

# Office of the Attorney General

## *At a Glance*

**GEORGE JEPSEN, Attorney General**

**PERRY ZINN-ROWTHORN, 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 - 299***

***Recurring General Fund operating expenses - \$30,095,659***

***Revenues Generated - \$ 636,334,250***

## **Mission**

*The critical missions of this office are to represent and vigorously advocate for the interests of the state and its citizens by performing, with diligence and integrity, the duties and directives assigned to the Attorney General by law, to ensure that state government acts within the letter and spirit of the law, to protect public resources for present and future generations, to safeguard the rights of all consumers, including our most vulnerable citizens, and to preserve and enhance the quality of life of all citizens of the State of Connecticut.*

## **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 2016-2017 fiscal year, \$ **636,334,250** was generated by the Attorney General's Office, as described below:

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

Tobacco Settlement Fund Collections	\$ 123,360,385
Child Support Collections	35,531,789
Tax Collection (Dept. of Banking cases)	291,931
Penalties for Environmental Violations	24,420
Consumer Protection Civil Penalties	717,046
Department of Social Services Collections/Civil	7,925,869
Global Civil Settlements/Anti-Trust	2,010,029
CUTPA Civil Penalties	1,198,032
York Prison Construction Settlement	10,500,000
Global Civil Settlements/Consumer Protection	17,747,822
RBS Securities Settlement	120,000,000
Workers Compensation Recoveries	756,030
Miscellaneous Settlements & Collections	40,955,873
<b>Total Revenue Generated for General Fund</b>	<b>\$ 361,019,226</b>

### **Revenue Generated for Special Funds**

Second Injury Fund	19,204
SEP's	150,000
Investment Commitment	21,000,000
<b>Total Revenue Generated for Special Funds</b>	<b>\$ 21,169,204</b>

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

Child Support Collected/Enforced for Families	244,691,833
Consumer Assistance Unit Mediations	1,088,980
Consumer Restitution from Home Improvement Contractors	100,156
Court ordered Restitution to DCP Guaranty Fund (HIC)	12,200
Consumer Protection Restitution from Litigation	3,730,000
Healthcare Advocacy Benefit to Consumers	519,138
Benefits for Conn. Utility Customers (multi-year settlement)	4,000,000
Security Deposit Cases – Recovery to Consumers	3,513

**Total Revenue Generated for Consumers and Businesses      \$ 254,145,820**

**TOTAL REVENUE ACHIEVED      \$ 636,334,250**

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

The Office of the Attorney General is divided into 15 departments, each of which represents agencies that provide particular categories of service to state residents. The Attorney General also participates in the legislative process, represents the State in various lawsuits and claims, maintains an active communication with citizens, promotes the protection of personal data and information, and investigates violations of privacy and breaches of personal information. The overall work completed by this office in fiscal year 2015-16 is summarized as follows:

Trial Court Cases	
Instituted	18,665
Completed	16,606
Pending	22,116
Appeals	
Instituted	165
Completed	146
Pending	259
Administrative proceedings	
Instituted	1,402
Completed	1,715
Pending	9,037

Antitrust/Fraud Investigations	
Instituted	78
Completed	102
Pending	133
Consumer Investigations	
Instituted	9
Completed	18
Pending	45
Privacy Investigations	
Instituted	697
Completed	576
Pending	424
Miscellaneous Investigations	
Instituted	19
Completed	17
Pending	37
Legal Documents Examined	6,705
Public Inquiries Completed	2,958
Opinions Issued	75

## **DEPARTMENTS**

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

The Antitrust and Government Program Fraud Department has two distinct and critical missions: (a) ensure that companies and individuals that do business in Connecticut compete fairly and vigorously and; (b) protect Connecticut's health and human service programs from fraud, waste and abusive schemes. In that vein the department has the primary responsibility to enforce two important state laws: the Connecticut Antitrust Act and the Connecticut state False Claims Act.

The Department's Antitrust Section 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 support the Attorney General's overall responsibility to maintain open and competitive markets in Connecticut. Utilizing these statutes, the section investigates and prosecutes antitrust and other competition-related actions on behalf of Connecticut's consumers, businesses and governmental entities. In addition, the section provides advice and counsel to the Attorney

| General on proposed legislation and various issues regarding competition policy.

The primary focus of the Department's Health Care Fraud Section is to detect, investigate and prosecute health care provider fraud that results in financial loss to the State of Connecticut's health and human services' programs, including the Medicaid program and the State Employee and Retiree Health Plan. The section 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 certain Connecticut health and human service agencies illegal, is the department's chief tool to fight health care fraud.

The department also investigates complaints made 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**

The Antitrust Section's mandate is focused on identifying and deterring anticompetitive conduct and obtaining restitution and injunctive relief for injured "consumers", including state agencies and government programs, small businesses and individuals. During the past year the section focused significant resources to ensuring competition in Connecticut's healthcare markets, with a primary emphasis on generic pharmaceuticals and health insurance. The benefits to consumers from competitive and efficient health care markets usually take the form of transparent and competitive pricing, sufficient consumer choice, access to providers, and high quality care.

In July 2014, the state of Connecticut initiated an investigation into the reasons behind suspicious price increases of certain generic pharmaceuticals. In the fall of 2016, after accumulating significant evidence of potential violations, the Attorney General organized a bipartisan working group of state Attorneys General to assist him with the investigation, which had broadened considerably since the inception of the investigation. In December 2016 Connecticut and nineteen other states, represented by their Attorneys General, filed a federal antitrust lawsuit in Connecticut against six generic pharmaceutical manufacturers alleging the companies engaged in a well-coordinated and long-running conspiracy to fix prices and allocate markets for two generic pharmaceuticals: doxycycline hyclate delayed release and glyburide. In addition to the lawsuit, the antitrust investigation is still ongoing with respect to a number of additional generic pharmaceutical manufacturers.

In August 2016, the Attorney General announced that he joined 48 other states and the District of Columbia in a \$125 million settlement with the biopharmaceutical manufacturer Cephalon and its affiliated companies, including Teva Pharmaceutical Industries, Teva Pharmaceuticals USA and Barr Laboratories. The settlement resolved allegations of anticompetitive conduct by Cephalon concerning its drug, Provigil. The conduct at issue is referred to as "pay for delay", where a branded drug company seeks to unlawfully maintain its exclusive rights to market a pharmaceutical by paying the would-be generic competitor to delay its entry into the market and thus keep prices at artificially high levels. Under the settlement Connecticut recovered a total of \$1,686,650, of which \$962,740 was returned to the state's

Medicaid program, \$150,000 was allocated to support the state Department of Consumer Protection's Prescription Drug Monitoring Fund and the remainder was deposited in the state's General Fund. In addition, Connecticut consumers received approximately \$525,942 in restitution payments through the settlement.

Merger enforcement in healthcare markets has continued to be a high priority in the Attorney General's antitrust enforcement efforts and this year was no exception. In 2015 the Attorney General worked with the U. S. Department of Justice to investigate Anthem's proposed acquisition of Cigna. The merger had the potential to reduce the number of national health insurers from four to three and would lead to higher prices or less services for consumers.

In July 2016 the Attorney General joined with 11 other Attorneys General and the United States Department of Justice in filing a lawsuit that sought to block the Anthem-Cigna merger. The investigation established that the merger would substantially lessen competition in all five of Connecticut's metropolitan markets for the provision of healthcare insurance services and raise the cost of health insurance and lower the quality of care. After a trial in late 2016, the federal court in the District of Columbia found for the government and enjoined the merger. Anthem appealed the verdict but lost at the Appellate court. The parties eventually called off the merger. Connecticut played a leading role in the Attorneys General's investigation and litigation of the matter.

In early 2012 the Attorney General, along with the Office of the New York Attorney General, opened an investigation into alleged anticompetitive conduct engaged in by a number of financial institutions into the suspected rigging of the London Interbank Offered Rate – more commonly referred to as LIBOR. The LIBOR investigation ultimately grew to include over forty Attorneys General. In August 2016, forty-four states, including Connecticut, entered into a \$100 million multistate settlement agreement with Barclays Bank PLC and Barclays Capital Inc. for the companies' role in illegally manipulating LIBOR in the lead up to and early days of the 2008 financial crisis. Connecticut agencies and certain nonprofit entities with affected LIBOR-linked swaps and other investment contracts with Barclays received close to \$3 million in in restitution from the established settlement fund.

### **Government Program Fraud**

The Government Program Fraud Section achieved significant success this year by settling a string of investigations and obtaining several large monetary recoveries for the Medicaid program. In addition, the Section continued to participate in numerous multi-state health care fraud settlements with pharmaceutical companies related to problematic marketing practices that affected the Medicaid program. In all, the Attorney General entered into thirteen (13) settlements with pharmaceutical companies yielding a total recovery (federal and state) of approximately \$1.8 million for the Medicaid program.

In addition to the multi-state settlements, the section filed one state False Claims Act Lawsuit and entered into several Connecticut-specific false claims act settlements this past fiscal year that provided restitution to the Medicaid program. These actions include the following:

- In July of 2016 the Attorney General reached a false claims act settlement with a psychiatrist and her husband who agreed to pay a total of \$400,000 to the Medicaid

program to resolve claims that they devised a scheme to defraud the program for the provision of behavioral health services. Additionally, the psychiatrist agreed to a three year exclusion from participating as a provider in the Connecticut Medicaid program. The settlement followed a false claims act lawsuit originally filed by the Attorney General in June 2015.

- In August 2016, following a seven-day court hearing, a Hartford Superior Court judge ordered a Winsted dentist and his practice to pay \$717,046 in restitution and civil penalties after finding that his conduct violated the Connecticut Unfair Trade Practices Act. The ruling found that the dentist devised and implemented an illegal scheme over several years to improperly bill the Connecticut Medicaid program for pediatric dental cleanings and fluoride treatments.
- In August 2016, the office, along with the Connecticut U.S. Attorney's Office, entered into a \$1.3 million false claims act settlement with a pediatric dental provider with offices in Milford and West Haven to resolve allegations that he submitted false claims to Connecticut's Medicaid program for x-ray services that did not comply with state law.
- On January 12, 2017, the Attorney General and the Connecticut U.S. Attorney's Office reached a \$5.25 million settlement with a Stratford-based home health agency and its owners to resolve allegations that the company submitted false claims to Connecticut's Medicaid program. The settlement followed a three-year investigation led by the Office of the Connecticut Attorney General.
- In February 2017, the Attorney General filed a false claims act lawsuit against a Fairfield County physician and her husband, a University of Connecticut employee, for allegedly engaging in a scheme to prescribe medically unnecessary compounded medications to state employees enrolled in the state employee pharmacy benefit plan. The plan is funded by state employees and taxpayers. The lawsuit stems from an investigation launched by the Office of the Connecticut Attorney General in 2014 after a request from State Comptroller Kevin Lembo, who administers the State of Connecticut Employee and Retiree Prescription Drug Plan. The investigation is still ongoing in regards to other potential schemes.
- On June 6, 2017 the Attorney General reached a settlement with a Stamford-based dentist, his wife and their related companies to resolve a false claims act lawsuit filed in June 2014 alleging that the dentist engaged in a long-running scheme to submit false claims for dental services provided to residents of long-term care facilities in the state. Under the terms of the settlement agreement the defendants agreed to forfeit \$755,956.30 in payments suspended by the DSS. In addition, the dentist will be excluded from participation in the state's Medicaid program for 10 years and agreed not to renew his expired dental license.

### **Whistleblower Matters**

The Whistleblower Section, 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 is dedicated to protecting the children of the State of Connecticut from abuse and neglect. Department attorneys represent the Connecticut Department of Children and Families (DCF) in all thirteen juvenile courts statewide, as well as in federal court. In addition, this department defends DCF in all administrative appeals to the Superior Court, and represents the State before the Office of the Claims Commissioner.

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. DCF seeks to enhance the safety of children's family environments and improve parenting skills.

DCF's interventions in serious cases of abuse or neglect are always subject to judicial scrutiny. The vast majority of civil child protection cases before the Superior Court of 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 youth found guilty of committing acts of delinquency and committed to the custody of 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 are heard by the criminal session of the Superior Court of Juvenile Matters and the department represents DCF in these cases.

During this past fiscal year, the department also successfully represented DCF in a large number of appeals to the state Appellate and Supreme Courts, including several positive outcomes in cases concerning abused and neglected children and youth.

In *In re Jayce O.*, 323 Conn. 696 (2016); the Connecticut Supreme Court rejected a challenge to the constitutional validity of the ground for termination of parental rights that allows the commencement of proceedings to terminate parental rights if the parent's rights were terminated in the past as to another child. The Court concluded that the appellant had sufficient procedural safeguards to protect her fundamental rights through numerous services offered to facilitate reunification.

In *In re Natalie S.*, 325 Conn. 833 (2017); the Supreme Court held that once the Superior Court for Juvenile Matter vests the guardianship of a neglected child in her father, DCF has no duty to make efforts to reunite the child with the mother and the State fulfilled its duty to reunify the child with a parent.

In *In re Unique R.*, 170 Conn. App. 833 (2017); the Appellate Court rejected a claim that the statutory requirement to allege and prove in termination cases that DCF made reasonable efforts to reunify the child, includes the conduct of a thorough investigation of relatives as a placement resource. The Court held that the inquiry must focus on the parent's willingness and ability to adjust his/her conduct in conjunction with services offered, to overcome the hurdles that led to the initiation of child protection proceeding initially.

## **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 Office of Child Support Services within the Department of Social Services (DSS-OCSS), to establish child support orders. Additionally, the department provides legal services to enforce 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 to collect, on a case-by-case basis, 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.

In fiscal year 2016-2017, department attorneys recovered in excess of 8 million dollars in cash payments on debts owed to the state. The department's activities on child support orders continue to create exceptionally large and increased caseloads. During the fiscal year, more than 11,500 cases were opened in all child-support categories. These cases are handled in both, the J.D. Superior Court- Family Division, the Family Support Magistrate Division, Probate Court, 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-OCSS, and SES, successfully enforced/collected approximately \$297 million in child support for families, and of that amount, more than \$35 million was paid to the state's General Fund under the state's assignment of rights.

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 work establishing paternity and support orders for children, department 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 the legal rights of children 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.

Outside the child-support area, department attorneys engaged in nearly 1,500 collection-related litigation matters and managed a large diverse case load, in numerous venues including state superior court, probate court, federal district court, and federal bankruptcy court proceedings in Connecticut and throughout the country. The department concluded several litigation collection matters involving the recovery of debts owed to numerous state agencies, boards and commissions.

The department's collections efforts resulted in a recovery in excess of \$100,000 in approximately twenty-one cases, for a total Department litigation collection recovery of

approximately \$7.5 million for the state General Fund. The largest of these matters involved recoveries of \$615,000 and \$441,000 respectively, arising out of claims on behalf of DAS and DSS seeking reimbursement for public assistance from Trusts in Probate Court, \$421,000 recovery from the enforcement of a DAS public assistance claim on a decedent estate in Probate Court, and \$208,000 recovery arising out of a claim filed on behalf of DAS in federal bankruptcy court.

The Department also recovered nearly \$105,000 on behalf of the Department of Correction (DOC) for cost of incarceration debt statutorily owed by inmates. The department also successfully collected nearly \$1 million in penalties/fines from foreign (unregistered) businesses, working in cooperation with the Secretary of the State's Commercial Recording Division.

Of the numerous bankruptcy claims that were successfully prosecuted in federal bankruptcy courts, the Department collected in excess of \$ 1.6 million this fiscal year. Additionally, within the Department's bankruptcy case load, staff are litigating questions of law involving matters of first impression. First, the Department is defending a sudden increase in Chapter 7 bankruptcy trustees seeking to recover or "clawback" tuition payments made by parents of students who subsequently filed bankruptcy on the theory that parents are not legally liable for college tuition and therefore did not receive reasonably equivalent value for the payments. This is an area of first impression in Connecticut that may impact state colleges and universities, and a number of actions have been both threatened and initiated against the state various state universities. The Department also provided bankruptcy expertise/assistance to the Attorney General in his efforts to seek successful passage by the state legislature of a new state law that will help prevent Chapter 7 Trustees from seeking similar clawbacks of tuition payments from the state universities in some Chapter 7 matters going forward.

Department staff also successfully defended a significant matter in federal district court involving an 11<sup>th</sup> Amendment claim bar defense on behalf of DOC which strengthened the DOC's right to continue to pursue cost of incarceration debt collections in such matters in the future.

All told, Department staff instituted and litigated nearly 13,000 child support and civil collections cases this past year in state and federal courts throughout the state, and successfully recovered in excess of \$ 8.5 million dollars for the state's General Fund. Department staff worked tirelessly in coordination with our Title IV-D child support partners to collect approximately \$ 297 million in child support payments- of which the vast majority was collected for needy families.

### **CONSUMER PROTECTION DEPARTMENT**

The Consumer Protection Department's focus is on protecting consumers from unfair and deceptive business practices through its representation of the Connecticut Department of Consumer Protection. The department directs and participates in consumer education, complaint mediation, investigations, appearances before state and federal agencies, and litigation under various state and federal laws, primarily 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 through voluntary mediation efforts. During the past fiscal year, CAU staff responded to 2,186 written consumer inquiries and many telephone inquiries. More than \$1,088,980.59 was refunded or credited to Connecticut consumers due to the mediation efforts of CAU.

## **Consumer Education**

Educating consumers is part of the department's core mission. During this past fiscal year, outreach efforts by staff included consumer information fairs in Ansonia, Danielson, Norwich, Westbrook, and Winsted, as well as consumer fraud presentations at senior centers in Bloomfield and New Britain. Staff also serve on the Coordinating Committee of the Department of Aging's Elder Justice Coalition and provide public education and constituent assistance support. On a monthly basis, a staff member participated on a Spanish language radio show to help educate the Latino community on consumer fraud issues.

## **Multistate Activities**

On December 8, 2016, Connecticut joined in a \$19.5 million multi-state settlement with drug-maker Bristol-Myers Squibb to resolve allegations that the company improperly marketed the atypical antipsychotic drug, Abilify. The states alleged that Bristol-Myers Squibb promoted Abilify for use in elderly patients with symptoms consistent with dementia and Alzheimer's disease despite lack of FDA approval for such use and without establishing the drug's safety for such patients. The states also alleged that Bristol-Myers Squibb marketed Abilify for children suffering from schizophrenia before it was approved by the FDA for children, and that the company minimized and misrepresented the risks associated with taking Abilify. Additionally, Bristol-Myers Squibb faces several restrictions on its marketing of Abilify through the settlement, and the company is prohibited from making false or misleading claims about Abilify, about its safety or efficacy in comparison to other drugs and about the implications of clinical studies related to Abilify. Connecticut's share of the settlement funds was \$310,133.00.

On October 27, 2016, Connecticut joined in a \$42.2 million multi-state settlement with Hyundai Motor Company, Hyundai Motor America, Kia Motors Corporation and Kia Motors America. Our office served as the co-lead of the multistate investigation into deceptive mileage claims by these companies. The investigation examined the companies' business practices relating to inflated fuel economy estimates for several model years 2011-2013 vehicles, at a time when gasoline prices in the United States were unusually high. Connecticut's portion of the settlement came to nearly \$1.4 million, which was deposited into the General Fund.

On April 12, 2017, operators of an alleged tech support scam agreed to settle charges that they bilked consumers out of tens of millions of dollars by pretending to represent Microsoft, Apple, and other major tech companies. Scammers trick consumers into believing their computers are infected with viruses and malware, and then charge them hundreds of dollars for unnecessary repairs. Connecticut participated in "Operation Tech Trap", an international crackdown by the Federal Trade Commission in partnership with other federal and state agencies targeting tech support scams. The settlement was part of a case filed by Connecticut, Pennsylvania and the FTC in the U.S. District Court for the Eastern District of Pennsylvania against the defendants Bruce Bartolotta, Click4Support, LLC, Spanning Source LLC, iSource USA LLC, George Saab, Chetan Patel, Niraj Patel, Innovazion Inc., Innovazion Research Private Limited, Abhishek Gagneja and Rishi Gagneja. Pursuant to the settlement, 10 of the 11 defendants agreed to pay a total of more than \$554,000 and to forfeit \$1.3 million held by the court appointed receiver. The Court entered a default judgment of more than \$27 million against the remaining defendant, iSource USA LLC. All Defendants were banned from marketing technical support services.

On May 24, 2017, Connecticut joined in a \$33 million multi-state settlement with Johnson & Johnson to resolve allegations that the company engaged in unfair or deceptive trade practices in the marketing of certain over-the-counter (OTC) medications. McNeil-PPC, Inc. was a wholly owned subsidiary of Johnson & Johnson that manufactured and distributed OTC medications. The states alleged that McNeil deceptively marketed and sold certain OTC medications between 2009 and 2011 as manufactured in accordance with current Good Manufacturing Practices (cGMP) when in fact they were not manufactured in accordance with cGMP. Connecticut's share of the settlement funds was \$531,816.00.

### **Other Unfair and Deceptive Trade Practice Cases**

On April 28, 2017, the Attorney General filed an amicus brief in Soto, et al. v. Bushmaster Firearms, et al. The brief supported the plaintiffs' argument that Connecticut's Unfair Trade Practices Act, Chapter 735A of the General Statutes, does not require the plaintiffs to have a commercial relationship with the defendants in order to have standing to bring suit against the defendants under General Statutes § 42-110g. The plaintiffs, families of the victims of the massacre that took place at Sandy Hook Elementary School in December, 2012, had sued the defendants, the manufacturers, distributors and sellers of the semiautomatic assault weapon, the M16, used in the massacre. The case is up on appeal from the trial court's decision dismissing the plaintiffs' claims.

On April 21, 2017, the department negotiated an Assurance of Voluntary Compliance with A and N Auto Service, LLC, a Hartford towing company, relating to claims that the company had unlawfully charged consumers labor fees in connection with nonconsensual tows. In order to resolve the matter, A and N agreed to allocate \$5,475 to refund consumers who had been charged a labor fee since 2013, and agreed to pay \$2,000 to reimburse the State for investigative costs. The

company also agreed to comply with section 14-63-36c of the Regulations of Connecticut State Agencies, which provides that towing companies shall not charge consumers any labor fee in connection with a nonconsensual towing or transporting service unless such charges are separately itemized.

### **Utility Cases**

The United Illuminating Company ("UI") is an electric distribution company that serves roughly 330,000 residential, commercial and industrial customers in the greater New Haven and Bridgeport areas of Connecticut. On July 1, 2016, UI filed an application with the Public Utilities Regulatory Authority ("PURA") to increase its rates by \$98 million over a three year period. Specifically, UI sought to increase its rates by \$66 million in 2017, an additional \$20 million in 2018 and an additional \$12 million in 2019. The Attorney General's Office opposed UI's proposed rate increases, arguing that rates must be no more than just and reasonable and that the Company's proposal would result in rates that were greater than necessary to provide adequate and reliable service. In its final decision, PURA approved a total rate increase of \$67 million (\$43 million in 2017, \$11 million in 2018 and \$3 million in 2019), a reduction of \$31 million (32%) from the Company's initial request.

### **EMPLOYMENT RIGHTS DEPARTMENT**

The Employment Rights Department devotes a substantial amount of its resources to defending state agencies and state officials in employment related litigation and administrative complaints. Its staff continues to work to effectively defend employment claims against the state and state officials – thereby limiting or avoiding the state's exposure to financial liability and other costs associated with litigation -- while ensuring protection of employees' legitimate legal rights.

The department also regularly provides legal advice and counsel, both orally and in writing, to state agencies on a variety of employment matters. The department staff also participates in training agency staff in employment laws including the Connecticut Fair Employment Practices Act, the Civil Rights Act of 1964, and the Americans with Disabilities Act.

Department staff is currently defending the State in approximately 85 employment cases in the state and federal courts, including 5 Second Circuit Court appeals and 3 Connecticut Appellate Court appeals. In addition to these cases, the department is defending approximately 92 complaints before the Connecticut Commission on Human Rights and Opportunities ("CHRO"), Office of Public Hearings, the Equal Employment Opportunity Commission ("EEOC") and Freedom of Information Commission ("FOIC"). The department is also defending 14 claims in the Office of the Claims Commissioner.

During the past year, the department successfully defended state agencies in numerous cases in the state and federal courts. Significantly, the department was able to obtain judgment in favor of the state and its officials on 9 summary judgment motions that were filed in federal court

and 6 summary judgment motions filed in state court, eliminating the need for trials in those cases. These victories are important as they eliminate not only the need to expend resources at trial, but also eliminate the uncertainty and exposure the state has to large jury awards. In 2 additional cases in federal court, summary judgment was granted in part and denied in part. The department also filed approximately 14 additional summary judgment motions, 10 in federal court and 4 in state court during fiscal year 2016-2017, motions which are pending rulings by the court. The department currently has 15 summary judgment motions pending, awaiting rulings from the court.

During fiscal year 2016 – 2017, the department defended the state in three jury trials in federal court. Two went to verdict, one case was withdrawn by the plaintiff shortly after opening statements. The department also tried 3 matters in state court and 2 at the Office of Public Hearings. These cases have not been decided.

The Employment Rights Department also successfully defended four federal district court decisions, in appeals before the federal Second Circuit Court of Appeals. In addition, department attorneys successfully defended a judgment rendered in favor of the state after a multiple day bench trial in an appeal before the Connecticut Appellate Court. Two other appeals filed with the Connecticut Appellate Court were withdrawn by plaintiffs.

The department also filed briefs in 3 appeals in the Connecticut Appellate Court and 3 appeals before the United States Court of Appeals. One other matter will be briefed shortly and another matter was just filed by plaintiff in the United States Court of Appeals.

The department was also successful in avoiding the state's exposure to financial liability by entering into favorable settlement agreements, and by filing motions in several cases, which resulted in dismissals by the Court and CHRO.

### **ENERGY DEPARTMENT**

The Energy Department provides legal services to the Public Utilities Regulatory Authority (PURA) and the Connecticut Siting Council (Council). The Department defends the state's interests in energy and utility issues in regional and national organizations, before the Federal Energy Regulatory Commission (FERC), before state and federal courts and before state agencies. The Department also represents PURA in telecommunications issues before the Federal Communications Commission (FCC) and the federal courts.

During the past fiscal year, the Energy Department recovered more than \$20.1 million for the benefit of Connecticut electric ratepayers through cases before FERC and the federal courts. Connecticut ratepayers have paid for the decommissioning costs of retired nuclear power plants. After losing federal litigation regarding its failure to obtain long-term storage of nuclear waste, (The *Connecticut Yankee* cases), the federal government has been ordered to reimburse the decommissioning costs to Connecticut ratepayers. This year, Phase III of the litigation, resulted in

\$15.3 million in refunds for the benefit of Connecticut ratepayers. The Energy Department also obtained a \$4.8 million reduction for electric ratepayers from what was sought through FERC by NU NSTAR as recovery for their merger costs.

The Energy Department also obtained a number of significant legal victories during the fiscal year. The State prevailed in an appeal before the D.C. Circuit Court of Appeals regarding the methodology for calculating transmission companies' returns on equity for payment through the formula rate tariffs. In *Emera Maine*, the D.C. Circuit reversed FERC's application of a new formula for calculating returns on equity, holding that FERC had not adequately supported or explained why the new, more expensive, formula should apply. The matter has been remanded back to FERC for further consideration.

In June 2017, the Second Circuit confirmed the states' abilities to pursue renewable energy policies in two significant ways in the case of *Allco Finance Ltd. v. Klee*. First, the *Allco* Court affirmed the states' abilities to direct their utilities to enter into traditional bilateral contracts for electric power. In doing so, the Court firmly rejected claims that states could only direct the procurement of renewable energy resources under the terms and conditions of the Public Utility Regulatory Policies Act ("PURPA"). Second, the *Allco* Court affirmed the states' ability to use a regional system of renewable energy certificate (REC) verification, expressly holding that Connecticut's requirement that the RECs reflect energy deliverable into the New England region did not violate the federal dormant Commerce Clause. Thus, the Second Circuit affirmed Connecticut's actions on the merits, paving the way for future procurements, and maintaining the state's successful REC program. Allco has filed a timely motion for reconsideration *en banc*.

The Energy Department also prevailed before the Connecticut Supreme Court in *Town of Middlebury v. Connecticut Siting Council*, where the Council approved an upgrade to an already-approved electric generation facility. The Supreme Court affirmed a Superior Court decision upholding the Council approval of the power plant modifications. The Court, in a case of first impression, interpreted the provision of Conn. Gen. Stat. § 16-50p(c)(1) requiring the Council to consider neighborhood concerns. The Court upheld how the Council addressed neighborhood concerns, thus setting the legal standard for future cases.

Finally, the Energy Department successfully defended PURA in a judicial challenge to Connecticut's Comprehensive Energy Strategy in *Connecticut Energy Marketers Association v. DEEP & PURA* before the Connecticut Supreme Court. The Supreme Court affirmed the Superior Court's dismissal of an action filed under the Connecticut Environmental Protection Act (CEPA), asking the Court to require an environmental impact evaluation for the state's Comprehensive Energy Strategy. The Supreme Court affirmed the Superior Court, holding that CEPA and the Connecticut Environmental Policy Act did not require an environmental impact evaluation of private action by natural gas companies approved by DEEP and PURA in accordance with the General Assembly's directions in Public Acts 2013, No. 13-298, § 51.

## **ENVIRONMENT DEPARTMENT**

The Environment Department represents the state Department of Energy and Environmental Protection and the Department of Agriculture in court and administrative proceedings. The department continues to have important success in abating pollution and in enforcing environmental laws. This year the department initiated and participated in a number of cases that sought to protect the environment and the citizens of the State of Connecticut. The department also continued to coordinate with other states on national efforts to keep Connecticut's air clean and help protect its citizens from the impacts of air pollution transported to our state and from climate change.

In the continuing effort to improve Connecticut's air quality, the department participated in a number of legal actions to enforce the Clean Air Act, including actions seeking to reduce the impact in Connecticut from air pollution generated in other states. For example, Connecticut joined with other northeast states in filing a lawsuit to force EPA to take action on our long pending Clean Air Act Section 176A petition to add numerous Midwestern states to the Ozone Transport Region ("OTR"). By adding these states to the OTR, they would be bound by the same standards and controls that already apply in the Northeast, thereby helping reduce the amount of pollution blowing into Connecticut. Because of this lawsuit, EPA agreed to take final action on the petition by October 2017. The department also continued efforts to defend the Clean Power Plan, which includes rules intended to reduce emissions of CO<sub>2</sub> (the main greenhouse gas that causes climate change). In addition, the Department worked with other states to support and defend federal rules intended to promote cleaner air in Connecticut, including rules that establish more stringent controls on vehicle emissions.

This year the department had a number of legal victories in State court on behalf of the Department of Energy and Environmental Protection ("DEEP") that bolstered the State's efforts to enforce and defend environmental laws. In conjunction with the U.S. Department of Justice (DOJ) and its federal Clean Water Act criminal prosecution, the department worked to resolve by Stipulated Judgment a state civil environmental enforcement action against Sheffield Pharmaceuticals, LLC. The federal criminal settlement involves Sheffield's agreement to commit no criminal conduct, comply with all applicable environmental laws and regulations, and pay \$1 million over seven (7) years, most of which will support environmental projects in coastal Connecticut. Of the \$1 million, the Stipulated Judgment directs \$150,000 to DEEP's Statewide Supplemental Environmental Project Account to be used for the enhancement of environmental protection or conservation of natural resources in coastal Connecticut.

The department also represented the State of Connecticut, as an affected state, in General Electric's appeal of a "RCRA" (Resource Conservation and Recovery Act) Corrective Action Permit issued by the United States Environmental Protection Agency in October 2016. This permit requires the cleanup of "PCB" (polychlorinated biphenyl) contamination in the Housatonic River that originated from GE's Pittsfield, Massachusetts facility. Our goal in participating in this proceeding is to ensure the clean-up of PCBs to at least the standard proposed by EPA, and prevent

any lowering of those standards, in order to protect the Housatonic River, as well as ecology, the health and safety of Connecticut residents who make use of the river.

The department also worked with the DEEP to negotiate Consent Orders and resolve outstanding administrative proceedings that are intended to protect the environment and remediate pollution.

The department's representation of the DEEP in bankruptcy proceedings continues to thwart polluters' efforts to avoid environmental liability by filing bankruptcy. The department attorneys handled numerous bankruptcy filings this year, representing DEEP's interests in bankruptcy courts. The department's work in bankruptcy court seeks to ensure that contaminated properties are not abandoned and left to taxpayers to clean up.

The department continues to represent and assist the Department of Agriculture ("DoAg") in animal cruelty cases, working with DoAg to protect neglected and cruelly treated animals. This past year the department also continued to defend challenges to DoAg decisions intended to protect the public from vicious animals. The department successfully defended an appeal in *Miller v. Department of Agriculture and the Town of Hamden* in which the Connecticut Appellate Court upheld the issuance of two disposal orders issued pursuant to Conn. Gen. Stat. §22-358 against two Rottweiler dogs that viciously attacked and bit a female victim in Hamden, Connecticut. The department also provided legal support to DoAg in preserving valuable Connecticut farmland by acquiring the development rights through the Farmland Preservation Program, thereby protecting the land from commercial or residential development. The department continues to provide legal support to DoAg's Aquaculture Division and assists DoAg in leasing hundreds of acres for oyster farming and other commercial aquaculture activities, thereby generating millions of dollars for the State's economy.

In addition, the Environment Department continues to provide a full range of legal services to both DEEP and DoAg, including defense of Claims Commissioner matters, contract review, opinions, legal advice and counsel.

## **FINANCE DEPARTMENT**

The Finance Department provides legal services to state agencies that regulate insurance, banking, and securities, as well as to the Department of Economic and Community Development (DECD), the Department of Revenue Services (DRS), and the Office of Policy and Management (OPM). The department handles litigation in federal and state courts for these agencies, including regulatory enforcement actions, administrative appeals, and actions requiring the defense of state laws, and in proceedings before the Freedom of Information Commission and the Claims Commissioner. The department also provides advice to the agencies it represents on a wide variety of legal and regulatory issues that arise in their daily operations, including the review of agency contracts and regulations for legal sufficiency.

In addition to the work it does directly on behalf of state agencies, the Finance Department focuses on consumer financial services and investor protection by conducting investigations, leading multistate enforcement committees, negotiating settlements, commencing litigation, and handling consumer complaints and other inquiries. Areas of focus include residential mortgage backed securities, for-profit colleges and universities, mortgage loan origination and servicing, student loans, and debt collection.

The Finance Department is also responsible for enforcement of the Master Settlement Agreement ("MSA") between the states, including Connecticut, and various participating tobacco product manufactures, as well as related tobacco issues. Department attorneys work to ensure that Connecticut receives the monetary payments it is owed under the MSA and that tobacco manufacturers, distributors and retailers comply with the public health provisions of the MSA and the requirements of state law. In addition, department attorneys represent DRS with respect to litigation arising from that agency's statutory responsibilities related to the MSA. During the past year, Connecticut collected over \$123 million pursuant to the MSA.

Department attorneys played a leading role in negotiating an \$863 million national settlement with Moody's Corporation, Moody's Investor Services, Inc. and Moody's Analytics, Inc. (Moody's) to resolve allegations that Moody's engaged in unfair, misleading, and deceptive business practices when rating structured finance securities, including mortgage-backed securities. This settlement, which was split among Connecticut, 20 other states, the District of Columbia, and the U.S. Department of Justice, was the culmination of a seven-year effort led by Connecticut to hold Moody's responsible for its role in the 2008 financial crisis. Connecticut received approximately \$31.5 million under the settlement.

Working as part of President Obama's Residential Mortgage Backed Security ("RMBS") Task Force, department attorneys, investigating RBS Securities, Inc., prepared a case alleging state securities fraud claims in the underwriting of billions of dollars of sub-prime and alt-A RMBS. Department attorneys, moving forward with Connecticut's case independent of the U.S. Department of Justice and other states, negotiated a settlement in coordination with the Department of Banking (DOB) in resolution of these and other claims that resulted in a \$120 million payment to the state.

Department attorneys also represented DRS in numerous matters over the past year, including 692 tax warrant proceedings seeking to collect overdue and delinquent state taxes. Among those was a federal interpleader action filed by the insurer of one tax debtor, pursuant to which full payment of a nearly \$300,000 tax debt was secured from insurance claim proceeds.

In another DRS matter, department attorneys successfully defended the constitutionality of a regulation allowing Connecticut to tax over \$53 million in income realized by a nonresident taxpayer through the exercise of nonqualified stock options that were granted to the taxpayer as compensation for services performed in Connecticut. After a positive decision in the Superior

Court, the Connecticut Supreme Court upheld the constitutionality of the regulation, and the U.S. Supreme Court denied the taxpayer's petition for certiorari.

In addition, department attorneys successfully defended DRS in an appeal in an estate tax case involving the inclusion of Qualified Terminable Interest Property (QTIP) in the decedent's Connecticut gross estate. The decedent's husband created the QTIP trust, and when he died as a resident of Florida, the decedent received a life interest in the QTIP. The Connecticut Supreme Court affirmed the judgment of the trial court that the QTIP assets were includable in the decedent's Connecticut gross estate.

The Finance Department also represented the Department of Insurance (DOI) in matters involving various complex issues, including a receivership proceeding involving the state's Affordable Care Act health insurance co-op, HealthyCT, ensuring orderly resolution. In addition, department attorneys successfully defended DOI in an administrative appeal involving a health insurer's challenge to the agency's rate review process.

Department attorneys also assisted the efforts of DECD in support of businesses operating in or relocating to Connecticut by providing frequent assistance and advice regarding grant, loan, and economic stimulus programs administered by the agency.

## **HEALTH AND 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 Connecticut State Colleges and Universities comprised of the four Connecticut State Universities and the thirteen Connecticut Community Colleges, the Office of Higher Education, the State Library, 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, 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, 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 a 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 SNAP, WIC, and HUSKY; nursing home and hospital rates; health care facility certificates of need; confidentiality of medical and education records; human subjects research, scientific misconduct, civil commitment law, medical/psychiatric treatment at state facilities, property acquisitions, state contract law, disability accommodations for students; 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.

The department worked with the Department of Public Health (DPH) to further its role as a health regulatory and enforcement agency. These activities included, among others, defending a number of challenges to the regulatory authority of DPH and decisions of the licensing boards for health care professionals. In *Moynihan v. Office of Health Care Access*, the Superior Court dismissed an injunction action seeking to permit the opening of an ambulatory surgery center with meeting regulatory permit requirements. The department also provided assistance in securing numerous consent orders between DPH and health care facilities securing regulatory compliance including with nursing homes, a clinical laboratory, an ambulance company and the three hospitals and nursing home acquired by the Prospect Medical Holdings. The department was successful in securing court ordered compliance by a public water supply company for repeated failures to perform water quality tests and other regulatory violations.

On behalf of the Office of Early Childhood, the department successfully pursued the revocation of a day care center's license as well as the closure of two centers for regulatory violations. The department handled a substantial amount of litigation for the Department of Social Services (DSS). In addition to resolving court cases involving issues of Medicaid eligibility, the department also assisted DSS with the impact of the bankruptcy filings of two nursing home chains and the Hebrew Home and Hospital. The department also was involved in bringing on behalf of DSS three nursing home receivership cases to stabilize the financially failing homes. The department continues its work in representing DSS in two class action lawsuits on the processing of Medicaid and food stamp applications. In addition, the department represents DSS in 146 hospital appeals challenging inpatient and outpatient Medicaid rates, supplemental Medicaid payments and hospital taxes. In *Medical Diagnostic Laboratories, LLC v. Department of Social Services*, an out of state provider attempt to force DSS to enroll it as a Connecticut Medicaid Provider was dismissed. In *Companion and Homemakers, Inc. v. DSS*, the department secured a dismissal of a lawsuit brought by a group of homemaker-companion agencies challenging a new electronic payment system and secured an agreement with the lead plaintiff that it would comply with its obligation to use the system.

The department provided counsel to DSS and the Department of Mental Health and Addiction Services in securing compliance in the settlement of a case addressing community based

services for psychiatrically disabled nursing home residents. The department also was successful in defending a lawsuit challenging the treatment provided to a patient at the Whiting Forensic Institute.

The department addressed a variety of issues for the State Board of Education and the Department of Education (SDE) including advice on teacher certification proceedings. The department successfully defended an injunction action challenging the SDE determination of magnet school tuition to be paid by other school districts. The department was also able to secure court decisions rejecting challenges to decisions of the Department of Developmental Disabilities (DDS) placing persons on its abuse and neglect registry. The department continues to represent DDS in ongoing settlement compliance in the Southbury Training School litigation.

The department provided legal services on a broad array of issues to the Connecticut State Colleges and Universities. Some of these issues included contract questions, real property matters, requests for access to student information, discrimination claims, Title IX claims, due process rights and issues arising under the Freedom of Information Act. In *Haughwout v. Tordenti et al*, the department secured a dismissal of a suit challenging the expulsion of a student on the basis of threatening conduct.

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 involving litigation and administrative proceedings. The department attorneys expend substantial time on legal review, negotiation and approval of highly complex transactions and contracts.

The University of Connecticut Health Center continues to present broad and challenging legal issues that arise from the operation of an academic health center. Significant legal advice was given in the areas of civil rights, human subjects' research, scientific misconduct, medical treatment, HIPAA compliance, the hospital's medical staff, medical and dental student and residency programs, emergency medical services, contracts 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.

## **PRIVACY AND DATA SECURITY DEPARTMENT**

The Privacy and Data Security Department handles matters related to the protection of Connecticut residents' personal information and data. The Department enforces state laws governing notification of data breaches, safeguarding of personal information, and protection of

social security numbers and other sensitive information. The Department is also responsible for enforcement of federal laws under which the Attorney General has enforcement authority, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Children's Online Privacy Protection Act (COPPA), and the Fair Credit Reporting Act (FCRA).

In addition, this Department provides the Attorney General with advice and counsel on proposed legislation and other matters regarding privacy and data security, and it engages in extensive outreach to citizens and businesses on matters relating to data protection and privacy.

### **Education**

Chief among the initial goals of the Privacy and Data Security Department and its predecessor- the Privacy Task Force- was 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 quite 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 Department is gaining an extremely unique, real-world perspective relative to data privacy and security. The Attorney General and the Privacy and Data Security Department staff 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 Privacy and Data Security Department staff members have spoken to trade groups and bar associations, as well as 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. In fiscal year 2016-2017, the office logged in approximately 697 data breaches– or, approximately 58 per month. The Privacy and Data Security Department reviews all breach notifications submitted to the office, and conducts all necessary follow-up with the reporting company, including for further information about the incident itself, copies of consumer notice letters, and/ or to request extended protection services where warranted under the circumstances.

### **Target**

Connecticut co-led an \$18.5 million settlement with the Target Corporation to resolve the states' investigation into the retail company's 2013 data breach. The settlement represents the largest multistate data breach settlement achieved to date.

The States' investigation found that, on or about November 12, 2013, cyber attackers accessed Target's gateway server through credentials stolen from a third-party vendor. The credentials were then used to exploit weaknesses in Target's system, which allowed the attackers to

access a customer service database and capture data, including consumer names, telephone numbers, email addresses and mailing addresses, payment card numbers, expiration dates, CVV1 codes, and encrypted debit PINs. The breach affected more than 41 million customer payment card accounts and contact information for more than 60 million customers.

Under the agreement, Target was required to develop, implement and maintain a comprehensive information security program and to employ an executive or officer responsible for executing the plan. The company was further required to: hire an independent, qualified third-party to conduct a comprehensive security assessment; maintain and support software on its network; maintain appropriate encryption policies, particularly as pertains to cardholder and personal information data; segment its cardholder data environment; and undertake steps to control access to its network, including implementing password rotation policies and two-factor authentication for certain accounts. Connecticut's share of the settlement was \$1,012,936, which was deposited in the General Fund.

### **Adobe**

Connecticut led a \$1 million multistate settlement with Adobe Systems, Inc. to resolve an investigation into the 2013 breach of certain Adobe servers, including servers containing the personal information of approximately 552,000 residents of the participating states.

In September 2013, Adobe received an alert that the hard drive for one of its application servers was nearing capacity. Adobe found the attacker had compromised a public-facing Web server and used it to access other servers on Adobe's network. The attacker ultimately stole encrypted payment card numbers and expiration dates, names, addresses, telephone numbers, e-mail addresses, and usernames as well as other data.

During the underlying investigation, the States alleged that Adobe did not use reasonable security measures to protect its systems from an attack or have proper measures in place to immediately detect an attack. The States also asserted consumer protection claims against the company in connection with misrepresentations made to consumers concerning Adobe's efforts to protect personal information.

Under the agreement, Adobe was required to implement new policies and practices to prevent future similar breaches. In particular, among other things, Adobe was required to: regularly review and update its security policies; provide the States with an independent security audit and a correction plan for any deficiencies identified; properly and effectively segregate payment card information from public-facing servers; employ tokenization; perform ongoing risk assessments of its security practices; perform ongoing penetration testing; and enhance employee training.

Connecticut's share of the settlement was \$135,095.71. Of that, \$25,000 was paid to the Department of Consumer Protection's consumer privacy protection guaranty and enforcement account, and the remaining amount was placed in the General Fund.

## **PUBLIC SAFETY DEPARTMENT**

This past year the Public Safety 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 ("DHS") and the law enforcement functions of the former Division of Fire, Emergency and Building Services; the Military Department; the State Marshal's Commission and the Department of Consumer Protection Liquor Control Division. The Department also provides legal services and representation to a number of associated boards, commissions and agencies, including the Division of Criminal Justice, the Division of Public Defender Services, the Office of Adult Probation, the Governor's Office (Interstate Extradition), the Statewide Emergency 9-1-1 Commission, the State Codes and Standards Committee, the Crane Operator's Examining Board, the Board of Firearms Permit Examiners, the Commission on Fire Prevention and Control, the Board of Pardons and Paroles and the Police Officer Standards and Training Council. Within the last year, attorneys in the department have also represented the Judicial Branch and the Department of Children and Families in various litigation matters.

### **The Department of Correction**

The Department of Correction ("DOC") is the Department's largest client agency. With over 6,000 employees, 15,000 inmates and another 5,000 offenders supervised in community placements, nearly all of the attorneys in the Department devote at least some of their time to representation of the DOC. Much of this work is done in defense of the agency and its employees in lawsuits brought by and on behalf of prisoners. The Department continues to defend a large number of lawsuits in state and federal court challenging conditions of confinement in state correctional facilities and the administration of community programs. The pending corrections cases in the U.S. Federal District Court alone continue to represent more than 10% of the overall federal court docket. These lawsuits collectively seek millions of dollars in money damages and seek to challenge and restrict the statutory authority and discretion of the Department of Correction. 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 oversight as has been the experience in other states. Significant areas of litigation in the last year include: continued defense of the DOC's pornography ban; defense of various challenges to limitations on access to courts by inmates; defense of policy restrictions on the ability of restrictive housing inmates to move out of cell without restraints; defending lawsuits brought by former death row prisoners challenging their conditions of confinement, and handling ongoing challenges by certain violent groups that seek to be recognized as religious organizations.

Because the inmate population continues to present exceptionally challenging medical and mental health issues, Department attorneys increasingly find themselves defending complex medical cases involving issues such as the alleged misdiagnosis of cancer and other serious chronic illnesses; viral infections allegedly resulting in blindness; loss of organ function; and methadone

overdose while in custody. In addition, the Department continues to defend a number of medical malpractice and civil rights cases arising from suicides and other acts of self-harm committed by persons in custody. Recent pharmacological advances in infectious disease treatment have led to a corresponding increase in lawsuits seeking Hepatitis medications. Additionally, at least once a month we handle emergency proceedings to allow for extraordinary measures to reverse the physical effects of inmates actively engaged in hunger strikes. This 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, develop policies addressing inmate patient care and identify systemic deficiencies in an effort to improve medical care and reduce the state's exposure to substantial damages awards.

A great number of inmate claims addressing conditions of confinement continue to be brought as habeas corpus cases. Thus, the Department continues to defend inmate challenges to prison conditions and the application of the "good time" statutes to multiple sentences. The DOC utilizes a "Risk Reduction Earned Credit" program to reduce the inmate population by awarding sentence credits for participation in designated inmate programming. Inmates who feel they have not received a sentence decrease frequently litigate these claims by means of habeas corpus cases. In each of the last several legislative sessions, statutory changes have altered the calculation of the award of discretionary sentence credits. This has resulted in a significant increase in habeas cases. The legislature has also implemented numerous changes to the parole and parole eligibility. There has been a resulting rapid increase in the number of parole eligibility cases defended by the attorneys in this Department. We also continue to see an increase in medical claims in this practice area.

In addition to our litigation commitments, Department staff continues to advise the Commissioner of Correction on the legal aspects of a myriad of policy initiatives and legal issues, including: providing necessary services to inmates discharging from custody, management of high profile inmates, maintaining appropriate services for mentally ill offenders, developing and maintaining appropriate administrative directives, and implementing safety and security procedures that protect staff and the public while also accommodating evolving constitutional standards as articulated in developing case law.

During the last year, the Department represented DOC in discussions with the Office of Protection and Advocacy and the Yale and Columbia Law School clinics in an effort to avoid litigation challenging conditions of confinement at the state's maximum security facility. The Department also continues to monitor compliance with agreements resolving litigation regarding the conditions of confinement in the women's prison, treatment of HIV infected inmates and release of offenders sought by immigration authorities for possible deportation. As the DOC shifts its focus to increasing community placements and reducing the number of inmates assigned to restrictive housing settings, the Department works closely with the agency to implement policies governing these new initiatives that comport with statutory and constitutional mandates. Department attorneys also provide instruction at the DOC training academy on legal issues arising

in corrections. These issues will continue to challenge the Department as budget constraints take a toll on the correctional system.

### **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, as well as parole eligibility and changes to the parole statutes. The Public Safety Department continues to provide the Board with advice and training on legal issues involving its hearing procedures and developing legal trends.

### **Department of Emergency Services and Public Protection**

Department attorneys defend all lawsuits involving the State Police, a division of the Department of Emergency Services and Public Protection ("DESPP"), where plaintiffs seek money damages arising from the exercise of police powers. The Department caseload of police litigation continues to grow in both number and complexity. The cases include false arrest and excessive force cases claims, wrongful death claims arising from police shootings, and contract claims arising from the agency's relationships with outside service providers. During the past year, the Department successfully litigated a number of cases in federal court and received favorable decisions in many of those cases. In addition to the department's litigation efforts, Department attorneys meet regularly with State Police command staff and in-house 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. Recent legislative mandates requiring adoption of policies addressing use of Tasers and body-worn cameras by police will continue to require the department to work closely with DESPP command staff in formulating their policies and practices.

The Department continues to represent DESPP and its successor agencies in administrative appeals involving the State Building Code and Fire Safety Code, and in revocation proceedings relating to firefighters, private investigators and certain tradesmen involved in fireworks and demolition. Department attorneys also routinely appear on behalf of DESPP 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.

### **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 has handled several appeals to the Superior Court from the Board's decisions, including efforts to compel towns to issue permits in accordance with the orders of the Board. The Department also continues to field many public inquiries related to the concealed and open carrying of firearms under Connecticut law and the recently enacted firearms legislation as it relates to the licensing of firearms owners and their

purchases of firearms and ammunition. The Department continues to work with the Board to enforce the firearms laws of the State of Connecticut.

### **Liquor Control Division**

During the past year, the Department handled a number of administrative appeals involving permits and licenses that are within the purview of the Liquor Control Division. In addition, department staff provided the Division with advice on legal issues concerning enforcement of the state's liquor laws.

### **State Marshal Commission**

During the past year, the Department continued to provide legal advice to the State Marshal Commission on several matters, particularly with respect to the duties of state marshals and the removal of state marshals. The Department's efforts have included 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 appeared and defended numerous cases involving the Division of Criminal Justice and the Division of Public Defender Services. These cases often raise constitutional questions and governmental immunity, and relate to the core duties of prosecutors and public defenders throughout the criminal justice process. In addition, the Department works closely with the Office of the Chief State's Attorney and several State's Attorneys in areas of overlapping jurisdiction, such as complex habeas corpus matters in state and federal courts. The Department has also seen an increase in Freedom of Information matters involving the Office of the Chief Public Defender and the Division of Criminal Justice and has provided legal advice and representation in this area.

### **Military Department**

The Department continues to work closely with the Military Department on a variety of issues, particularly in claims from one of the ceremonial military units challenging the authority of the Military Department.

### **Prosecution of Home Improvement Contractors**

An Assistant Attorney General in the Public Safety Department oversees the Attorney General's program for prosecution of fraudulent and/or unlicensed home improvement contractors. Under this program, several of the office's AAGs are appointed as special assistant state's attorneys to prosecute new home construction contractors and home improvement contractors for various crimes including failure to obtain proper licensing and refusing to refund deposits. The program's AAGs review and approve warrant applications leading to the arrest of individuals who violate the

laws governing home improvement and new home construction contractors. The AAGs then prosecute the cases to completion in criminal court.

### **Wrongful Incarceration Claims**

The Department continues to represent the State in claims for wrongful incarceration brought in the Claims Commission pursuant to Conn. Gen. Stat. § 54-102uu. Since the legislature created this remedy, more than 30 individuals have filed claims seeking millions of dollars in damages for being wrongfully convicted of, and incarcerated for, crimes they did not commit. This Department reviews each claim to determine whether a claimant is eligible for damages, which requires examination of the underlying criminal case files and consultation with prosecutors. In several of the cases where it appeared the claimants were not eligible for damages, the Department contested the claim in litigation before the Claims Commissioner.

### **Miscellaneous Litigation Matters**

During the past year, the Department continued to work on litigation matters involving other departments within the Office of the Attorney General, including: a wrongful death claim against the state arising from the death of a child in custody of a foster parent employed by the Department of Children and Families, and several claims by the estates of crime victims challenging the release and supervision of offenders in Connecticut and other states.

### **Contracts**

Each year, the Department works closely with its client agencies, including DOC, DESPP, DHS, and the Military Department, to review and approve contracts for the Commissioners' and Major General's signature. Included are memoranda of understanding, grants, and agreements with service providers as well as with local/federal government entities. The contracts are carefully reviewed to ensure compliance with all applicable statutes and regulations. This year the Department reviewed over 130 contracts, requiring authorization of the Commissioners and Major General for expenditures totaling in excess of \$50 million dollars.

The Department reviewed and provided advice to DESPP on contracts and MOU's, including agreements relating to the licensing of telecommunication facilities to effect consolidation of dispatch services around the state, as well as all resident trooper agreements between the department and the more than forty municipalities participating in the resident trooper program. The Department also reviewed and provided advice to the DOC on contracts, including those related to administration of temporary supportive housing, outpatient treatment, and rehabilitative services to offenders on parole. An AAG in the Department advises the agencies in the negotiation of problematic contractual provisions to ensure agency policies and practices are effectuated, as well as educating and training its agency staff in contract law.

## **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 Gaming Division of the Department of Consumer Protection, the Office of Governmental Accountability, the State Contracting Standards Board, the State Properties Review Board, the Judicial Review Council, the Judicial Selection Commission, the Statewide Grievance Committee, the Probate Court Administrator, the Office of Child Advocate, 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 matters, including:

- the successful defense of constitutional challenges to a state law that created a framework for the preliminary efforts of the Mashantucket Pequot and Mohegan Tribes for a possible joint gaming facility outside their tribal lands;
- the ongoing defense in the Second Circuit Court of Appeals of a federal commerce clause challenge to the method under state law for allocating the cost of recycling of electronic device waste on manufacturers;
- several cases involving access of candidates to the ballot in state elections;
- the successful argument in the state Supreme Court for the Attorney General's authority to enforce conservation easements;
- the ongoing defense in the Second Circuit of a class action alleging that the State's response to the 2014 Ebola outbreak was unconstitutional, raising numerous novel questions of law;
- the successful resolution of the federal Department of Justice's potential enforcement action against the State about possible violations of federal law relating to "motor-voter" registration through the Department of Motor Vehicles;
- a lawsuit by the Schaghticoke Tribal Nation alleging that the State breached its duties to the Schaghticoke tribe since the early 1800s;
- ongoing advice to the Governor and legislative leaders regarding complex legal issues under the State-Tribal gaming compacts and federal law raised by the development of a gaming facility jointly owned and operated by the Mohegan and Mashantucket Pequot tribes;

- actions, coordinated with other states, in response to decisions and activities of the Trump administration and Congress that are detrimental to the interests of the State and its residents, including in the areas of immigration, sanctuary jurisdictions, and defunding of Planned Parenthood.

In the area of charitable trusts and gifts, the department was active in investigations or court actions to ensure that charitable gifts are used for the purposes for which they were given. In several matters involving private organizations, department attorneys mediated and successfully resolved, without resort to litigation, complaints about mishandling or misuse of charitable funds. Members of the charities unit regularly offer guidance on best practices for governance of charitable organizations, with the goal of avoiding problems that often afflict such organizations where good governance is lacking. 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, and assistance on possible first amendment, commerce clause and other constitutional implications of proposed legislation. The department also provides advice and guidance to state officials and agencies on Freedom of Information Act matters.

The department represents the interests of the State in matters related to federal tribal recognition and 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 participates as amicus curiae in litigation involving other states, the federal government and private parties in which important state interests are implicated. In addition, a considerable portion of the department's resources is committed to defending the State's interests in a growing body of self-represented litigation against judges and other state officials.

### **TORTS/CIVIL RIGHTS DEPARTMENT**

The Torts/Civil Rights Department defends state agencies and employees in tort and civil rights actions, including high exposure personal injury and wrongful death actions. Many of the department's cases are brought by parties alleging injuries or civil rights violations at state facilities or while receiving services from state agencies. The department's cases reflect the wide and varied activities and programs in which the state is involved: administering technical high schools and colleges; providing care and assistance to persons with mental illness, substance use disorders, and intellectual or developmental disabilities; maintaining recreational parks and swimming areas;

owning buildings and land; protecting abused or neglected children; and providing numerous other services. Claimants often seek large sums of money damages. The department has saved the state and its taxpayers millions of dollars through the years by obtaining favorable judgments and fair settlements in the state and federal courts, as well as at the Office of the Claims Commissioner ("OCC").

Of the 82 cases the department closed this fiscal year, the state prevailed in 44, after department attorneys filed dispositive motions or defended the state in trials or hearings on the merits; and obtained withdrawals in 21. In eight cases, department attorneys were successful in negotiating reasonable and just settlements. Of the remaining 10 cases, one was a claim in which the Claims Commissioner made a modest monetary award, three were claims for which the Claims Commissioner or General Assembly granted permission to sue the state in the Connecticut Superior Court, three were not pursued by the claimant, one was transferred to another department in the AGO, and one appeal was transferred to the Connecticut Supreme Court. The department represented the state or its employees or officials from 23 state agencies in these cases; and successfully argued in most that the claims lacked merit, had jurisdictional defects, or failed to state a legally sufficient cause of action.

During the past fiscal year, the department continued to defend several complex, high-exposure, wrongful death, medical malpractice, constitutional, intentional tort and personal injury cases. Much effort has gone into preparing these cases by engaging in extensive discovery, including conducting complicated electronic forensic investigations, retaining appropriate expert witnesses, and filing motions and briefs. One hundred forty-four of the department's cases are ongoing, most pending in the U.S. District Court, Connecticut Supreme Court, Connecticut Appellate Court, Connecticut Superior Court, and the OCC.

As an outgrowth of defending the many premises liability claims filed, the department advises agencies on issues relating to physical or policy changes designed to increase safety or ameliorate unsafe conditions or practices in the future. This advice contributes to reduced risk of state liability, thereby resulting in substantial savings of state taxpayer funded resources.

When plaintiffs owe money to the state, the department asserts set-offs, after consulting with the Department of Administrative Services, and has been successful in recovering money for the state or reducing settlement figures by the amounts owed.

Where an alleged injury may be an insurable event under an insurance policy that a private party purchased as a term and condition of a contract or lease with a state agency -- or when a state contract requires a private contractor to indemnify the state -- the department seeks insurance coverage to ensure that the state is held harmless and/or reimbursed for expenses. In such cases, the department has been successful in persuading contractors or their insurance carriers to settle and pay claims against the state, thereby saving the state thousands of dollars. When state contractors and/or their insurers have not quickly come forward to defend and indemnify the state, department attorneys have sought and obtained compensation for their time and costs in defending the claims.

Similarly, the department has saved the state considerable expense by obtaining dismissals of claims brought by employees of private companies with state contracts who were injured and were awarded worker's compensation from their employers, based on the argument that the state contributed to such compensation by requiring that the contractors obtain workers compensation insurance and factoring the expense into the overall cost of the contract.

## **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 Administrative Services (“DAS”), Bureau of Enterprise Systems and Technology (“BEST”) part of DAS, Division of Construction Services (“DCS”) part of DAS, Department of Motor Vehicles (“DMV”), Department of Housing (“DOH”), Department of Energy and Environmental Protection (“DEEP”) for real property matters, and the State Historic Preservation Office. 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.

### **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, DMV, Housing and other state agencies, such as the General Assembly’s Joint Committee on Legislative Management (“JCLM”). 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 and amendment of various master contracts for use in all areas of contracting at the DOT, DAS, DCS and DOH with the goal of streamlining the State’s contracting process.

This past year, the department reviewed and worked with DOT in negotiating on a number of contracts related to DOT's rail service, including DOT's new Hartford/Springfield rail line. These included contracts for the operation of the trains for CT Rail Service, agreements and amendments among the State, MetroNorth and Amtrak for service along various passenger rail lines relating to the requirements of the Passenger Rail Investment and Improvement Act of 2008, amendments to the service contract and construction and maintenance agreement between the State and Amtrak and the contracts for the overhaul and repair of State-owned locomotive units.

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

- a) Assisted DOT with the review, negotiation, and approval of a contract for the provision of a cloud-based product to aid in the management of construction projects;
- b) Assisted DOT with the review and approval of various construction contracts;
- c) Assisted DOH with the review, negotiation, and approval of a contract with the Connecticut Children's Medical Center for the provision of a program to reduce residential lead and other health hazards.
- d) Assisted DOH with the review and approval of various loan and grant documentation;
- e) Assisted DAS with the review, negotiation, and approval of a contract for the provision of ballot marking devices for the physically disabled;
- f) Review, revision and approval of variety of IT contracts for DAS in support of the software and hardware needs of multiple State agencies, including public safety, law enforcement, child welfare and health care agencies;
- g) Assisted DEEP with the review, negotiation, and approval of a lease for the operation of the Mohawk Mountain Ski Resort in Cromwell

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**

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. During the past year the department assisted the DMV in negotiating and resolving a significant contract dispute with the vendor who provided DMV with some of its operating systems.

During the past fiscal year, department staff has been involved in the prosecution and defense of several major lawsuits and appeals. The department finalized a settlement in which the State received \$10,500,000 as a result of its suit seeking damages for construction defects at the York Women's Prison in Niantic. The department also handled a 5 day arbitration hearing for a construction claim involving a project in the City of New Haven for new traffic signals. Finally, the department defended the State in a hearing in federal court brought by Tweed-New Haven Airport Authority challenging on federal preemption grounds, a state statute limiting the length of the runway at Tweed Airport. Post-trial briefs have been filed and a decision is pending.

The department argued one case at the Supreme Court and four at the Appellate Court.

The department defended a Construction claim for the Department of Transportation that totaled \$2,329,870 in which the arbitrator awarded \$581,394. This resulted in savings to the State of \$1,748,476.

During the past fiscal year the department defended DOT in claims with a total claimed value of \$2,527,051.27 and which were resolved for \$990,000, a total savings to the State of \$1,537,051.27. The department is representing DOT and DAS in several pending claims against the State.

### **Property Matters**

The department's representation of DOT also includes provision of legal services and advice relating to: eminent domain; rights-of-way; surplus property divestitures; service plazas and other properties and facilities along I-95 and the Merritt Parkway; Transit Oriented Development projects in various towns; public transit and rails; the State Traffic Commission; and environmental matters involving permitting, salt shed and maintenance facilities located throughout the State. Department attorneys also counseled the DOT regarding the divestiture of surplus properties.

The department resolved 5 eminent domain appeals filed against DOT by trial, 12 by stipulated judgment and 2 were withdrawn. There are currently 23 eminent domain appeals in litigation. The litigation outcomes of the concluded eminent domain appeals resulted in savings to the State of \$952,113.00.

The Department continues to provide assistance to DOT regarding litigation involving Certificates of Public Convenience and Necessity for various bus companies. These bus companies in four separate actions claim that they have exclusive authority to run certain routes and in certain locations based on the Certificates. Three of the cases are currently pending at the Complex Litigation Docket.

The Transportation Department represented 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 department also regularly provides legal advice to DEEP on complex property law issues, including, but not limited to, issuing a formal legal opinion advising DEEP on the ownership of the so-called Stonington Breakwater located in Stonington Harbor. DEEP requested that our office provide the opinion following the de-authorization of the Breakwater by the federal government (the original owner). The opinion advised that the State now owns the Breakwater

During the past year, the department provided DAS and DCS with legal counsel and review of 21 leases, 11 agreements and 117 contracts.

## **Housing Matters**

The Transportation Department is also responsible for representing the Department of Housing. These matters include representing the Department at the Commission of Human Rights and Opportunities for housing discrimination complaints, administrative appeals, 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 45 foreclosures were filed this fiscal year and there are currently 84 pending foreclosure matters naming the state as a defendant.

## **State Historic Preservation Office**

The Department represents the State Historic Preservation Office matters and is occasionally called upon to seek the court's protection of historic properties on the National Register of Historic Places (16 USC 470a, as amended) which face destruction by owners or developers.

## **Department of Motor Vehicles**

The department handles a variety of matters for DMV, 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. The department successfully defended the DMV in the state Supreme Court in *Modzelewski's Towing & Recovery, Inc. v. DMV*, which held that state laws regulating the amount towing companies may charge for recovery services performed prior to towing a vehicle off a highway are not preempted by federal law. The decision overturned a ruling by the administrative appeals court that such laws were preempted and therefore violated the Supremacy Clause. Subsequently, the department opposed the plaintiff's petition for a writ of certiorari from the United States Supreme Court, which was denied.

## **Environmental Matters**

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 continues 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 DEEP and the United States Army Corps of Engineers. 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 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 attorneys and paralegals represent 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 in the private sector. The department's workers' compensation attorneys and paralegals also devote significant time to third party tortfeasor cases that result in the recovery of money for the State and the Fund, as well as handling a large number of appeals to the Compensation Review Board and the Appellate and Supreme Courts.

During the past fiscal year, department attorneys and paralegals appeared for the Fund and the State in 3,215 hearings before workers' compensation commissioners and in 211 new unemployment compensation cases in the Superior Court. The department also opened 98 new cases on behalf of Connecticut citizens who were not paid wages by their employers.

Department attorneys and paralegals were responsible for recouping \$662,344.29 for the State of Connecticut and \$62,128.62 for the Second Injury Fund through third party interventions in Superior Court and negotiated settlements in lieu of litigation. This money represents reimbursements to the State or the 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 \$221,216.62 in unpaid wages and civil penalties for Connecticut citizens whose employers failed to pay them in accordance with Connecticut's labor laws.

During the fiscal year in question, the Workers' Compensation & Labor Relations Department was involved in the following significant cases

In *Amaral Brothers, Inc. v. Department of Labor*, the state Supreme Court affirmed the decision of the Superior Court, which upheld the ruling of the Department of Labor that the plaintiff (Domino's franchisees in Mystic and Groton) may not take a "tip credit" to reduce the

minimum wage paid to its delivery drivers. The court's decision protects employees in the restaurant and hotel industries who regularly and customarily receive gratuities (other than waiters, waitresses and bartenders) from being subject to the tip credit. Had the tip credit been found to apply to such employees, many workers would have suffered a reduction of wages. This case upheld the statutory and regulatory scheme that the state Department of Labor has been working within since the 1950s.

In *Barker v. All Roofs by Dominic, et al.*, the Compensation Review Board ("CRB") affirmed the finding and orders of a trial commissioner who determined that respondent city of Bridgeport was liable under Conn. Gen. Stat. § 31-291 as a "principal employer" for the injuries sustained by the claimant, a laborer employed by All Roofs by Dominic, who fell from a roof while working on a city-owned garage. The city argued that because it is not in the "trade or business" of roofing, liability for the injury rested with its contractor, All Roofs by Dominic, and that since that business entity was uninsured for workers' compensation liability, the claim was the responsibility of the Second Injury Fund under Conn. Gen. Stat. § 31-355 (the no-insurance statute). In its decision, the CRB cited relevant case law and adopted the Fund's argument that, insofar as the city's public works department is in the trade or business of maintaining the city's garages for the benefit of its citizens, there is no meaningful distinction between it and a commercial entity such as general contractor who is engaged in home construction or remodeling. Thus, barring a legislative directive to exempt the city (or any other public sector entity) from coverage under the statute, the city can be found to be the "principal employer" of an employee who was injured in the course of repairing one of the city's garages.

In *Estate of Rock v. University of Connecticut*, the estate of a deceased former UConn employee (who died from mesothelioma at age 85) filed a claim for workers' compensation benefits due to asbestos-related lung disease even though the employee never filed a claim for benefits during his lifetime and had no dependents at the time of his death. The trial commissioner granted the state's motion to dismiss the claim on the ground that the estate did not have standing to pursue either temporary total or permanency benefits. The Compensation Review Board upheld the dismissal of the claim for indemnity benefits but determined that the estate qualified as a legal entity under the Act and, as such, found that the estate had standing to seek burial expenses, medical expenses and actual lost wages. The CRB's decision was appealed to the Appellate Court but transferred to the Supreme Court which held that the estate did not constitute a legal representative of the decedent under Conn. Gen. Stat. § 31-294c and, therefore, was incapable of bringing a claim under the Workers' Compensation Act. Noting that it was well established in the law that an estate is not a legal person, but merely a name to indicate the sum total of the assets and liabilities of the decedent, the Court concluded that the estate did not have standing to pursue any type of workers' compensation benefits, and reversed the Board's decision that the estate had standing to seek burial expenses, medical expenses and actual lost wages.

In *Wagner v. State of Connecticut*, court approval was given to settle this class action involving approximately 450 retirees from state service who claimed that they were required to pay more for group health insurance coverage than other state employee retirees because they were

disabled and receiving workers' compensation benefits. The state's defense relied, *inter alia*, on Conn. Gen. Stat. § 31-284b which requires retirees on workers' compensation to pay for group health insurance coverage at the same level as active state employees. After obtaining class certification and surviving a motion to dismiss on a breach of contract claim, but facing another motion to dismiss on grounds of failure to exhaust contractual remedies of arbitration pursuant to the SEBAC collective bargaining agreement, the plaintiffs agreed to settle this class action with the assistance of court mediation. The settlement calls for a total payment of \$400,000.00 to members of the class including attorney's fees and costs. This settlement resolves longstanding litigation which involved complex constitutional, statutory and contractual claims. This settlement amount was fair and reasonable given the state's exposure for substantial damages and attorney's fees.

In *U.S. Department of Labor v. State of Connecticut/ Department of Veteran's Affairs*, the federal government asserted a minimum wage and overtime claim on behalf of residents of the Rocky Hill Veteran's Home who participated in rehabilitation training programs administered by the state. We defended the claim on the basis that the veterans enrolled in the programs could not be considered employees within the meaning of federal law. The nature of our defenses, which were grounded in the federal statutes, regulations and case law, when considered in the context of the remedial nature of federal labor law which tends to favor putative employees, made a negotiated settlement attractive to both sides. Consequently, the parties were successful in settling the matter for less than \$500,000, which sum represented one-fourth of the state's potential exposure given the remedies available to the federal government under the Fair Labor Standards Act. The settlement also included changes in the Veterans Home's training programs that will minimize the state's exposure for similar claims in the future.

### **INTERNSHIP & VOLUNTEER PROGRAMS**

The Office of the Attorney General welcomes the assistance of students and other volunteers who provide valuable service to the Office and its work on behalf of the State.

Students are offered opportunities to learn about the law inside the state's largest public interest law firm through unpaid internships, and in cooperation with their sponsoring school, externships for course credit, work-study or legal fellowship positions. Applications are accepted throughout the year for placements during the fall and spring academic semesters or the summer months.

While the Office's greatest need is for law students, the program is also open to graduate, undergraduate, paralegal and highly motivated high-school students. Through an arrangement with West Hartford Public Schools and the Farmington Valley Transition Academy, the Office also provided work experience for special needs students.

The work performed by student volunteers varies by department, but all assignments require critical thinking, research and writing. Law students also gain experience in legal practice skills, drafting legal documents and trial preparation.

Non-students and adults have opportunities to serve as volunteer advocates in the Consumer Protection Department's Consumer Assistance Unit, where, under staff supervision, they provide informal mediation services to assist consumers to resolve complaints.

In limited cases, the Office accepts the assistance of volunteer professionals -- licensed attorneys, law school graduates awaiting admission to the bar, or paralegals, seeking to supplement their legal training or practical experience by volunteering in the Office. Volunteers may be assigned to a department for up to a year to provide legal research and drafting assistance to a supervising assistant attorney general.

During fiscal 2016-17, 141 students participated in internship, externship, work-study or legal fellowship programs. The Office also received assistance from three volunteer attorneys, six volunteer advocates and seven special needs students.

The internship and volunteer programs are coordinated by OAG staff and applications and communications are handled electronically. Expenses associated with the program include staff time and limited copying and mailing.

### **AFFIRMATIVE ACTION**

The Office of the Attorney General is firmly committed to equal employment opportunity. Nearly **59.7%** of the full-time attorney workforce consisted of women and minorities. Women and minorities comprised **71.02%** of entry level attorneys and **53.79%** of middle and high level attorneys.