERGY DEPARTMENT**

The Energy Department provides legal services to the Public Utilities Regulatory Authority (PURA) and the Connecticut Siting Council. The Department defends the state's interests on energy issues before the Federal Energy Regulatory Commission (FERC) and the Federal Communications Commission (FCC). The Department represents PURA in court challenges to PURA decisions regarding electric, gas, and water rates, transfer of assets, acquisition of control, safety, service and consumer billing issues. The Energy Department also represents the Connecticut Siting Council when its decisions on placement of facilities, such as cell towers, transmission lines, power plants and wind turbines, are challenged in state or federal court.

### **PURA Matters**

Over the past fiscal year, the Energy Department has recovered over \$80 million dollars for Connecticut ratepayers through three cases before FERC, and forestalled another \$2 million dollars in additional charges by prevailing in a legal challenge to how energy capacity contracts were interpreted.

The department represents the state's interests in the matter of *Connecticut Yankee Atomic Power Company*. Connecticut ratepayers have paid for the decommissioning costs of various New England retired nuclear power plants. At the same time, the Yankee nuclear power companies sued the federal government for its failure to obtain long-term storage of nuclear waste. To date, the companies have been awarded damages through 2001 and anticipate similar damages for additional years until long-term storage is found. As a result of the award of damages from the federal government, the Yankee companies negotiated with PURA to refund the prior decommissioning costs to ratepayers and to suspend the federal tariff. The settlement will provide Connecticut ratepayers \$75.8 million in savings.

In the matter of *Constellation Energy Commodities Group, Inc.*, FERC enforcement staff reached settlement with an energy supplier for unfair trade practices. As part of the settlement, \$20 million was allocated for refunds for New England ratepayers. Our office designed and brokered the agreement among the New England states for the distribution of the \$20 million, resulting in just over \$5 million for Connecticut ratepayers.

In the matter of *ISO NE 2013 Budget*, the Energy Department represented PURA at FERC in its challenge to the 2013 administrative and capital budgets submitted by the region's grid operator, ISO New England. ISO New England is funded entirely by federal tariff, and all costs are either directly or indirectly paid for by New England ratepayers. After lengthy negotiations, ISO New England reached a multi-state settlement, agreeing to explicit state review of future proposed budgets, and reducing its 2013 budgets by \$2.85 million.

In the matter of *Waterside Energy, LLP*, an electric generator challenged PURA's interpretation of the generators' contracts to provide energy capacity to the New England energy grid. The Superior Court upheld PURA's legal interpretation, and the decision was not appealed. The decision saves Connecticut ratepayers over \$2 million.

### **Siting Council Matters**

The Siting Council approved the siting of the first commercial wind turbines in Connecticut, and the Energy Department has successfully defended its decisions before the Superior Court. Appeals to the Connecticut Supreme Court are fully briefed and pending oral argument. The Energy Department has also successfully defended numerous challenges to Siting Council decisions regarding the placement of cell towers and is currently defending decisions regarding the placement of transmission power lines.

## **ENVIRONMENT DEPARTMENT**

The Environment Department provides representation and legal services to the Department of Energy and Environmental Protection (DEEP) and the Department of Agriculture (DoAg). During the past fiscal year, the department had a number of important successes in abating pollution and in enforcing environmental laws.

Department staff obtained two temporary injunctions in court cases involving ongoing pollution and potential exposure to dangerous contaminants. The department sought and obtained an emergency court order requiring the owners of English Station Power Plant in New Haven, a highly contaminated site, to secure the abandoned site to prevent entry on to it. The order prohibits the demolition of a highly contaminated building until the PCBs on the site are remediated so that the building can be safely removed.

In two cases before the Connecticut Supreme Court, the department succeeded in obtaining important clarification of DEEP's authority with respect to coastal management and development. In *Sams v. Department of Environmental Protection*, the Supreme Court for the first time construed the relationship between DEEP's Structures and Dredging Act authority and the Coastal Management Act, and affirmed the importance of the coordinate responsibilities of DEEP and coastal municipalities over the shoreline. The Supreme Court upheld the DEEP's assertion of jurisdiction over a seawall and its technical expertise over coastal management. In *Shanahan v. Department of Environmental Protection*, the Supreme Court held that the Commissioner properly applied the then-existing definition of the high tide line determining the

limits of DEEP's jurisdiction. The Court agreed that the structure at issue was at least in part within the state's jurisdiction and subject to the DEEP's authority.

In *Pictometry v. Freedom of Information Commission*, the Supreme Court considered for the first time whether copyrighted materials are exempt from the copying provisions of the Freedom of Information Act. In that case the Freedom of Information Commission had ruled that DEEP was required to provide copies of copyrighted photos and metadata used by DEEP and created by a company with technical capabilities beyond the state's expertise to a requestor at no more than 25 cents per page when DEEP's contract for use of materials required a \$20 per page fee. The FOIC's decision threatened millions in costs to the State and would have undermined the protections of copyrighted material under the Federal Copyright laws. The Supreme Court agreed with our position that the federal copyright laws must be respected and that the requestor was not entitled to obtain from DEEP copies of the materials he would otherwise be required to pay for from the company holding the copyright.

The department prevailed in a lawsuit against Kohler Mix Specialties alleging numerous violations of its water discharge permit from its facility in Newington. This past year we obtained a judgment of \$299,000 in penalties and an injunction preventing future violations of the company's water discharge permit.

We also obtained a judgment in *McCarthy v. Old Pin Shop* requiring the defendant to repair a dangerous dam in Watertown and ordering the payment of a \$50,000 penalty for failing to repair the dam earlier as required by an earlier DEEP order.

During the past fiscal year, the department had another significant victory in the battle against climate change. Connecticut was part of a coalition of states that sued the Environmental Protection Agency ("EPA"), seeking to require the agency to regulate the discharge of greenhouse gases from motor vehicles. The United States Supreme Court agreed that EPA had the authority to regulate greenhouse gases and ordered it to determine whether greenhouse gases were endangering public health and welfare--a necessary predicate to regulation. After the EPA made the "endangerment determination," several parties sued EPA arguing that it was improper for EPA to conclude that greenhouse gases were endangering public health and welfare. Connecticut, along with several other states, intervened in that lawsuit to support EPA's findings. This past year, the court ruled that EPA's endangerment determination was legally supportable, paving the way to regulation of greenhouse gas emissions.

Also in the arena of air pollution enforcement, we continued our litigation against Midwest power producers who violated the Clean Air Act by making major modifications at their aging facilities without installing pollution controls. Prevailing winds carry much of this pollution into Connecticut. The department completed the liability trial against Allegheny Energy in the fall of 2010, and we are awaiting the court's decision. We continue to pursue our case against Reliant Energy.

Department attorneys successfully defended the first challenge of its kind to the state's certificate of permission process for the construction of docks in Long Island Sound. The Appellate Court accepted our argument in *Lane v. DEEP* that an existing dock had to be

continuously maintained and serviceable in order to be eligible for a certificate of permission instead of a permit.

We continued our successful representation of the state in federal “superfund” pollution matters. We resolved a dispute with AT&T about an easement, paving the way for remediation to occur at the Solvents Recovery Services Superfund site. We also continued to assist DEEP in mediating potential approaches with General Electric for the clean-up of PCBs in the Housatonic River. We continued efforts to collect \$2.75 million for natural resource damages from responsible parties in the Old Southington Landfill superfund case.

Department staff continue to assist DEEP 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.

The department’s representation of the DEEP in bankruptcy proceedings continues to prevent polluters from avoiding their environmental liability by filing for bankruptcy protection.

In our representation of the Department of Agriculture (“DoAg”), the department successfully protected several animals, rescuing them from abuse and neglect through court actions in seeking to remove ownership and control of neglected animals from their abusers. As part of these efforts, the state took ownership of horses for placement in appropriate situations.

The department has carried on its protection of valuable Connecticut farmland this year, providing legal support to the DoAg in preserving hundreds of acres of farmland by acquiring the development rights to the land through its Farmland Preservation Program.

In addition to all of the above, the Environment Department continues to provide a full range of other legal services to both DEEP and DoAg, 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 industry formed a major part of this department’s work in 2013.

The Finance Department continues to help Connecticut consumers affected by the recent housing and foreclosure crisis. Attorneys from the Finance Department represent Connecticut on the Mortgage Monitoring Committee overseeing implementation of the 2012 National Mortgage Settlement (NMS). Thus far, nearly 6,000 Connecticut borrowers have received \$420 million in debt relief under the NMS. Of that total, \$99 million in relief has been first mortgage principal forgiveness. Additionally, more than 4,600 Connecticut consumers who lost their homes to foreclosure during the crisis have received payments of \$1,480 under the NMS. Additional debt

relief under the NMS is still being provided and Connecticut consumers are expected to continue to benefit from that relief. In a related settlement, document processing company Lender Processing Services Inc. (LPS) paid a total of \$120 million in a multistate settlement alleging improper execution of mortgage and foreclosure related documents. Connecticut received a direct payment of \$1.8 million under the LPS settlement.

Finally, together with Governor Malloy and the Department of Banking, the Finance Department has helped to organize two multi-servicer mortgage assistance events at different locations around the state. These day long events offer Connecticut citizens the opportunity to meet face to face with their banks to work out a loan modification or other assistance on the spot.

Department attorneys have also been active on other consumer financial enforcement matters. We are part of the President Obama's Residential Mortgage Backed Security (RMBS) Task Force investigating how financial institutions packaged the structured securities at the heart of the 2008 financial crisis, and are actively engaged in pursuing these important and complex investigations. Additionally, Department attorneys are leading a multistate coalition of 18 other states and the Department of Justice in a series of related lawsuits against a national rating agency.

The Finance Department works closely with the state agencies it represents. For example, Department attorneys successfully defended the Department of Revenue Services in an important case before the Connecticut Appellate Court upholding a taxing statute's retroactive application. The Finance Department also defends in court legal challenges to its client agencies' numerous 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 advised and assisted the Department of Banking in the drafting on an important ruling on the application of Connecticut's statutes regulating debt negotiators. The ruling is being challenged in the Superior Court and Department attorneys are defending the Banking Commissioner's ruling. Additionally, given the Governor's emphasis on providing support to businesses operating in or relocating to Connecticut, Department attorneys provide frequent assistance and advice to the Department of Economic and Community Development (DECD) regarding the grant, loan, and economic stimulus programs administered by DECD. Department attorneys also litigated an important matter on behalf of DECD that established DECD's right to maintain the confidentiality of economic models used by DECD to determine the economic impact and competitiveness of the assistance offered by DECD as compared to other, competing states.

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, and that tobacco manufacturers also comply with the public health provisions of the MSA and the requirements of state law. Department attorneys recently worked with assistant attorneys general from 22 other jurisdictions to settle a nationwide, multi-year dispute totaling more than \$9 billion in MSA payments that tobacco manufacturers claim they do not owe the states. The settlement eliminates the risk of Connecticut losing any of its MSA payments for the years 2003 – 2014 and provides for a net payment to Connecticut of more than \$50 million.

## **HEALTH/EDUCATION DEPARTMENT**

The Health and Education Department provides legal services and representation to a broad spectrum of state agencies, including the University of Connecticut, the University's Health Care Center and John Dempsey Hospital, the Board of Regents composed of the three Connecticut State Universities and the sixteen Connecticut Community Colleges, the State Department of Education and the Connecticut Technical High Schools. This department also represents the Department of Public Health, the Department of Social Services, the Department of Mental Health and Addiction Services, the Department of Rehabilitation Services, the Department of Aging, the Office of Early Childhood Planning, 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, including, 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; confidentiality of medical and education 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, disability 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 2600 contracts and 16 sets of regulations.

As in past years, the department was very busy with nursing home issues. The department had substantial involvement in financially stabilizing a nursing home chain that had filed for bankruptcy under chapter 11. The department was instrumental in securing a receiver to operate a residential care home that was substantially out of compliance with regulatory

requirements, including those governing the facility's physical plant. The department also secured the sale of a nursing home in receivership to a new operator. In another receivership, a financially insolvent nursing home was closed with residents placed in new facilities and back in the community. During the past year, the department assisted the Department of Social Services to secure recovery of approximately \$1 million in Medicaid advances to distressed nursing homes.

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, 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 *Giammatteo v. Newton*, the plaintiff, a physical therapist, appealed from the final decision of the Board of Examiners for Physical therapy disciplining her. She alleged due process and other challenges to the Board's decision. The trial court dismissed her appeal and affirmed the decision of the Board.

The department addressed a variety of issues for the State Board of Education and the Department of Education. The department successfully negotiated a one year extension of the settlement agreement in the landmark Hartford school desegregation case, *Sheff v. O'Neill*. In *Mangiafico v. State Board of Education*, the Appellate Court rejected a parent's challenge to the State Board of Education's application of residency rules in determining that his children were not residents of a city and thus not entitled to free school accommodations. The State Department of Education and the U.S. Department of Education entered into a settlement regarding alleged irregularities in the administration of a federal Migrant Education Program through which some Connecticut municipalities received federal funding. The U.S. Department of Justice was prepared to bring suit against the State under the federal False Claims Act based on alleged failures in overseeing the program. The State agreed to pay the U.S. Department of Education \$4.5 million dollars over a period of five years. The potential exposure to the State had litigation proceeded could have exceeded \$15 million dollars.

The department continued to provide legal services on a broad array of issues to the newly formed Board of Regents, which includes the Connecticut State University System, Charter Oak College and the Community-Technical Colleges. Some of these issues included contract questions, real property matters, requests for access to student information, discrimination claims, Title IX claims, due process rights, the development of an interagency data base for longitudinal studies and issues arising under the Freedom of Information Act.

The department also provides services for the 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 Title 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. Of note was the successful defense of the University in a federal action challenging the expulsion of a student for sexual assault.

The University of Connecticut Health Center continues to present broad and challenging legal issues that arise from the operation of an academic health center with an annual budget approaching \$900 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 and appeared before multiple administrative agencies including the Claims Commissioner, the Freedom of Information Commission and the Commission on Human Rights and Opportunities. We continued to be successful in litigation avoidance relative to the hospital, the medical school, the dental school and the research enterprise. Finally, we continue to provide 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, as well as the acquisition of an office building contiguous to the Health Center campus.

The department also successfully handled assignments for agencies that are outside their normal client group. The department secured the appointment of a receiver for a company operating group homes for Department of Children and Families' clients and a special education school that was financially insolvent. The children residing in the group homes and students in the school were quickly and successfully placed in new locations. The receivership was completed in less than six months. In *Mercer v. Champion*, the Appellate Court affirmed the dismissal of a disability claim brought by prisoner seeking an injunction permitting his use of an electronic keyboard in his cell.

At the end of the fiscal year, this department had 168 state and federal court cases pending at the trial or appellate level, as well as 122 administrative proceedings pending before various state agencies.

## **PRIVACY TASK FORCE**

In September of 2001, the Attorney General created a multi-disciplinary Privacy Task Force within the Office. The Task Force is led by an assistant attorney general who reports directly to the office's administration and is staffed by attorneys from a number of departments with specialized expertise in health, insurance, finance, insurance and other areas. Since its creation, the purpose of the task force has been twofold: to proactively promote the protection of personal data and information and to investigate alleged violations of privacy or breaches of personal information in violation of federal and state laws that require protection of that data. The Task Force investigates dozens of privacy and data security matters affecting hundreds of thousands of Connecticut residents each year.

## **Education**

Chief among the initial goals was to establish relationships and share information through a series of meetings with public and private entities with a strong interest in privacy and data protection. These included a broad spectrum of large Connecticut-based business and educational institutions. The meetings afforded the Attorney General and the Task Force the opportunity to learn, through open and candid discussions, precisely what entities are doing to protect consumers' private information. Perhaps more importantly, the dialogue that began in these initial meetings has continued, and the Task Force is gaining a unique, real-world perspective relative to data privacy and security. The Attorney General and the Task Force members have spoken to groups and businesses about the importance of data privacy and security. In addition to small business roundtable or industry-specific events, the Attorney General and Task Force members have spoken to trade groups and bar associations, and participated in numerous panel discussions and presentations regarding data security and privacy.

## **Data Breaches**

Effective October 1, 2012, Connecticut law requires notification to the Attorney General of security breaches. Since that date, the office has received approximately 285 data breaches logged in – or, approximately 35 per month. The majority have been received via a devoted email address (ag.breach@ct.gov), with the remaining received in by regular mail or package service. In total, approximately 279,000 Connecticut residents are reported to have been affected by these breaches with varying categories of personal information implicated. Most of the reported breaches that specified a number of affected residents impacted fewer than 100 individuals, with approximately 60 breaches impacting 100 or more residents.

## **Google**

After it became known that Google's Street View vehicles collected data being transmitted over unsecured business and personal wireless networks as their cars were driving by, Connecticut led a multistate investigation of the practice. Google acknowledged the data may have included addresses of requested Web pages, partial or complete email communications, and any other private information being transmitted to or from the network. Connecticut led the eight-state executive committee that worked for two years to investigate the matter and negotiate a settlement with Google, which took effect in March 2013. Attorneys general for 38 states and the District of Columbia signed the agreement to resolve consumer protection and privacy claims. The settlement totaled \$7 million, with Connecticut, as the lead state, receiving the largest single share of \$520,823.

## **Facebook**

In early 2013, our office worked cooperatively with Facebook to improve its response to – including by more quickly identifying and removing – false, intimidating or harassing pages and postings relating to the tragic shootings at Sandy Hook Elementary School, including pages

used unlawfully to solicit donations in the names of the Newtown victims. Around the same time, our office also assisted the Bronx County District Attorney's Office and facilitated communications between it and Facebook on a matter ultimately leading to the indictment of a Bronx, New York woman who allegedly solicited and obtained donations by falsely claiming she was related to a young victim of the Newtown tragedy.

## **PUBLIC SAFETY DEPARTMENT**

During the 2012-13 fiscal year, this department represented the Department of Correction, the Department of Emergency Services and Public Protection, including the Division of State Police, the Division of Emergency Management and Homeland Security, the Division of Fire, Emergency and Building Services, the Military Department, the State Marshal's Commission and the Department of Consumer Protection Liquor Control Division. We also provide legal services and representation to a number of associated boards, commissions and agencies, including the University of Connecticut Correctional Managed Care program, 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, the Police Officer Standards and Training Council, and the Office of Victim Services. We continue to provide representation for the State Fire Marshal and State Building Inspector, offices that are now part of the Department of Construction Services, including review of all regulations and changes to the state Building and Fire Codes. We also serve as the Attorney General's representative on the DNA Oversight Committee and provide advice to that committee.

Within the last year, the department has also represented the University of Connecticut, John Dempsey Hospital, the Department of Consumer Protection, the Department of Mental Health and Addiction Services, the Department of Social Services, the Department of Environmental Protection the Department of Children and Families and several state colleges and universities in a variety of litigation matters.

### **Department Of Correction**

The Department of Correction (DOC) is the department's largest client agency. With over 6,500 employees and more than 25,000 offenders under supervision in prisons and in community settings, the DOC requires the attention of nearly all of the attorneys in the department. Much of this work is done in defense of the state in lawsuits brought by and on behalf of prisoners and/or their estates. Department attorneys continue to defend a large number of lawsuits challenging conditions of confinement in state correctional facilities and the administration of community programs. Pending corrections cases in the U.S. District Court for Connecticut alone continue to represent more than 10% of the entire federal court docket in this state. These lawsuits collectively seek millions of dollars in money damages and seek to challenge and restrict the statutory authority and discretion of the DOC. The department's efforts in defense of these cases save the State of Connecticut millions of dollars in damages

claims, and preserve the state's authority to safely and securely manage an extremely difficult prison population free of costly and onerous court. In addition, this department has assisted in the recoument 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 come into custody with a myriad of complex medical and mental health needs. Examples of such cases include: management of inmates who engage in acts of self-harm, including suicide; adequacy of care to inmates in community and halfway house settings; management of sex offender treatment programs; side effects of psychotropic medications; management of the medical conditions of aging inmates; and involuntary medication of seriously mentally ill offenders. The department continues 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 strategies for improving medical care, thereby reducing the risk of 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 department attorneys continue to defend inmate challenges to prison conditions and the application of the "good time" statutes to multiple sentences. The implementation of a "Risk Reduction Earned Credit" program, designed to further reduce the inmate population, has resulted in a significant increase in habeas litigation challenging the grant, denial and taking away of prison credits. During the past year department staff continued to be involved in arranging the trial of a class action brought by death row inmates challenging the constitutionality of their sentences.

During the last year, the department successfully resolved a class action lawsuit brought by immigrants held in correctional facilities on detainers issued by the Immigration and Customs Enforcement Agency. Monitoring of the settlement and implementation of recent legislation involving the detention of undocumented individuals will continue in the next fiscal year. In addition to the department's litigation commitments, staff continue to advise the Commissioner of Correction on myriad legal issues, including: management of a growing inmate population, refinement of the Risk Reduction Earned Credit program, 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. Department attorneys also provide instruction at the DOC training academy on legal issues arising in corrections.

### **Board Of Pardons And Paroles**

The department continues to defend a number of cases involving the Board of Pardons and Paroles (BOPP). These cases involve challenges to the Board's authority relative to the granting, rescission and revocation of paroles and the setting of particular parole release conditions. In addition, staff have been involved in the issue of disclosure of the identities of

persons who have been granted pardons, and additional litigation in the next fiscal year is likely. The department continues to provide the Board with training on legal issues involving its hearing procedures and developing legal trends, particularly with respect to management of sex offenders.

### **Department Of Emergency Services And Public Protection (DESPP)**

The department defends nearly all the lawsuits brought against the Connecticut State Police seeking money damages, except those lawsuits involving cruiser accidents (which are covered by the state's fleet insurance policy) and employment matters (which are handled by the office's Employment Rights Department). The caseload of police litigation continues to grow in both number and complexity, and includes 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, department attorneys successfully litigated a number of cases in federal court where State Police personnel were accused of false arrest, excessive force and the like, and received favorable decisions in many of those cases. The department also continues to defend constitutional challenges to Connecticut's sex offender registration laws and is defending a constitutional challenge to the processing of handgun permits. In addition to such litigation efforts, staff 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.

The department continues to represent DESPP and its successor agencies in administrative appeals involving the State Building Code and Fire Safety Code, and to review regulations implementing the various building and fire codes. Department attorneys 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, the department continues 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 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, the department provided legal advice and representation to the Board of Firearms Permit Examiners on a number of issues. The department handled several appeals to the Superior Court from the Board's decisions, including a mandamus action seeking to compel towns to issue permits in accordance with the orders of the Board. The department also continues to respond to 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, department attorneys handled a number of administrative appeals involving permits and licenses that are within the purview of the Liquor Control Division. In addition, staff provided the Division with advice on legal issues concerning enforcement of the liquor law.

## **State Marshal Commission**

The department continued to provide legal advice to the State Marshal Commission on several matters during the past year, particularly with respect to the duties of state marshals and the removal of state marshals. Department staff have assisted the Commission in responding to complaints regarding state marshals, developing protocols and appropriate training for marshals who have authority to serve criminal process, and developing guidelines for serving process on behalf of pro se litigants.

## **Division Of Criminal Justice & Division Of Public Defender Services**

The department has defended numerous cases involving the Division of Criminal Justice and the Division of Public Defender Services. These cases often raise constitutional questions and issues of governmental immunity, and relate to the core duties of prosecutors throughout the criminal justice process. In addition, department staff 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, sex offender registration and DNA cases. The department has advised and represented the Office of the Chief Public Defender in several Freedom of Information matters.

## **Military Department**

The department continues to work closely with the Military Department on a variety of issues, including: a recent effort to revive litigation arising from construction projects in and around Camp Hartell and claims from one of the ceremonial military units against the Military Department. During the past year department staff reviewed contracts involving military construction projects worth millions of dollars.

## **Prosecution Of Home Improvement Contractors**

An AAG assigned to this department oversees the Attorney General's program for prosecution of fraudulent home improvement contractors. Under this program, several of the office's AAGs are appointed as special assistant state's attorneys in order to prosecute new home construction contractors and home improvement contractors for a multitude of crimes including failure to obtain proper licensing and refusing to refund deposits. The program's AAGs are involved in reviewing and approving warrants leading to the arrest of individuals who violate the acts governing home improvement and new home construction contractors. During the past fiscal year, the office criminally prosecuted 59 unregistered home improvement contractors

resulting in nearly \$238,839 in court-ordered restitution to consumers. In two matters, contractors were sentenced to periods of incarceration.

### **Miscellaneous Litigation Matters**

The department staff continue to work on a diverse litigation portfolio, including: the wrongful death and personal injury claims arising from a courthouse shooting in Middletown; claims by the Town of Cheshire challenging DOC's increased usage of the town's sewer treatment plant; litigation arising from the suicide of a SCSU student; a wrongful death claim against the state arising from the death of a child in custody of a foster parent employed by DCF; and claims of exonerated offenders seeking compensation for their lengthy incarceration as provided by statute. In addition, attorneys in the department are representing the State in other civil rights litigation against DCF employees arising from child protection activities and a wrongful death claim against DSS involving an allegation that the agency failed to provide adequate services to an individual who had been discharged from DOC custody.

### **SPECIAL LITIGATION & CHARITIES DEPARTMENT**

The Special Litigation and Charities Department represents the Governor, Lieutenant Governor, the General Assembly, the Judicial Branch, 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 Office of Governmental Accountability, the State Properties Review Board, the Judicial Review Council, the Judicial Selection Commission, the Statewide Grievance Committee, the Probate Court Administrator, the Board of Accountancy, the Office of Protection and Advocacy and the Office of the Victims Advocate. 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: the ongoing defense of recently enacted gun control legislation against several lawsuits seeking to enjoin the State's efforts to protect public safety through reasonable restrictions on ownership of assault weapons and high-capacity ammunition magazines; a federal constitutional challenge to provisions of Connecticut franchise law pertaining to payments made by auto manufacturers to auto dealers for warranty repairs; successful federal court appeal of claims by a federally recognized Indian tribe that vendors doing business with tribal entities should be exempt from local property taxes; the resolution of several election matters including a court-ordered recount in a legislative election; a successful appeal securing the reversal a lower court decision that the State's claims for faulty construction of the University of Connecticut law library were time barred; a successful appeal before the state supreme court of a multi-million dollar verdict against the State in favor of a computer supply vendor; ongoing litigation seeking to compel the State to maintain minimum staffing levels for the state police; successful defense of challenges to changes to the State's bottle deposit law and claims of unconstitutional takings; ongoing litigation involving a constitutional challenge to the rule of professional conduct prohibiting non-lawyer investment in law firms; ongoing defense of the Governor's authority to issue executive orders with regard to the election

of a majority representative for family child care providers and personal care attendants; and several appellate cases involving complex sovereign immunity issues. In addition, a considerable portion of the Department's resources is committed to defending the State's interests in a growing body of pro se litigation against judges and other state officials.

In the area of charitable trusts and gifts, the Department was active in investigations or court actions in more than a hundred different matters to ensure that charitable gifts are used for the purposes for which they were given. The charities unit has spent considerable time and effort on charitable fundraising and fund management issues related to the Newtown-Sandy Hook tragedy, including offering guidance to fundraisers, and developing procedures for tracking and providing transparency of such funds. The Department is engaged in several pending merger and non-profit hospital conversions to ensure ongoing protection of charitable assets. Department attorneys were involved in several matters with municipalities and private groups to protect parks, open space, school properties and museums that were donated for those charitable purposes. In addition, the Department has been actively involved in a multistate effort to develop a single portal website for public charity registration.

The attorneys in the Special Litigation Department provide ongoing advice to the Governor's office, the legislature, constitutional officers, commissioners and others on a wide variety of constitutional and other important legal questions, including guidance and advice to the Commissioner of Consumer Protection in the development of regulations for the palliative use of marijuana; advice legal issues related to the state budget; and assistance on possible first amendment, commerce clause and other constitutional implications of proposed legislation. The Department also provides advice and guidance to agencies and other departments on Freedom of Information Act matters.

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 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, as well as issues relating to gaming generally.

The Department also plays a leading role in the preparation of appeals and opinions in the Office. The Department often participation as amicus curiae in litigation involving other states, the federal government and private parties in which important state interests are implicated.

## **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 state educational facilities, such as the vocational high schools and state colleges, or involve children in the care of the Department of Children and Families ("DCF"). The remainder of cases involve many agencies and reflects the varied activities and services in which the State is involved - from providing direct treatment to those with mental illness or mental retardation, to maintaining recreational parks and swimming areas, being a large landowner and controlling many buildings and other premises, obtaining

custody of abused/neglected children, operating many types of programs and services and holding arrestees in police custody. 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.

The department has aggressively pursued indemnification and hold harmless provisions in contracts between the state agencies and contractors providing services. Where state contractors and/or their insurers have not quickly come forward to defend and indemnify the State in these actions, department staff have sought and obtained compensation for the office's attorneys' time and expenses. In several cases the department has 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, some notable legal decisions include:

- In the *Claim of Charla Nash*, the Claims Commissioner dismissed the claim of a woman injured by her friend's pet chimpanzee on the basis that regulatory functions of the Department of Energy and Environmental Protection allowing it to issue a permit and/or seize certain wild animals did not create a private duty to the claimant. This doctrine, known as "the public duty doctrine," performs a very valuable function in ensuring that the State is not open to limitless liability when it chooses to regulate areas for the protection of the public and prevents a drain on public funds for injuries caused by private entities.
- A Superior Court also ruled in favor of the State on the basis of the public duty doctrine in *Cianfaglione v. Key Human Services, et al.* The plaintiff was a neighbor of a private group home for developmentally disabled people who claimed that DDS failed to properly license and monitor the home. The judge ruled that regulatory functions of state agencies cannot be used to create a private duty to the plaintiff.
- In *Bryan Brouillard v. State*, the Superior Court dismissed a claim brought by a person formerly subject to review by the Psychiatric Security Review Board on the basis that the legislature's grant of permission to sue was an unconstitutional exclusive public emolument which did not serve a public purpose. The plaintiff had initially filed two claims at the Office of the Claims Commissioner that had been dismissed as being untimely filed. The legislature subsequently passed a resolution allowing the plaintiff to file an action in court. It was this resolution which was held to be unconstitutional.
- After a three day trial on the issue of liability, the court ruled in the State's favor in the related cases *Burgess v. State* and *Piotrowski v. State*. The two plaintiffs fell off of a cliff at night at Sunset Rock State Park. The court held that the Department of Energy and Environmental Protection, which maintains the park, was protected by recreational use immunity and that it did not act in a willful or malicious manner so as to take it out of the protection of the Recreational Use Statute. The court also held that the plaintiffs were trespassing and that their reckless actions made them more than 50% liable for the injuries.

- In *Savage v. Andoh*, the department successfully defended a department chair at Southern Connecticut State University against a professor's allegations of a pattern of harassment and defamation.
- In *Burke v. Prue*, department staff successfully defended a state employee sued by a co-worker for alleged assault and infliction of emotional distress on her. After a nine day trial, a state court jury rejected those claims, returning a verdict in favor of the defendant.
- In *Winslow v. Lemma*, the department successfully defended an appeal to the Second Circuit Court of Appeals in a First Amendment retaliation case in which the district court had granted summary judgment in favor of a state university official. The district court had held that the plaintiff had not provided sufficient evidence to support an allegation that the decision to dismiss a student from a teacher certification program was based on an improper motive.

The Department has successfully defended the majority of the many slip and fall actions filed. In addition, the Department regularly advises agencies on issues relating to physical or policy changes designed to increase safety or ameliorate unsafe conditions or practices. This advice contributes to reduced risk of state liability, thereby resulting in substantial – albeit difficult to quantify – savings of state taxpayer funded resources.

## **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 Construction Services("DCS")<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")<sup>2</sup>, Department of Energy and Environmental Protection (“DEEP”) for real property matters, and the 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.

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<sup>1</sup> The Legislature in its last session has consolidated several of the agencies represented by the Transportation Department. Department of Public Works merged into DAS, including its construction responsibilities, now titled Department of Construction Services. Department Of Information Technology was also merged into DAS and is now called the Bureau of Enterprise Systems and Technology (“BEST”). The Historic Commission is now part of DECD. The Transportation Department will continue its representation of these new entities as well as its current client agencies.

<sup>2</sup> The Legislature in its most recent session created a new Housing Department, removing from DECD all housing and housing-related matters.

## **Contracting matters**

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, DCS, DAS and other state agencies, such as the General Assembly's Joint Committee on Legislative Management ("JCLM") and the State Contracting Standards Board. The Department also provides counsel on and drafting of many of the state's significant transactional matters. In conjunction with agency staff, the department has been assisting with the development of various master contracts for use in all areas of contracting at the DOT, DAS and DCS with the goal of streamlining the State's contracting process.

This past year, the department reviewed 591 contracts for substance and form and provided substantive advice in connection with the negotiation of a number of significant State transactions, including:

- a) Purchasing commercial property for State office space in Hartford area.
- b) Drafting energy savings performance contract and process for DEEP to realize energy efficiencies in State and municipal facilities.
- c) Contracting for establishment of an electronic health records database.
- d) Procuring IT consulting services contract with multiple vendors.
- e) Negotiating agreements with several utilities needed to secure rebates to State.
- f) Contracting to acquire DNA test kits for use in criminal investigations.

Other legal assistance involving contracts is provided in resolving public contracting bid protests, interpreting and drafting contract language, and addressing problems that arise during the course of large construction and statewide procurement projects.

## **Litigation Matters and Construction Claims**

During the past fiscal year, department staff have been involved in the prosecution and defense of several major lawsuits and appeals, including suits seeking damages for construction defects at the University of Connecticut School of Law library in Hartford and the York Women's Prison in Niantic. The department has also in this fiscal year handled litigation and claims involving important state construction projects, including projects at the New Haven Rail yard, Bradley International Airport and Henry Abbott Technical High School.

During the past fiscal year the department defended DOT in claims with a total claimed value of \$42,907,786 and saved the state over \$12 million in those claims. Eight claims were informally resolved.

We resolved three eminent domain appeals filed against DOT by trial and 28 by stipulated judgment. There are currently 43 eminent domain appeals in litigation, including 13 new appeals filed during the last fiscal year. The litigation outcomes of the concluded eminent domain appeals resulted in savings to the State of \$1,469,750.

In addition to prosecuting and defending lawsuits in court, the department continues to regularly assist agency personnel with early analysis and settlement negotiations in an attempt to avoid litigation, with the goal of quickly resolving disputes to avoid or minimize the potential adverse financial impact of such claims on the public treasury.

### **Housing Matters**

The Transportation Department is also responsible for handling housing matters for the DECD, as well as the newly-formed Department of Housing. These matters include disputes with residents of state-owned residential properties and foreclosures involving real property in which the state has an interest in the property. A total of forty-nine (49) foreclosure matters were filed this fiscal year naming the state as a defendant.

### **Historic Commission:**

The Department represents the Historic Commission matters and is occasionally called upon to seek the court's protection of historic properties which face destruction by owners or developers. See C.G.C. §22a-19a. Of particular note this past year is CT Comm. on Culture & Tourism v. Norwalk Inn. In that case, the parties stipulated to a judgment of a permanent injunction, prohibiting the destruction of the historic Grumman-St. John House located at 93 East Avenue, Norwalk. This case represents the second injunction issued by a Connecticut court to prevent the destruction of an historic structure. Significantly, the owners have since completed a \$1.5 M restoration of the Grumman St. John House, maintaining this historical structure for productive use into the future.

### **Miscellaneous DOT Issues**

The department's representation of DOT also includes provision of legal services and advice relating: eminent domain; rights-of-way; surplus property divestitures; service plazas and other properties and facilities along I-95 and the Merritt Parkway; aviation and ports; public transit and rails; the State Traffic Commission; and environmental matters involving permitting, salt shed and maintenance facilities located throughout the State. We also counseled the DOT regarding the divestiture of 102 surplus properties representing \$2,700,037 in sales of state property.

### **Department of Motor Vehicles**

The department handles a variety of matters for DMC, including appeals of administrative suspensions or revocations of driving licenses of impaired drivers. The department also provides legal support to DMV in connection with dealers and repairer complaints, registration matters, the emissions program and safety inspections.

### **DEEP Property Matters**

The Transportation Department also represents DEEP in real property matters. Of particular significance was the department's work with DEEP in connection with the

procurement of conservation easements, resulting in the dedication of thousands of acres to public recreation. These conservation easements equal the value of the grants that DEEP provided for land purchases by other entities, specifically municipalities and land trusts. The easements and purchase prices of all land that DEEP bought directly for the State total \$5,287,344 and cover a total of 1,732.958 acres of land. The department also regularly provides legal advice to DEEP on complex property law issues.

During the past year, we provided DAS and DCS with legal counsel and review of 20 leases, 23 agreements, 207 contracts and 5 deeds.

In addition, the department is deeply involved in various environmental matters associated with public works projects, roads and bridges projects, and other activities of its client agencies. Staff continue to provide legal assistance and guidance to those 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, the department assists these agencies in complying 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 from both Connecticut and federal regulatory agencies, including the Connecticut Department of Environmental Protection and the United States Army Corps of Engineers. Of note, the Transportation Department successfully represented DOT in its application for a wetlands permit from DEEP for the CT FastTrack Project ("Busway Project"). The department also defends client agencies in court when environmental challenges are brought.

## **WORKERS' COMPENSATION & LABOR RELATIONS DEPARTMENT**

The Workers' Compensation and Labor Relations Department represents the state Treasurer as the Custodian of the Second Injury Fund, the Workers' Compensation Commission and the Department of Administrative Services in its capacity as the administrator of the state employees' workers' compensation program, as well as DAS Personnel, the Labor Department, the Office of Labor Relations, the Office of the Claims Commissioner, the State Employees Retirement Commission, the Teachers' Retirement Board, and others. The department's workers' compensation staff represents the Second Injury Fund in cases involving potential liability of the Fund for workers' compensation benefits and the State of Connecticut in contested workers' compensation claims filed by state employees, while the department's labor attorneys represent the Department of Labor in unemployment compensation appeals to the Superior Court. The department also represents the Department of Labor's Wage Enforcement Division, collecting unpaid wages due Connecticut employees. The department's workers' compensation attorneys and paralegals also spend significant time on third party tort-feasor cases that result in the recovery of money for both the State and the Fund, as well as handling a large number of appeals to the Compensation Review Board and on to the Appellate and Supreme Courts.

During the past fiscal year, department attorneys and paralegals appeared for the Fund and the State in over 4,000 hearings before workers' compensation commissioners, and in more than 260 new unemployment compensation cases in the Superior Court. The department's labor relations attorneys also reviewed 13 arbitration awards that reinstated employees dismissed from state service for fraudulently obtaining benefits from the Disaster Supplemental Nutrition Assistance Program administered by the Department of Social Services. Eight motions were filed by the department asking the Superior Court to vacate the awards on public policy grounds.

Department attorneys and paralegals were responsible for recouping \$36,776 for the Second Injury Fund and \$472,658 for the State through third party interventions. This money represents a reimbursement to the state or Fund of money which has been paid out in workers' compensation benefits for injuries caused by third parties. Finally, department attorneys were responsible for the collection of \$327,900.48 in unpaid wages for Connecticut employees in the private sector. This recovery goes directly to the Connecticut citizens whose employers failed to pay them in accordance with Connecticut's labor laws.

During the past fiscal year, department attorneys assisted the Attorney General in his participation on the State Employees Misclassification Taskforce. This ad hoc group, comprised of the Chief State's Attorney, the Commissioners of Labor, Revenue Services, Consumer Protection, Workers' Compensation Commission and the Attorney General, is charged by the General Assembly with promoting, coordinating and enforcing workers' rights by penalizing employers who intentionally designate workers as independent contractors when, in fact, they are employees.

The Workers' Compensation & Labor Relations Department was involved in a number of significant cases during the last fiscal year, including the following:

In *Velez v. Commissioner of Labor*, 306 Conn. 475 (September 25, 2012), the Connecticut Supreme Court held that the definition of employer in the Connecticut Family and Medical Leave Act, Conn. Gen. Stat. Sec. 31-51kk, *et seq.*, requiring fifty or more employees, was limited to employees physically located in Connecticut and specifically concluded that the statute did not require employers to count employees located outside the state.

In *AFSCME, Council 4, Local 2663 v. Department of Children & Families*, 142 Conn. App. 1 (2013), the Appellate Court upheld an arbitrator's award, which concluded that DCF had just cause to terminate a social worker after an investigation concluded that she had committed abuse and/or neglect of a seven month old child who died of shaken baby syndrome while left in her care. This outcome preserved the strong nexus between the employee's off duty conduct and her job duties as a social worker charged with ensuring the welfare of children.

In *Manukyan v. Administrator, Unemployment Compensation Act*, 139 Conn. App. 26 (October 30, 2012), the Connecticut Appellate Court reversed the Superior Court's decision and upheld the Board of Review's conclusion that an individual who primarily devotes his or her time to self-employment activities is not "available for work" and thus ineligible for unemployment compensation benefits. The Court's opinion in this case not only endorsed the Board's interpretation of the statutory provisions related to self-employment but also affirmed

the Board's power to make the factual findings that provided the basis for its conclusion that the plaintiff was ineligible for unemployment benefits.

The Appellate Court case of *Labor & Logistics Management v. Administrator, Unemployment Compensation Act*, A.C. 35117, was resolved by a settlement that requires an employer to pay a substantial portion of past due unemployment taxes for its truck drivers and an agreement that it will pay such taxes in full for all such drivers in the future.

### **AFFIRMATIVE ACTION**

The Office of the Attorney General is firmly committed to equal employment opportunity. Nearly **53.4%** of the full-time attorney workforce consisted of women and minorities. Women and minorities comprised **58.2%** of entry level attorneys and **48.8%** of middle and high level attorneys.

### **VOLUNTEER PROGRAMS**

Volunteers provide valuable assistance to the Office of the Attorney General, through its Student Internship and Volunteer Advocate programs.

The Student Internship program is open to law and graduate students, paralegal students, undergraduates and highly motivated high school students, who are placed within the OAG based on department needs and the interests, education and skill levels of the students. Placements are made three times a year: for the fall and spring semesters and summer. The Office also worked with the West Hartford Public Schools to place three special needs high school students.

Most students volunteer their time, but they may be able to earn work-study stipends or course credit through their schools or universities. The Office also hosts legal fellows, who earn stipends from their law schools or other programs while they work to acquire lawyering skills and practice experience.

Internships provide students with a valuable inside look at the state's largest public-interest law firm. Assignments vary by individual and department, but all provide opportunities for critical thinking and to observe the legal process. Law students gain practical experience in legal research, drafting documents and trial preparation. In-house seminars presented by OAG attorneys provide interns with opportunities to learn more about the work of the Office and different practice areas.

The Volunteer Advocate Program welcomes adults with good communication skills who have an interest in helping others. Volunteer advocates work with the Office's Consumer Assistance Unit to help consumers resolve problems with purchases of goods and services, such as obtaining refunds or bill credits to which they are entitled.

During fiscal 2012-13, 173 students took part in the internship program, along with six volunteer consumer advocates. Both programs provided valuable assistance to the Office and its work on behalf of the state.