



**OFFICE OF THE ATTORNEY GENERAL  
ANNUAL REPORT- FISCAL YEAR 2020-2021**

**At a Glance**

**WILLIAM TONG,**  
*Attorney General*

**MARGARET Q. CHAPPLE,**  
*Deputy Attorney General*

*Established – 1897*

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

*Central Office: 165 Capitol Avenue, Hartford, CT 06106*

*Average number of full-time employees: 308*

*Recurring General Fund operating expenses: \$ 32,580,161.76*

*Revenues Generated: \$ 557,830,530*

**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 Office of the Attorney General (OAG) 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 2020-2021 fiscal year, \$ 557,830,530 was generated by the Attorney General's Office, as described below, including \$ 216,537,350 deposited to the General Fund. The remaining monies were directly paid to and/or used to benefit constituents, businesses, and other entities.

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

Tobacco Settlement Fund Collections	\$ 133,121,333
Child Support Collections	36,581,188
Global Civil Settlements / Antitrust	9,609,624
Anthem Settlement / Privacy & Data Security	3,804,392
Department of Social Services / Civil	3,834,274
Home Depot Settlement / Privacy & Data Security	1,093,196
Antitrust Fees and Costs Assessed	478,404
Civil Penalties / Charitable Trusts/Solicitations	174,182
Civil Settlements / Treasurer's Office	103,445
Miscellaneous Collections	27,737,312

**Total Revenue Generated for General Fund** **\$ 216,537,350**

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**B. Revenue Generated for Special Funds**

Opioid Multistate Special Fund	\$ 7,513,087
CT Environmental Benefit Project	28,230

**Total Revenue Generated for Special Funds** **\$ 7,541,317**

**C. Revenue Generated for Individuals and Businesses**

Child Support Collected/Enforced for Families	\$ 282,603,791
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Consumer Assistance Unit Benefit to Consumers	2,126,232
Electricity Restitution to Customers	9,404,191
Healthcare Advocacy Benefit to Consumers	506,427
Home Improvement Contractors -	
Consumer Restitution from Criminal Prosecution	40,542
Court Ordered Restitution to DCP Guaranty Fund	36,650
<b>Total Revenue Generated Individuals and Businesses</b>	<b>\$ 294,717,833</b>

**D. Revenue Protected for Consumers and Businesses**

Charitable Funds Recovered or Preserved	\$ 1,024,000
Charitable Trusts Protected	14,348,201
Refunds for CT Utility Customers	3,661,819
Utility Rate Increases Requested (not yet obtained)	20,000,000
<b>Total Revenue Protected</b>	<b>\$ 39,034,030</b>
<b>TOTAL REVENUE ACHIEVED</b>	<b>\$ 557,830,530</b>

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

This fiscal year saw the reorganization of the Office of the Attorney General. The Office is now divided into 5 divisions: Appeals, Civil Litigation, Enforcement & Public Protection, Government Administration and Consumer and Constituent Services. Each division contains sections which, along with the Administration, represent 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 2020 - 21 is summarized as follows:

<u>Trial Court Cases</u>	
Instituted	5,844
Completed	5,989
Pending	16,149

Appeals

Instituted	294
Completed	318
Pending	241

Administrative Proceedings

Instituted	1,047
Completed	717
Pending	3,335

Antitrust/Fraud Investigations

Instituted	94
Completed	64
Pending	180

Consumer Investigations

Instituted	24
Completed	116
Pending	37

Privacy Investigations

Instituted	1,598
Completed	1,508
Pending	191

Miscellaneous Investigations

Instituted	22
Completed	17
Pending	39

Legal Documents Examined

Instituted	2,563
Completed	2,694
Pending	858

Consumer Protection Public Inquiries

Instituted	4,645
Completed	3,456
Pending	4,199

OAG Administration Public Inquiries

Instituted	1,120
Completed	1,314
Pending	209

Health Care Advocacy Public Inquiries

Instituted	204
Completed	206
Pending	0

Workers Compensation Public Inquiries

Instituted	97
Completed	44
Pending	63

Miscellaneous Public Inquiries

Instituted	125
Completed	117
Pending	346

Formal Opinions Issued	4
Informal Opinions Issued	93

### **AFFIRMATIVE ACTION**

The Office of the Attorney General is firmly committed to equal employment opportunity. Exactly 61.06% of the full-time attorney workforce consists of women and minorities. Women and minorities comprise 67.59% of entry-level attorneys and 57.46% of middle- and high-level attorneys.

### **LEGISLATION**

The Connecticut General Assembly concluded its regular legislative session on Wednesday, June 9, 2021. Due to the ongoing COVID-19 pandemic, the legislature was forced to drastically rewrite its rules to accommodate virtual hearings and socially distanced debate.

Notably, a bipartisan budget was passed during regular session and the Office of the Attorney General (OAG) maintained its funding levels. Many staff from various sections of the Office assisted the OAG's former Chief Counsel and Director of Legislative Affairs in securing secure final passage of the following bills: OAG's bill clarifying the Office's standing to bring pattern and practice civil rights cases; a bill updating our data breach notification statute (which had not been updated since 2005); and a bill modifying the pension revocation statute to require the State's Attorney to notify the OAG of a possible case, rather than the OAG notifying the State's Attorney. Our bills to update the price gouging statute and exempt OAG employee residential addresses from disclosure did not receive a vote in both chambers by the time the 2021 session ended. In addition, OAG was involved in counseling, negotiating and drafting a number of other bills which received final passage, including bills related to the Office of the Claims Commissioner; prohibiting deceptive advertising at limited-service pregnancy centers; repealing the religious exemption for school vaccination and explicitly permitting the Department of Public Health (DPH) to release deidentified immunization information; and authorizing sports wagering, among other bills.

On June 15<sup>th</sup>, the House and Senate reconvened in Special Session to give final passage to a bill legalizing cannabis for recreational use and the annual omnibus bill to implement the state budget. The Governor signed both bills into law, with some provisions of the cannabis bill going into effect on July 1, 2021. Finally, on July 16<sup>th</sup>, the House and Senate convened to pass concurrent resolutions authorizing the Governor to continue his COVID-19 declarations of public health and civil preparedness emergencies through September 30<sup>th</sup>, allowing him to

extend approximately a dozen executive orders related to vaccinations, emergency housing, and other initiatives aimed at mitigating the spread of the coronavirus.

## SOLICITOR GENERAL

The Solicitor General is responsible for all appellate matters on behalf of the Office, for the preparation of all formal opinions, and serves as Chief of the Division of Appeals.

The Office issued four formal opinions in FY 2020-2021: (1) regarding how Section 3 of the Police Accountability Bill would interact with collectively bargained grievance procedures; (2) the scope of the Judicial Review Council's authority when considering a judge's disability retirement application; (3) the scope of the State Contracting Standards Board's jurisdiction over the Connecticut Port Authority; and (4) whether Section 13 of House Bill 6443 would violate Connecticut's constitution.

The Office typically handles approximately 300 active appeals at any given time, as a party and as amicus. In FY 2020-2021, the number of new party appeals filed dropped by 50%, most likely as a result of the COVID-19 pandemic. Nonetheless, the number of appeals closed remained steady, and the issues remained challenging.

The Office defended 26 different state agencies in 105 new appeals. Approximately 60% of these new appeals were before the state appellate courts, and 40% were brought before the federal appellate courts. Approximately 30% involved the Department of Correction, 20% arose from the Department of Children and Families and 15% of the new appeals involved the Department of Energy and Environmental Protection. The Office closed 208 appeals plus 91 appeals where we submitted amicus briefs, with the same 60%-40% split between state and federal appellate courts. Cases from the Child Protection and Public Safety sections comprised half of the closed matters.

In FY2020-2021, the State was a party to 27 cases decided by Connecticut Supreme Court, with significant rulings concerning child protection, banking, elections and prisoner rights. The Connecticut Appellate Court issued 101 decisions in civil appeals where the state was a party, including significant decisions in habeas juvenile, employment and health matters, as well as numerous administrative appeals. Before the U.S. Court of Appeals for the Second Circuit, the state received 54 decisions as a party, in election, education, employment, civil rights and statutory matters.

The primary focus of prominent appeals for this fiscal year has been the pandemic. The Office prevailed in court challenges to the Governor's Executive Orders during the pandemic, including in *Casey v. Lamont* before the Connecticut Supreme Court, *Young v. Tong* and *McPherson v. Lamont*. The Office also successfully defended a long-pending challenge to gubernatorial executive orders during the Ebola outbreak, in *Liberian Community Ass'n v. Malloy* (2d Circuit).

This fiscal year the U.S. Court of Appeals for the Second Circuit held that some state statutes were either unconstitutional or preempted, and upheld other state statutes against constitutional attack. In *Reynolds v. Quiros*, the Second Circuit held that Conn. Gen. Stat. § 18-10b, regarding the conditions applicable to former death row inmates, was an unconstitutional bill of attainder. The Second Circuit also affirmed the district court's holding in *Hartford Courant v. Carroll*, that Public Act no. 19-187 was unconstitutional, requiring juvenile offenders who were tried as adults to be ineligible for juvenile privacy rules. In *Williams v. Marinelli*, the court held that 42 U.S. C. § 1983 preempted Conn. Gen. Stat. §§ 18-85a, 18-85b, and 51-298(b), precluding the recovery of incarceration costs from an award to an inmate under the particular facts and circumstances of that case. The Second Circuit also upheld a state statute against constitutional attack, holding Conn. Gen. Stat. § 4-28(m)(a)(3) was constitutional in *Grand River Enterprises Six Nations LTD v. Biello*.

The State was a party in a number of national cases before the U.S. Supreme Court regarding critical issues. The State was part of the successful defense of the Affordable Care Act in *California v. Texas*; defense of the ability of Title X providers to provide information on all medical options in *AMA v. Cochran*, and in defense of an accurate and full census count in *Trump v. New York*. Before the various federal Courts of Appeals, the State was a party in challenges to ghost guns and numerous environmental cases.

The Office joined multistate amicus briefs regarding voting rights, women's rights, the environment, consumer protection, governmental integrity standards, privacy rights, antitrust, LGBTQ+ rights, immigration, civil rights and health care access. The amicus cases were before both state and federal courts, with almost half of the state's FY20-21 amicus matters pending before the U.S. Supreme Court. This Fiscal Year, the Office considered joining 84 new amicus matters and 91 amicus matters were decided and/or resolved.

This year was particularly active in the realm of voting rights with the state joining multistate amicus briefs in two voting rights cases decided by the U.S. Supreme Court on the merits in *Chiafalo v. Washington* and *Brnovich v. DNC*. The state also participated as amicus in emergency motions practice before the U.S. Supreme Court with respect to limits on absentee ballots and place of voting, in *Middleton v. Andino*, *Wise v. Circosta*, and in *People First of Alabama v. Merrill*. The state also supported voting rights in various states across the country, including in *Lambert v. Secretary of State* (Michigan), *Schroeder v. Minnesota* (Minnesota), *Jones v. DeSantis* (Florida) and *Texas v. Hollins* (Texas).

This year also saw many attacks on women's reproductive rights, and the state joined numerous multistate amicus briefs to protect that right, including the U.S. Supreme Court cases of *Little Sisters of the Poor v. Pennsylvania* regarding the obligation to provide birth control as part of health benefits. There were also challenges to state laws limiting access to a woman's right to choose in Kentucky, Indiana, Missouri, Mississippi, Pennsylvania and Tennessee, where the state joined multistate amicus briefs in support of injunctions blocking implementation of those state laws. The state also joined multiple amicus briefs to defend transgender and LGBTQ+ rights, ranging from school sports and bathrooms to requiring medical insurance coverage in *Kadel v. NC State Health Plan* (4<sup>th</sup> Circuit), *Adams v. School Board* (11<sup>th</sup> Circuit), and *Grimm v.*



*Gloucester County School Board* (4<sup>th</sup> Circuit). The state also unsuccessfully advocated for the right for government contracts to forbid unlawful discrimination in *Fulton v. Philadelphia* (U.S.); to prevent discrimination against employees of religious institutions in *Our Lady of Guadalupe School v. Morrissey-Berru* (U.S.); and to protect minority ownership of radio stations in *FCC v. Prometheus Radio Project*, (U.S.).

With respect to immigration issues, the state continued its fight against restrictions placed on Byrne JAG grants by joining amicus briefs in *San Francisco v. Barr* (9<sup>th</sup> Circuit) and *Providence v. Barr* (1<sup>st</sup> Circuit). The state successfully supported the role of the state's pardon procedure in *Thompson v. Barr* (1<sup>st</sup> Circuit) and *Graham v. Garland* (2<sup>nd</sup> Circuit). The state supported TPS certificate holders in *Sanchez v. Wolf* (U.S.) and *Ramos v. Nielsen* (9<sup>th</sup> Circuit).

The state actively supported climate change litigation appeals in *Exxon Mobil v. Healey* (2d Circuit), *Rhode Island v. Shell* (1<sup>st</sup> Circuit), and *BP v. Baltimore* (U.S.). The state also joined amicus challenges to renewable fuel standards in *HollyFrontier Cheyenne Refining LLC v. Renewable Fuels* (U.S.); the location of Keystone pipeline in *Northern Resources Plains Council v. U.S. Army Corp.* (9<sup>th</sup> Circuit) and *Standing Rock Sioux Tribe v. U.S. Army Corps.* (D.C. Circuit). The state bolstered Clean Air standards by joining amicus briefs before the D.C. Circuit in *New York v. EPA, Hearth, Patio & BBQ Ass'n v. EPA* and *Clean Wisconsin v. EPA*, as well as Clean Water standards before the 4<sup>th</sup> Circuit in *North Carolina v. FERC*. In addition to other environmental issues, the state was also active in energy matters, challenging FERC's impediments to state-sponsored renewable energy and state policies to achieve a zero-carbon grid.

With respect to consumer issues, the state fought against robocalls in *Facebook v. Duguid* (U.S.) and *Barr v. American Ass'n of Political Consultants* (U.S.); protected student loan borrowers' rights in *Pennsylvania v. Navient* (3d Circuit); and maintaining products liability jurisdiction in *Ford Motor Co. v. Montana Eighth Judicial District* (U.S.). The state held online marketers responsible in *Online Merchants Guild v. Cameron* (6<sup>th</sup> Circuit), and defended state enforcement rights in *Grewal v. Defense Dist.* (U.S.). The state also supported Hawaii's and Vermont's gun control state laws against attack. The state also successfully supported the state authority with the holding that ERISA did not preempt state regulation in *Rutledge v. Pharmaceutical Care Management Ass'n* (U.S.).

## **SECTIONS**

### **ANTITRUST AND GOVERNMENT PROGRAM FRAUD SECTION**

The Antitrust and Government Program Fraud Section has two primary missions: (a) to ensure that those who do business in Connecticut compete on a level playing field; and (b) to protect Connecticut's health and human service programs from fraudulent and abusive conduct. In that vein, the Section assists the Attorney General in enforcing two important state laws: the Connecticut Antitrust Act and the Connecticut state False Claims Act.

The Section's attorneys and staff administer and enforce the Connecticut Antitrust Act as well as major provisions of federal antitrust laws. The group 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 civil antitrust and other competition-related misconduct 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 Section's attorneys and staff also detect, investigate and prosecute civil healthcare 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 prohibits the submission of a false claim to certain Connecticut health and human service agencies, is the Section's chief tool to fight health care fraud.

The Section also investigates "whistleblower" 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.

Lastly, beginning this year, attorneys and staff in the Section also assist the Attorney General with investigation and prosecution of opioids-related offenses.

## **Antitrust Enforcement**

The Section's antitrust mandate is focused on identifying and deterring anticompetitive conduct and obtaining civil penalties, restitution and injunctive relief. During the past year the Section focused significant resources to ensuring competition in Connecticut's healthcare markets, with a primary emphasis on generic pharmaceuticals. The benefits to consumers from competitive and efficient healthcare markets usually take the form of transparent and competitive pricing, sufficient consumer choice, access to providers, and high-quality care.

### **1. Generic Pharmaceutical Manufacturers**

In July, 2014, the Office of the Attorney General 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 Office of the Connecticut Attorney General organized a bi-partisan working group of state Attorneys General to assist with the office's investigation, which had broadened considerably since the inception of the investigation.

In December of 2016, Connecticut and nineteen other states 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. The lawsuit was subsequently transferred to federal court in the Eastern District of Pennsylvania.

In October, 2018, the Attorney General's working group asked the federal court for permission to file a new complaint in the states' pending lawsuit that increased the number of generic drug manufacturer defendants from six to 18 in the case and the number of drugs at issue in the litigation from two to 15. The court granted the Attorney General's request on June 5, 2018.

In May, 2019, the Attorney General led an expanded 44-state coalition that marked a significant broadening of the investigation by filing a lawsuit against Teva Pharmaceuticals and 19 of the nation's largest generic drug manufacturers, alleging a vast conspiracy to inflate and manipulate prices, reduce competition and unreasonably restrain trade for more than 100 different generic drugs. The lawsuit, which was filed in U.S. District Court for the District of Connecticut and subsequently transferred to federal court in the Eastern District of Pennsylvania, also names 15 individual senior executive defendants at the heart of the conspiracy who were responsible for sales, marketing, pricing and operations. The drugs at issue account for billions of dollars of sales in the United States, and the alleged schemes increased prices affecting the health insurance market, taxpayer-funded healthcare programs like Medicare and Medicaid, and individuals who must pay artificially inflated prices for their generic prescription drugs.

On June 10, 2020 the Attorney General led the filing of the third lawsuit in the working group's ongoing investigation into price fixing in the U.S. generic drug market. The civil lawsuit, brought on behalf of 51 states and U.S. territories, alleges 26 corporate defendants and 10 individual defendants fixed the prices on 80 topical generic drugs that account for billions of dollars of sales in the United States. The topical drugs at the center of the complaint include creams, gels, lotions, ointments, shampoos, and solutions used to treat a variety of skin conditions, pain, and allergies. The latest complaint was filed in the U.S. District Court for the District of Connecticut and seeks damages, civil penalties, and actions by the court to restore competition to the generic drug market.

In January, 2021, the Attorney General released the third full unredacted complaint. The complaint was unsealed after the court granted the states' motion to unseal. The previously redacted portions of the complaint include detailed descriptions and images of evidence documenting the widespread price-fixing.

## **2. Other Antitrust Enforcement**

Over the last few years concerns have been raised by policymakers, the business community, consumer advocates and academia about the size and potential market power of large U.S. based technology companies - - "Big Tech" - - and their respective ability to raise prices, diminish quality and stifle innovation and competition in established and burgeoning markets. To address those issues the Attorney General is working with other Attorneys General to investigate the business practices of Google, Facebook and Amazon. These complex antitrust investigations are ongoing.

Ensuring open and vigorous competition in Connecticut's health care markets is a chief law enforcement objective of the Attorney General. The benefits to consumers from competitive and

efficient healthcare markets usually take the form of lower prices, sufficient consumer choice and access to providers, and high-quality care. During this fiscal year the Antitrust Section reviewed a number of proposed acquisitions by Connecticut hospitals and/or physician practice groups. These investigations are non-public unless the Attorney General ultimately challenges the acquisition in court. Although none of the reviews conducted this year resulted in a court challenge, one proposed acquisition did raise potential competitive concerns. After an investigation by the office, the parties ultimately decided to terminate the merger.

### **Government Program Fraud Enforcement**

Once again this year, the Section's attorneys and staff obtained significant results for their government program fraud investigations by obtaining several large monetary recoveries for the Medicaid Program. In addition, the Section continued to participate in numerous multistate healthcare fraud settlements with pharmaceutical companies and other healthcare providers related to violations of the false claims act that affected the Medicaid Program. In all, the Attorney General entered into ten (10) multistate settlements with healthcare companies and obtained a total recovery (federal and state) of approximately \$11,025,338 for the Medicaid program from multistate settlements.

In addition to the multistate healthcare fraud settlements, the section filed two state False Claims Act lawsuits, entered into several Connecticut-specific settlements, and obtained a total recovery (federal and state) of approximately \$3,190,789 this past fiscal year for the Medicaid Program and the Connecticut State Health Plan. These actions include the following:

- In July, 2020, the Attorney General announced a \$354,368 joint federal/state settlement with the operator of methadone clinics in the state. The Department of Social Services (DSS) provides clinics with a bundled payment for all services provided, including drug testing. A joint investigation found that between March 1, 2017 and October 17, 2017, the operator used an independent laboratory that separately billed the Connecticut Medical Assistance Program (CMAP) for urine drug testing. This resulted in double bills for testing through the bundled payments to the clinic and the separate charge by the independent laboratory.
- In August, 2020, the Attorney General William Tong announced a \$149,000 joint state/federal settlement with an oral surgeon regarding claims the surgeon submitted to the state's Medicaid program for administering anesthesia and conscious sedation services to his patients after his permit had expired. Connecticut law requires dentists to hold an active permit from the Department of Public Health (DPH) to administer moderate or deep sedation or general anesthesia during dental procedures. The permit must be renewed annually. On January 31, 2018 the DPH sent the surgeon a renewal notice notifying him that his dental anesthesia/conscious sedation permit would expire on April 30, 2018. Under Connecticut law, a dentist has a 90-day grace period after the expiration date to renew the permit before it becomes void. Thus, the surgeon had until July 31, 2018 to renew his permit. He did not apply to the DPH to reinstate his permit until April 30, 2019. During the time when his permit had lapsed, the surgeon continued to administer general anesthesia and sedation to his Medicaid patients, and continued to submit claims to the Connecticut Medicaid Program for these services.

- In October, 2020, the Attorney General announced a \$300,000 joint state/federal False Claims Act settlement with a dentist and his businesses for overbilling of dental services and the use of uncertified dental assistants. Working alongside the U.S. Health and Human Services Office of the Inspector General/Office of Investigations and the Office of the United States Attorney, attorneys and investigators in the Section conducted an investigation that developed substantial evidence that the businesses repeatedly overcharged CMAP, which includes the Medicaid program, for dental fillings that were either never performed or were medically unnecessary. The investigation also uncovered substantial evidence of dental x-rays being taken by dental assistants who were not certified by the Dental Assisting National Board (DANB). Connecticut law requires DANB certification of dental assistants before they are allowed to take dental x-rays. The certification demonstrates that the dental assistant successfully completed a course of instruction on the protocols and operating procedures that must be followed to ensure the safe administration of x-rays. From January 1, 2014 through November 30, 2015, the businesses routinely caused claims for payment to be submitted to the CMAP for x-rays taken by dental assistants who had not obtained DANB certification.
- In October, 2020, the Attorney General announced a \$230,000 joint state/federal False Claims Act settlement with a mental health and substance abuse counseling center and its former owner for illegal billing relating to psychotherapy services. The former owner was a state-licensed alcohol and drug counselor. The investigation uncovered evidence that from March 2017 through May 2018, the center repeatedly billed CMAP for psychotherapy services allegedly performed by the former owner, when in fact those services were provided by unlicensed individuals.
- In February, the Attorney General announced that a national healthcare testing and monitoring services company, including laboratory services for urine drug testing, entered into a civil settlement with the state and federal governments and paid \$845,108 to resolve allegations that it violated the federal and state False Claims Acts. A laboratory that was a subsidiary of the company served a behavioral health residential treatment center located in Connecticut. Many residents of the treatment center were enrolled in the Connecticut Medicaid program. The treatment center had a policy requiring its residents to submit to regular urine drug testing, largely for residential monitoring purposes. The laboratory ordered presumptive (screening) urine drug tests and definitive (confirmatory) urine drug tests for each resident weekly. In many cases, the treatment center ordered identical, duplicative tests for its residents more than two times a week, and as often as three, four, or five times a week. These urine drug tests were performed by the company and were billed to Connecticut Medicaid. The government alleged that the company knew or should have known that the tests that the treatment center ordered for its residents more than two times a week were not medically necessary. The state and federal governments asserted that the company failed to report and return overpayments for the claims Connecticut Medicaid paid the company for performing these medically unnecessary urine drug tests.
- In February, 2021, the Attorney General announced that an behavioral health provider and his business entered into a civil settlement agreement with the state and federal governments, paying more than \$100,000 to resolve allegations that they violated the

federal and state False Claims Acts. The business provided after-school and school break programs for children with behavioral and mental health issues. The business was enrolled as both a Behavioral Health Clinician Group and a Professional Counselor Group in CMAP, but the provider was not licensed as a behavioral health provider in Connecticut. It was alleged that they submitted fraudulent claims to Medicaid, misrepresenting that a licensed provider had rendered services. The provider and his business also falsely represented that 45 minutes of one-on-one psychotherapy services were provided when in fact 20 minutes of group services were provided. Finally, provider and his business falsely represented that the services provided included biofeedback when, in fact, they did not. To resolve the allegations under the federal and state False Claims Acts, the provider and his business agreed to pay \$100,842.86 in order to reimburse the Medicaid program.

- In April, 2021, the Attorney General announced a \$300 million multistate settlement with Indivior PLC and Indivior Inc. to settle allegations that Indivior falsely and aggressively marketed and otherwise promoted the drug Suboxone, resulting in improper expenditures of state Medicaid funds. Indivior, a Delaware company, will pay a total of \$300 million to resolve various civil fraud allegations impacting Medicaid and other government healthcare programs, of which \$203,735,800 will go to Medicaid and \$90,682,800 will be paid to the states as their share of the Medicaid recovery. Connecticut will receive \$7,921,070.05 in the settlement and an additional \$200,000 for Connecticut Department of Social Services' state-funded programs.
- In June, 2021, the Attorney General secured a \$14,982,081 court judgment against a former Norwalk primary care physician for illegally billing CMAP for millions of dollars in services he never provided. A joint investigation with the U.S. Drug Enforcement Administration found that from 2014 to 2016, while operating an urgent care center in Norwalk, the physician fabricated and submitted thousands of false claims for reimbursement for services never provided to Connecticut Medicaid patients. The investigation found that he fraudulently billed the State for office visits, home visits, and nursing home visits using billing codes that provided him the maximum reimbursement rates. In some instances, he billed for services in Connecticut on dates when he was working in Kentucky, or vacationing in Florida, the Dominican Republic, or Italy. The investigation found that he defrauded the Connecticut Medical Assistance Program of \$4,994,027.
- In June, 2021, the Attorney General announced a \$1,002,481 settlement with a behavioral health and addiction medicine practice and its principals, resolving allegations of excessive billing for urine drug tests. A settlement was the result of a joint investigation by investigators and attorneys in the Section, the U.S. Attorney's Office and the U.S. Department of Health and Human Services Office of the Inspector General, after referral by DSS quality assurance investigators. The medical practice allegedly charged and was paid by the CMAP and Medicare for medically unnecessary urine drug testing. The investigation focused on two types of urine drug testing—a "screen" test performed in office that offers quick but less detailed results, as well as a "confirmation" test which is a more advanced test that is performed by an offsite laboratory. A screen test should be followed by a confirmation test only when a qualified healthcare provider decides the

additional test is medically necessary based upon the individual patient's presentation and history. During the time period in question, the practice billed the federal and state governments for in-office screen tests while at the same time it automatically ordered and received the more advanced confirmation tests from an independent lab for every patient, for every sample. The investigation determined that a large amount of the in-office screen testing was redundant and not medically necessary because the more advanced confirmation test results were available to the practice at the time of the patient's treatment.

As a result of the COVID-19 public health crisis, the Attorney General, in partnership with the Connecticut U.S. Attorney's Office, the Chief State's Attorney's Office and the Federal Bureau of Investigation, established a COVID-19 Fraud Task Force to investigate and prosecute a wide range of misconduct related to the pandemic. The Section is an integral component of this initiative and has taken affirmative steps to ensure that the Connecticut Medicaid Program is protected from fraudsters and scammers who may try and take advantage of newly implemented policies designed to facilitate screening and treatment for the COVID-19 virus. To that end, the section's investigators are actively reviewing Medicaid paid claims data to identify any aberrant providers and/or target suspicious claim activity.

### **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.

### **Opioids**

In February of 2019, the Attorney General filed a sovereign action in state court against Purdue Pharma, its owners and directors, asserting that they triggered the opioid epidemic through their unfair and deceptive practices in the sales and marketing of their opioid drugs. That action is presently stayed pending the outcome of Purdue Pharma's bankruptcy proceedings in New York.

While aggressively pursuing the interests of the State and its residents harmed by Purdue Pharma's misconduct, attorneys and staff in the Section also assist the Attorney General in a bipartisan coalition of attorneys general from across the country working to hold responsible others who caused or exacerbated the opioid epidemic. The Attorney General is a leader in the coalition, which continues to investigate and act against those who engaged in potential unlawful practices in the marketing, sale, distribution and dispensing of prescription opioids.

In February of 2021, the Attorney General helped lead 47 states, the District of Columbia and five U.S. territories in a \$573 million settlement with McKinsey & Company. The settlement resolved investigations into the consulting firm's work advising opioid companies on how to promote and profit from their drugs. Connecticut was part of a 10-state executive committee that negotiated the settlement. This was the first multistate settlement to result in substantial payments directly to the states to address and abate the opioid epidemic. Connecticut will receive \$7,513,087.22, which will be used to abate the opioid epidemic.

## **CHILD PROTECTION SECTION**

The Child Protection Section is responsible for representing the Connecticut Department of Children and Families (DCF) in state and federal court proceedings brought in the interest of abused and neglected children. DCF's most prominent mandate is to investigate reports of child abuse or neglect and, based on the outcome of the investigations, to provide the proper protection for children and to assist families in retaining or regaining the care and custody of their children by enhancing the safety of children's family environments and improving parenting skills. DCF's interventions in serious cases of abuse or neglect are always 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 youths found guilty of committing acts of delinquency and committed to the custody of the DCF commissioner. The cases of committed delinquents had been 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 OAG would represent DCF in these cases.<sup>1</sup> Attorneys in the Child Protection Section regularly represent DCF in all twelve (12) juvenile courts statewide, as well as in state and federal court. In addition, this section defends DCF in all administrative appeals to the Superior Court and represents the State before the Office of the Claims Commissioner.

Due to the COVID-19 pandemic, the hearings before the Superior Court for Juvenile Matters have been primarily conducted through remote hearings via available technological platforms. The Child Protection Section responded to the challenges by making the necessary technological and logistic adjustments.

During this fiscal year, the Child Protection Section also represented DCF in a large number of appeals to the state Appellate and Supreme Courts, including several positive outcomes in appeals concerning abused and neglected children and youths.

## **COLLECTIONS/CHILD SUPPORT SECTION**

The Collections/Child Support Section 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 section 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 section also represents the Office of Child Support Services within the Department of Social Services (DSS-OCSS), to establish child support orders. Additionally, the section provides legal services to enforce child support orders at the request of the Support Enforcement Services division of the Connecticut Judicial Branch (SES). Section staff also provide a full range of litigation services to collect, on a case-by-case

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<sup>1</sup> Effective July 1, 2018, DCF no longer has responsibility for the delinquent children whose cases are heard before the criminal session of the Superior Court for Juvenile Matters.



basis, monies owed to various 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 2020-2021, section attorneys recovered millions of dollars in cash payments on debts owed to the state. The section's activities on child support orders continue to create exceptionally large and increased caseloads. During the fiscal year, nearly 1,500 cases were opened in all child-support categories. These cases are handled in the J.D. Superior Court-Family Division, the Family Support Magistrate Division, and Probate Court, and involve the establishment of paternity and/or financial orders for the support of minor children. Additionally, the Section argued several child support related matters in the state appellate courts.

The State of CT-Title IV-D partnership, comprised of the Office of the Attorney General, DSS-OCSS, and SES, successfully enforced/collected approximately \$283 million in child support for families, and of that amount, \$36 million was paid to the state General Fund under the state's assignment of rights.

Section 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, section 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, section attorneys engaged in nearly 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 in Connecticut and throughout the country. The section concluded several litigation collection matters involving the recovery of debts owed to numerous state agencies, boards and commissions.

The Section's collections efforts resulted in a recovery of \$100,000 or more in approximately 18 cases, for a total Section litigation collection recovery of approximately \$ 7.6 million for the state General Fund. The largest of these matters involved recoveries of \$414,000, \$372,000, and approximately \$370,000, respectively, arising out of successfully enforced state claims on behalf of DAS seeking reimbursement for public assistance from various Special Needs Trust and/or Decedent Estate matters in Probate Court.

The Section also recovered approximately \$64,000 on behalf of the Department of Correction for cost of incarceration debt statutorily owed by inmates, \$183,000 for the Office of the Treasurer- Second Injury Fund, nearly \$91,000 for unpaid medical care provided by John Dempsey Hospital, and recovered \$15,000 for the Office of the Probate Court Administrator. The

Section also successfully collected in excess of \$1.8 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 Section collected approximately \$603,000 this fiscal year.

Additionally, within the Section's bankruptcy case load, staff are litigating complicated questions of law involving matters of 1<sup>st</sup> impression. First, the Section continues to defend Chapter 7 bankruptcy trustee "clawback" cases involving 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 remains 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 various state universities.

The Section also actively defended numerous appeals filed to both the Superior Court, as well as to the state Appellate Court. This past year, the Section successfully defended a debtor's appeal to the Appellate Court of a Superior Court Civil Division decision in favor of the Department of Correction holding a former inmate legally liable for their cost of incarceration debt. The Section successfully defended against the claim that the cost of incarceration statute was unconstitutional, which culminated six years of highly contested trial court litigation efforts, and recouped badly needed funds for the state's General Fund.

In sum, Section staff instituted and litigated nearly 2,000 child support and civil collections cases this past year in state and federal courts throughout the state, and successfully recovered in excess of \$7.6 million dollars for the state's General Fund. Section staff worked tirelessly in coordination with our Title IV-D child support client agencies and partners to collect approximately \$283 million in child support payments, of which the vast majority was collected for needy families.

### **CONSUMER PROTECTION SECTION**

The Consumer Protection Department protects Connecticut's consumers by investigating and litigating consumer protection matters under the authority of the Connecticut Unfair Trade Practices Act ("CUTPA") and other state and federal statutes. The Department advises the Attorney General and the Commissioner of the Department of Consumer Protection on consumer protection matters and represents and defends the Department of Consumer Protection in court. The Department also advocates on behalf of Connecticut's energy and utility ratepayers in state and federal fora. In addition, the Department educates consumers on how to avoid becoming victims of unfair and deceptive trade practices and, where possible, mediates disputes. Some highlights from the 2020-2021 fiscal year are described below.

## **Protecting Utility Consumers Following Tropical Storm Isaias**

PURA Docket No. 20-08-03: *PURA Investigation into Electric Distribution Companies' Preparation for and Response to Tropical Storm Isaias.*

After an eight-month investigation, Connecticut Public Utilities Regulatory Authority (PURA) issued its Final Decision on April 28, 2021, concluding that Eversource and United Illuminating (“UI”) failed to meet performance standards in their preparation for and response to Tropical Storm Isaias, which hit Connecticut on August 4, 2020. PURA adopted the Attorney General’s three main arguments that Eversource: 1) was imprudently unprepared to communicate with its customers during the Tropical Storm Isaias emergency; 2) imprudently administered the “make safe” phase of the storm response related to road clearing; and 3) ineffectively implemented its town liaison program during the critical early days of the public safety emergency. To ensure better future storm performance, PURA ordered enhancements to the utilities’ emergency response programs. In addition, PURA also required Eversource to reduce its return on equity (“ROE”) by 90 basis points in a subsequent rate proceeding, and UI by 15 basis points. In July 2021, in a companion Isaias civil penalty docket, PURA is expected to finalize its \$30 million proposed civil penalty assessed against Eversource and \$2.1 million proposed civil penalty assessed against UI.

## **Reducing United Illuminating Rates**

*United Illuminating Rates Settlement* (PURA Docket Nos. 21-01-04, 17-12-03RE11 & 16-06-04RE04).

On June 23, 2021, PURA approved an Amended Settlement Agreement filed by the Attorney General, UI, Office of Consumer Counsel, Department of Energy and Environmental Protection, and PURA’s Office of Education, Outreach, and Enforcement. As a result of the settlement and in conjunction with lower standard service rates, UI customers will see a 5.2 percent total bill decrease starting on July 1, 2021. The agreement fully offsets what would have been a five to eight percent increase in bills on May 1, 2021 due to federally mandated transmission charges and the costs of the Millstone power purchase agreement. PURA initially proposed to amortize these accumulated charges over a 68-month period, which would have cost UI ratepayers more. At the urging of the Attorney General and settling parties, PURA reconsidered. The Amended Settlement Agreement includes a \$5 million voluntary contribution from UI’s shareholders to resolve PURA’s interim rate decrease investigation. In addition, the agreement accelerates the return of \$41.55 million of accumulated savings from the 2018 federal corporate tax rate reduction ahead of what would have otherwise been required and reflects a reduction in the federal corporate tax rate in UI distribution rates starting on July 1, 2021. Finally, UI agreed to not change base distribution rates until at least May 2023, which will save UI ratepayers a projected \$20 million in addition to the \$46.5 million relief from the accumulated tax savings and UI’s voluntary contribution.

### **Protecting Automobile Consumers**

The Consumer Protection Section helped lead a multistate investigation into American Honda Motor Company, Inc. and Honda of America Manufacturing, Inc. (collectively, “Honda”) into allegations that Honda concealed dangerous safety problems with frontal airbag systems installed in millions of Honda and Acura vehicles. The airbag systems were manufactured by Takata Corporation, and the investigation examined whether Honda knew, or should have known, that the propellant in the airbag inflators, ammonium nitrate, could cause the inflators to rupture. Under the settlement, which was memorialized in a stipulated judgment, Honda agreed to adopt significant changes to its design, procurement, and manufacturing processes. Honda also agreed to pay nearly \$85 million to the multistate working group, including \$2,362,819.71 to Connecticut and \$1 million to the National Association of Attorneys General to support future investigations and Attorney General staff professional development.

### **Protecting Consumers During the COVID-19 Emergency**

In July 2020, at the height of the COVID-19 public health emergency, the Consumer Protection Section negotiated a voluntary agreement with NAWAS International (“NAWAS”) of Darien, CT to assist consumers whose plans to attend the 2020 Passion Play in Germany were derailed by COVID-related travel restrictions. The Section worked extensively with NAWAS to provide thousands of dollars in partial refunds to consumers who were unable or unwilling to travel to the rescheduled event in 2022, and who were unlikely to receive refunds otherwise.

### **Protecting Consumers from Government Imposter Fraud**

In August of 2020, the Consumer Protection Section negotiated a settlement with ANS, Inc., d/b/a Workplace Compliance Services (“ANS”), an out-of-state provider of business services, to resolve allegations that the solicitations it sent to Connecticut businesses were designed to mimic official government forms. This settlement protected Connecticut businesses from being misled into believing that they were required by law to use ANS’s services. Under the terms of the settlement, ANS agreed to modify its business practices to comply with Connecticut law, and it paid over \$17,000 in refunds to Connecticut businesses. It also paid \$25,000 to the state.

## **CONSUMER ASSISTANCE SECTION**

The Consumer Assistance Section (CAS) utilizes a staff consisting of two attorneys, one investigator, and three secretaries and is supervised by our Special Associate Attorney General, Chief of the Division of Consumer and Constituent Services. The staff works tirelessly to assist constituents with numerous consumer related complaints and inquiries. They are responsible for processing incoming complaints, mediating, investigating, and referring those complaints to the proper section within the OAG or one of our partner agencies for possible enforcement. During

the past fiscal year, CAS received and responded to thousands of written and telephone consumer inquiries. More than \$2,000,000.00 was refunded or credited to Connecticut consumers due to CAS' mediation efforts. Due to the COVID-19 pandemic, CAS experienced an exponential increase in complaints. CAS also lost the assistance of its Senior Advocates during the pandemic.

CAS received 3,478 complaints in multiple areas including price gouging, travel cancellations, event interruptions, failure to receive unemployment benefits or other government services, and reports of potential scams. In addition to e-complaints, CAS also fielded numerous telephone calls and emails reporting a myriad of issues. CAS personnel were instrumental in identifying a large-scale tour group complaint which resulted in over one million dollars being returned to travelers.

In 2021, the Attorney General's Office, in cooperation with the Coalition for Elder Justice in Connecticut (CEJC), has launched the Elder Justice Hotline, a new resource to help older adults in Connecticut seek information, assistance, and justice. The Elder Justice Hotline is intended as an additional resource offered to connect individuals seeking information to the appropriate state agencies. The hotline is staffed by the members of CAS, and to date, CAS has handled over 40 Elder Justice calls which led to referrals to numerous State agencies.

The Division of Constituent Affairs, working in conjunction with the Communication Team, is responsible for the Office of the Attorney General's public outreach efforts. The Division also assisted with gathering information for press releases, consumer advisories, and other media events. During the COVID pandemic, most outside events needed to transition to virtual platforms, which resulted in extensive coordination and organization.

### **EMPLOYMENT RIGHTS SECTION**

The Employment Rights Section devotes a substantial amount of its resources to defending state agencies, including the University of Connecticut, the UCONN Health Center, the Connecticut State Colleges and Universities, 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 section also regularly provides legal advice and counsel, both orally and in writing, to state agencies on a variety of employment matters. This section's role continues to increase in this regard as the issues facing state agencies become more complex. Section 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.

Section staff is currently defending the State in approximately 67 employment cases in the state and federal courts, including 3 Second Circuit Court appeals and 5 appeals in the Connecticut Appellate and Supreme Courts. In addition to these cases, the department is defending approximately 155 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 section is also defending 16 claims in the Office of the Claims Commissioner.

During the past year, the section successfully defended state agencies in numerous cases in the state and federal courts. Significantly, the section was able to obtain judgment in favor of the state and its officials on 9 dispositive motions including 3 summary judgment motions that were filed in federal court and summary judgment motions filed in state court, thus

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. The section also filed approximately 3 additional summary judgment motions during fiscal year 2020-2021, motions which are pending rulings by the court. Overall, the section currently has 3 summary judgment motions pending, awaiting rulings from the court.

During fiscal year 2020-2021 the COVID-19 pandemic continued to affect the judicial system. As such, the section did not have any trials. However, the section successfully defended 3 federal district court decisions in appeals before the federal Second Circuit Court of Appeals.

The section 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 Courts and CHRO.

## **ENVIRONMENT SECTION**

The Environment Section represents the state Department of Energy and Environmental Protection (DEEP) and the Department of Agriculture in court and administrative proceedings. The Section continues to have important success in abating pollution and in enforcing environmental laws. This year the Section initiated and participated in a number of cases that sought to protect the environment and the citizens of the State of Connecticut. The Section 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 Environment Section 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, the Section 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 Section worked with other states to support and defend federal rules intended to promote cleaner

air in Connecticut. The Section also worked to ensure that rules intended to protect Connecticut from upwind pollution are enforced and not eliminated. These efforts included joining a multistate group that seeks to prevent the rollback of vehicle emissions laws that are at the heart of Connecticut's air pollution program. The Section also won an important victory against the United States Environmental Protection Agency (EPA) where the U.S. District Court granted a request by Connecticut to force EPA to hold upwind states accountable for cross-state air pollution in compliance with the Clean Air Act.

This year, the Section also secured a number of legal victories on behalf of the Department of Energy and Environmental Protection ("DEEP") that furthered the State's efforts to enforce and defend environmental laws.

This Section pursued and was granted a Motion for Contempt against an owner of a property in West Haven, CT for the failure to comply with a judgment to remediate pollution at the site. The Section worked with EPA and DEEP to ensure that all of the asbestos was removed from the site as well as multiple containers of hazardous waste and petroleum product. As part of the order on contempt the owner was required and removed scrap tires and metal waste that was at the site. The owner continued to fall short of compliance and the Court again found the owner in contempt for failing to address the remaining waste. The Court ordered sanctions of \$100 per day payable until the site is remediated.

The Environment Section received an important decision from the Connecticut Appellate Court in the matter of *Jacques v. Klee*. The case involved the statutory environmental impact evaluation (EIE) performed for the proposed development of Seaside State Park in Waterford, Connecticut. A neighbor, who sought to intervene in the public comment process under Conn. Gen. Stat. Sec. 22a-19 and was denied because there was no requisite proceeding under Sec. 22a-19, later brought an action against the Commissioner of DEEP and the Secretary of OPM seeking an injunction to restrain them from implementing the Master Plan for the redevelopment of Seaside. The Appellate Court affirmed the trial court's dismissal of the case based on sovereign immunity and provided helpful legal analysis on key points to guide agencies that receive Connecticut Environmental Policy Act (CEPA) intervention petitions in non-adversarial proceedings.

The Environment Section represented the Department of Energy and Environmental Protection in two cases involving Long Island Sound. In *Rosado v EPA*, New York officials sought to overturn an EPA decision approving a disposal area in the eastern Sound for dredged materials. This Section intervened on behalf of DEEP and took a leading role in this federal litigation in the Eastern District of New York. The case is important because any impact on the ability to dredge the state's ports and harbors could cost Connecticut businesses and industry more than 40,000 jobs and hundreds of millions of dollars. This Section prevailed at the trial level and is continuing to defend the EPA decision at the Court of Appeals for the Second Circuit. In a related case, this Section supported Electric Boat Corporation in overturning a New York decision blocking the company from using the eastern disposal site for a dredging project needed to allow the company to build the nation's next generation of nuclear submarines. If this

had not been successful, EB would have lost the contract which is worth \$7 billion in direct economic value to Connecticut over the next twenty years.

The Environment Section also provided extensive support for DEEP's Bureau of Energy and Technology Policy (BETP) over the last year. The Section was successful in the case of *Allco v FOIC*, where a solar developer sought to use the FOIA to obtain his competitors' confidential business information submitted to BETP as part of a legislatively mandated clean energy procurement. The trial and appellate courts agreed that BETP can keep information confidential as a trade secret thus protecting the integrity of the DEEP's clean energy procurement efforts which efforts have substantially reduced consumer costs.

This Section also lead up to 16 other state agencies from up to 11 states before the Federal Energy Regulatory Commission (FERC) primarily in the area of electric transmission regulation. These briefs focused on preventing excessive ratepayer costs, improving transparency, and reducing air pollution by developing new clean energy resources. FERC subsequently issued a revised notice of proposed rulemaking to reduce the financial incentive given to transmission companies to encourage actions that they are already legally obligated to do. In the order issuing the supplemental notice, FERC cited to this Section's brief as support for its rule change. If implemented, this proposed new rule will save ratepayers \$400 million nationally and Connecticut ratepayers up to \$24 million every year.

The Section also worked extensively with the DEEP to negotiate Consent Orders and resolve outstanding administrative proceedings that are intended to protect the environment, remediate pollution and impose penalties for past violations.

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

The Section 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, this Section moved on behalf of the Chief Animal Control Officer of the Department of Agriculture to seize 65 goats from property in Redding, Connecticut. At the time of the seizure by the Department of Agriculture, the goats were found to be in extremely poor condition. The conditions on the property were much worse than anticipated. The findings revealed more than 50 dead and decaying goats in various areas of the property. Some buried and some exposed and decomposing. The court held a two-day hearing with evidence and testimony. The court found that the goats were neglected and cruelly treated and awarded temporary custody and costs to the State. The goats have been in the care of the State since the order of the court and their condition is improving.

This past year the Environment Section also continued to defend challenges to DoAg decisions intended to protect the public from vicious animals. The section 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 Section 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 Section 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.

### **FINANCIAL & REVENUE SERVICES SECTION (formerly Finance)**

The Financial and Revenue Services Section (“Section”) provides legal services to several state agencies, including the Department of Banking, the Department of Insurance, the Department of Revenue Services, the Department of Economic and Community Development, the Office of Policy and Management, the Office of Health Strategy, and the State Insurance Risk Management Board. The Section handles litigation in federal and state courts for these agencies, including regulatory enforcement actions, administrative appeals, actions requiring the defense of state laws, and in proceedings before the Freedom of Information Commission and the Claims Commissioner. The Section 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.

#### State Agency Representation

During the past fiscal year, the Section’s work on behalf of state agencies included representing the Department of Revenue Services in 114 tax warrant proceedings seeking to collect overdue and delinquent state taxes, representing the Department of Banking in numerous administrative enforcement actions and other litigation matters, providing the Department of Economic and Community Development with legal assistance regarding grant, loan, and economic development programs, and assisting the Office of Health Strategy by providing legal advice with respect to its statutory responsibilities and guidance on state contract requirements. Representative litigation matters included the following:

- *Great Plains Lending, LLC v. State of CT Dep’t of Banking* – In an appeal from an order of the Banking Commissioner against an on-line payday lender owned by a federally recognized tribe and involving legal issues of first impression for the state, the Connecticut Supreme Court articulated the appropriate multi-factor test to determine whether a business entity is an arm of a tribe and therefore entitled to tribal sovereign immunity from suit. The Court also held that the burden of satisfying the test is on the entity claiming to be an arm of the tribe. Finally, the Court held that corporate officers of an arm of a tribe sued in their individual capacity are not immune from prospective injunctive relief and therefore may be enjoined from violating state law.

- *Tonina v. Revenue Services* – The Second Circuit Court of Appeals upheld the district court’s dismissal of a suit brought against the Department of Revenue Services, holding that the plaintiff’s claims were barred by the Eleventh Amendment.
- *Black v. Town of West Hartford* – In an appeal from a decision of the Superior Court dismissing, on the basis of sovereign immunity, the plaintiff’s claims against OPM for its alleged violation of Conn. Gen. Stat. § 12-71d (whereby OPM recommends a schedule of motor vehicle values to municipal tax assessors), the Connecticut Appellate Court upheld the judgment on the alternative basis that the plaintiff lacked aggrievement/standing.
- *Costas v. Sullivan*, AC 44075 – Appeal from a decision of the Superior Court upholding the determination by the Commissioner of Revenue Services concerning the plaintiffs’ tax credit for income taxes paid to New York, specifically with respect to the proper allocation, under Connecticut tax regulations, of deferred compensation received by the plaintiffs. Case is fully briefed and ready for argument.
- *Grand River Enterprises, Six Nations, Ltd. v. Boughton* – The Second Circuit Court of Appeals upheld the U.S. District Court’s dismissal of a suit brought against the Department of Revenue Services by a nonparticipating tobacco manufacturer, Grand River Enterprises, challenging the constitutionality of Conn. Gen. Stat. § 4-28m(a)(3)(C). The ruling contains valuable interpretations of the federal Commerce Clause and of the federal PACT Act, which will assist Connecticut and other states in their future efforts to combat illicit tobacco sales.

#### Other Consumer Financial Protection Efforts

Along with the work it does directly on behalf of state agencies, the Section focuses on consumer financial protection by conducting investigations, leading multistate enforcement committees, negotiating settlements, commencing litigation, drafting and reviewing regulatory and other comment letters, and handling consumer inquiries. Areas of focus include financial services, securities regulation, consumer lending, residential mortgage loan origination and servicing, for-profit education, student loan servicing, and debt collection. Representative consumer financial protection matters included the following:

- Negotiating an \$86.3 million multistate settlement with Nationstar Mortgage, the country’s fourth-largest mortgage servicer, to resolve allegations that the company violated consumer protection laws during its servicing of mortgage loans including by failing to properly oversee and implement loan transfers. Nationstar is required to follow a detailed set of servicing standards for three years that are more comprehensive than existing law. In addition, the settlement will provide over \$79 million in relief affecting 55,814 loans nationally, including over \$1 million for 685 eligible loans in Connecticut. In addition to the payments to borrowers, the State of Connecticut received \$250,000 through the settlement to support additional consumer protection efforts.

- Analyzing “pay-to-pay” convenience fees charged to borrowers by some mortgage services for online and telephone payments.
- Investigating the errors of an electronic payment vendor which triggered unauthorized bank account withdrawals for 480,000 borrowers nationwide.
- Engaging with largest mortgage loan servicers to ensure compliance with federal CARES Act COVID-19 forbearance and other mortgage relief requirements.
- Obtaining \$297,874 in debt relief for former ITT Tech students in Connecticut as part of a \$330 million multistate settlement with PEAKS Trust, a private loan program run by the now-defunct for-profit school and affiliated with Deutsche Bank entities.
- Facilitating a bipartisan multistate coalition of Attorneys General urging the U.S. Department of Education to implement additional reforms to ease the process of paying student loans and protect student loan borrowers from paying back debt to unscrupulous for-profit and defunct colleges.
- Advocating for rejection of a rule adopted by the federal Office of the Comptroller of the Currency that would have harmed vulnerable consumers by enabling predatory lenders to circumvent state usury caps through “rent-a-bank” schemes.
- Opposing federal Internal Revenue Service proposed rule that sought to treat payments made to healthcare sharing ministries as deductible medical expenses because it would have resulted in consumer confusion, harm, and junk coverage.

### Tobacco Enforcement and Advocacy

The Financial and Revenue Services Section is also responsible for a variety of tobacco-related matters. These include enforcement of the Master Settlement Agreement ("MSA") between fifty-two states and territories, including Connecticut, and more than forty participating tobacco product manufacturers. In 2021, Connecticut received over \$133 million in payments from tobacco manufacturers that participate in the MSA. Section attorneys work to ensure that Connecticut continues to receive the monetary payments it is owed under the MSA from participating manufacturers, that those manufacturers also comply with the public health provisions of the MSA, that nonparticipating manufacturers selling cigarettes in Connecticut make their requisite escrow deposits for Connecticut’s benefit, and that all tobacco product manufacturers abide by other requirements of state and federal law. In the past year, Section attorneys have also facilitated multistate efforts to urge the federal Food and Drug Administration to ban menthol cigarettes and to prevent manufacturers of electronic cigarettes from enticing youth to vape by adding flavorings to their products and by engaging in youth-oriented advertising.

## **GENERAL LITIGATION SECTION (formerly Torts)**

The attorneys in the General Litigation Section defend state agencies, officials and employees in tort, civil rights and other matters, including high exposure personal injury, medical malpractice and wrongful death claims and lawsuits. Many of the section's cases are brought by parties alleging injuries or civil rights violations at state facilities or while receiving services from state agencies.

The section'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 abuse 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. This year, two cases involved challenges to the governor's orders issued to keep our state's residents safe in the pandemic. Claimants often seek large sums of monetary damages. The section 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").

During the past year, the section continued to defend several complex, high-exposure, wrongful death, medical malpractice, civil rights, intentional tort, and personal injury cases. The section appeared for the state, its employees or officials from 40 state agencies and institutions this fiscal year; and successfully argued in most cases that the claims lacked merit, had jurisdictional defects, or failed to state a legally sufficient cause of action. Of the 51 cases the section closed this fiscal year, the state prevailed in 13 after section attorneys filed dispositive motions or defended the state in trials or hearings on the merits; and obtained withdrawals in 27. In two cases, section attorneys were successful in negotiating reasonable and just settlements. Of the remaining eight cases the section concluded, seven were not pursued by the claimant after discussion with our attorneys and in one the claimant filed a new suit in the superior court after the claims commissioner granted permission to sue the state. Two hundred and forty of the section's cases are ongoing, 37 more than last year. Many involve a death, assault or serious injury. Most of these cases are pending in the U.S. District Court, Connecticut Appellate Court, Connecticut Superior Court, and the OCC. To defend these cases, the section engages in extensive investigation, legal research, discovery and briefing, including complicated electronic forensic examinations and consultation with expert witnesses.

As an outgrowth of handling the many supervisory and premises liability claims filed, the section 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 section has been successful in recovering that money or reducing settlements by the amounts owed. It does so by consulting with the Department of Administrative Services for the outstanding figures and asserting setoffs in the claims brought by parties who have uncollected debt to the state.

Where an alleged injury may be covered by 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 section seeks insurance coverage to ensure that the state is held harmless and/or reimbursed for expenses. In such cases, the section 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. Indeed, most of the 27 withdrawals the section obtained, and some of the claims parties abandoned, resulted from convincing state contractors to assume liability for the claims. If state contractors and/or their insurers do not quickly come forward to defend and indemnify the state, section attorneys seek monetary compensation for their time and costs in defending the claims.

Similarly, the section has saved the state considerable expense by obtaining dismissals of claims brought at the OCC by employees of private companies with state contracts who were injured and were awarded workers' compensation from their employers, based on the argument that, because 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, additional compensation from the state for the claims would not be just and equitable.

### **HEALTH AND EDUCATION SECTION**

The Health and Education Section 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 composed of the four Connecticut State Universities and the twelve Connecticut Community Colleges, the Office of Higher Education, the State Library, the State Department of Education and the Connecticut Technical High Schools. This section also represents the Department of Public Health, the Department of Social Services, the Department of Mental Health and Addiction Services, the Department of Aging and Disability Services, the Department of Developmental Services, the Department of Veterans' Affairs, the Office of Early Childhood, the Psychiatric Security Review Board, the Commission on Human Rights and Opportunities, the Office of the Chief Medical Examiner and the sixteen health licensing boards and commissions.

The section'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 section 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 section 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 food stamps; nursing home and hospital rates; health care facility

certificates of need; confidentiality of medical and education records; 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 section also reviews and approves for legal sufficiency regulations and contracts for its client agencies.

## **Health**

Since the beginning of the pandemic, with the Governor's declaration of a public health emergency and civil preparedness emergency, the section has been extensively engaged in responding to legal demands arising from the COVID-19 pandemic. The section provided advice on dozens of the Governor's executive orders issued under the declaration and numerous orders of the Commissioner of Public Health. The section negotiated consent orders with 13 health care facilities after the declaration often to permit and regulate the expansion of services needed to respond to the COVID-19 surge. The section secured the agreement and approval of the Office of Civil Rights of the Department of Health and Human Services of an order from the Commissioner of Public Health addressing access of support persons to disabled patients in hospital and other facilities.

The section 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.

The section was successful in the Appellate Court in upholding a finding of contempt against a licensed dentist for failure to produce subpoenaed records with respect to a Department of Public Health investigation into the dentist's billing practices. Our section was also awarded attorneys' fees in this case.

The section handled a substantial amount of litigation for the Department of Social Services (DSS). The section continues to represent DDS in ongoing settlement compliance in the Southbury Training School litigation.

## **Education**

The section successfully defended a challenge to the Connecticut Department of Education's binding guidance issued to Connecticut public schools concerning the mandatory wearing of masks in schools and school settings. A lawsuit was brought in state court in August 2020 alleging that the guidance violated both the Connecticut Constitution and Connecticut state law. The trial court ultimately granted summary judgment to the defendants in April 2021

finding that the guidance did not violate state law.

The section provided legal services on a broad array of issues to the Connecticut State Colleges and Universities. Some of these issues included contract questions, discrimination claims, Title IX claims, due process rights and issues arising under the Freedom of Information Act.

This section also won an important case in the Appellate Court in an appeal from the revoking of the license for a principal who encouraged cheating on the standard mastery tests. While she was principal, massive cheating occurred during the administration of the 2011 Connecticut Mastery Test. As a result of this conduct, the Connecticut State Board of Education (Board) issued a decision revoking her administrator and teaching certificates. The trial court upheld the revocation, and our Appellate Court affirmed the trial court's decision.

The section 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 including challenges to student disciplinary matters. The section 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.

### **INFRASTRUCTURE & ECONOMIC DEVELOPMENT SECTION (formerly Transportation)**

The Infrastructure and Economic Development Section ("Section") 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 section 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 section 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 section also provides counsel on and drafting of many of the state's significant transactional matters. In conjunction with agency staff, the section 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.

During this past year, the section worked with DAS to review and approve contracts necessitated by the public health crisis as a result of COVID-19. These included: assisting DAS with the review and approval of agreements and amendments to agreements with multiple hotels and motels for the housing of homeless individuals and homeless shelter staff.

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

- a) Assisted DMV with the drafting and negotiating of the new emissions testing contract.
- b) Assisted DAS with the drafting and negotiating of the Child Support Enforcement Systems contract to provide design, development, and implementation services for the modernization of the Connecticut Child Support Enforcement System, including configuration, integration, and custom design of existing State software.
- c) Assisted DAS with the drafting and negotiating of the Medicaid Enterprise Technology System contract to deliver project management and technical solutions to facilitate the design, development, and implementation of a new Modular Medicaid Enterprise solution for the State's Medicaid program, delivered in a phased approach.
- d) Assisted DAS and DEEP with the drafting and negotiating of the Solar Power Purchase Agreement Template and Interconnection Agreement to sell energy to the State produced by solar electric generating facilities for site-specific venues.
- e) Assisted and assisting DOT with the review and approval of various contracts related to the Norwalk Bridge replacement project.
- f) Assisted and assisting DOT with various property transfers, easements, leases, licenses, and requests for breaks in non-access highway lines.
- g) Assisting DOT with the review and approval of a cost reimbursement agreement with Providence & Worcester Railroad necessitated by the disruption of rail freight service due to DOT construction.
- h) Assisted and assisting DOT with the review and approval of amendments to a lease agreement with Amtrak whereby the State leases certain property from Amtrak along the Hartford line passenger rail service.
- i) Assisted DOT with review and approval of two agreements for facilities management services at various railroad stations.



- j) Assisted DOT with review and approval of agreement with the New York State Thruway Authority relating to the repair of the Byram River Bridge, which spans the Byram River between Greenwich, Connecticut and Port Chester, New York.
- k) Assisted DOT with the review and approval of a lease with the City of New Haven to permit the City to use certain State property as a temporary waste stockpile area related to construction activities being undertaken by the City.
- l) Assisted DOT with the review and approval of an agreement for the licensing of certain data products to assist with transportation planning and operational analyses.
- m) Assisting DOT with a land swap transaction between DOT and the City of New Britain related to the construction of a new State commuter parking lot.
- n) Assisting DOT with the review and approval of an agreement with Housatonic Railroad Company for the repair of a highway-railroad grade crossing along the Berkshire Line Rail Segment.
- o) Assisting DOT with the review and approval of an agreement with the Center for Transportation and the Environment for the testing and deployment of battery powered electric buses using autonomous driving system technology.
- p) Assisting DOT with the review and approval of a license agreement with the city of New Britain whereby DOT would license a parking facility from the City for *CTfastrak* customers.
- q) Assisting DOT with the review and approval of documentation relating to a transit orientated development project to be located in the city of Stamford.
- r) Assisted DAS with the review and approval of a license agreement with Capital Workforce Partners for the provision of career counseling services at Tunxis Community College for its students.
- s) Assisted DAS with the review and approval of an agreement with Connecticut Light & Power for the provision of energy efficiency studies at various State properties.
- t) Advising DOH with regard to the proper structure of the so-called Resilient Bridgeport project, including advice on the appropriate state agencies to carry out various portions of the project.
- u) Assisted and assisting DOH with the review and approval of various personal service agreements, personal service agreement amendments, assistance agreements, and other contracts and agreements.

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 section 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 fiscal year, the section resolved a construction claim filed by a contractor pursuant to Conn. Gen. Stat. § 4-61 alleging damages for delay, lost productivity, and additional material costs from a bridge rehabilitation project. The contractor sought more than \$3.5 million dollars in damages and the Department settled the claim for \$1 million dollars, a total savings to the State of \$2.5 million dollars. We assisted another OAG section in the defense of a construction claim filed by a contractor against the Department of Mental Health and Addiction Services arising from the termination of a contract for work at Connecticut Valley Hospital in Middletown. The contractor sought over \$6,000,000 in damages based upon an alleged failure to compensate the company for work performed on an energy savings performance contract. The arbitration settled in late 2020 for \$3,000,000. The section continues to represent DOT and DAS in several pending claims against the State.

During the past fiscal year, section staff has been involved in the prosecution and defense of several major lawsuits and appeals. The section routinely argues cases at the Supreme Court and the Appellate Court. Section attorneys successfully won two cases at the Appellate Court that affirmed DMV's authority to use its discretion to weigh certain statutory factors in allowing a new auto line at an existing car dealership as well as DMV's authority to determine reasonable tow rate increases.

The section successfully defended the Office of Policy and Management (OPM) in a breach of contract action filed by the Metropolitan District Commission (MDC). MDC alleged that OPM owed \$312,885 from a 2001 permit agreement for the installation of a sewer line serving Adriaen's Landing. The trial court agreed that the claim was barred by sovereign immunity because the MDC failed to properly allege that the permit agreement was a construction contract under Conn. Gen. Stat. § 4-61.

The section 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. All the cases are currently pending at the Complex Litigation Docket.

Finally, the section is defending several claims filed against DOT involving salt contamination.

### **Property Matters**

The section's representation of DOT also includes the 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. The section also counseled the DOT regarding the divestiture of surplus properties.

The section resolved 2 eminent domain appeals filed against the DOT by trial and 7 by stipulated judgment. There are currently 21 eminent domain appeals in litigation. The litigation outcomes of the concluded eminent domain appeals resulted in savings to the State of \$516,550. The section successfully tried an eminent domain case before the trial court. DOT had assessed damages of \$2,000 for a partial taking of the plaintiff's property. The trial court agreed with DOT on the assessment and found that the plaintiffs had not proven that their parcel was land locked, saving the State \$99,000.

The section also worked with DEEP in connection with the procurement of conservation easements, resulting in the dedication 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. During the past year, the Department provided DAS and DCS with legal counsel and review of leases, agreements and contracts including:

- a) Assisted and assisting DOT with various property transfers, easements, leases, licenses, and requests for breaks in non-access highway lines.
- b) Assisting DEEP with the review and approval of a lease of State property located in Bloomfield to the town of Bloomfield for passive recreation purposes.
- c) Assisted DEEP with the review and approval of an easement agreement whereby DEEP granted a neighboring property owner an access easement over State property in exchange for a scenic easement over the neighboring property.
- d) Assisted and assisting DEEP with the review and approval of various grant agreements and conservation easements in connection with the statutory Open Space and Watershed Land Acquisition Grant Program.
- e) Assisted and assisting DEEP with the purchase of various properties pursuant to its statutory land acquisition authority.
- f) Assisted and assisting DEEP with various leases, easements, and boundary line agreements.
- g) Advising DAS regarding an encroachment by a neighboring property owner onto certain State property known as the Platt Technical High School in Milford.
- h) Assisting DAS with the review and approval of an air rights and construction easement with the City of New Britain that will permit the State to construct a pedestrian bridge at Central Connecticut State University over a city roadway.
- i) Assisting DAS with the review and approval of a water distribution line easement in favor of the town of Winchester over property located in Winchester.
- j) Assisted and assisting DAS with the review, negotiation, and approval of various agreements related to property purchases, sales, licenses, and leases.
- k) Assisting DAS with revisions to its form commercial lease.

## **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, and disputes with residents of state-owned residential properties and foreclosures involving real property in which the state has an interest in the property. The Department is currently defending DOH in several construction claims brought by a contractor hired to renovate and rebuild properties as part of Superstorm Sandy. In addition, the Department defended DOH in a declaratory judgment action and successfully worked with all the parties to reach a resolution. Finally, the Department is defending DOH before HUD on a complaint filed by Open Communities Alliance alleging a violation of the Fair Housing Act.

## **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. During this past year the Department achieved agreements with developers to preserve historic buildings at 650 Atlantic Avenue, Stamford; 153 East Main Street, Clinton, and 1 Old Kings Highway in Norwalk.

## **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 DMV's decision on tow rates. The Appellate Court upheld the DMV's denial of an exorbitant towing rate increase request by a towing association. The Appellate Court affirmed the DMV's decision, stating that the word "may" in the statute and regulation afforded the agency wide discretion in determining which listed factors to consider in reaching its decision. Further, the Court concluded that it would not substitute its judgment for that of the agency on the weight of the evidence presented. The plaintiff has filed a petition for certification with the State Supreme Court.

## **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 is assisting DOT to obtain environmental permits for the construction of the new Walk Bridge, Stamford. The Department also defends client agencies in court when environmental challenges are brought.

## **PRIVACY AND DATA SECURITY SECTION**

The Privacy Section handles matters related to the protection of Connecticut residents' personal information and data. The Section advises the Attorney General regarding the enforcement of state and federal privacy laws. These laws include Connecticut's breach notification statute, Connecticut's safeguards law, the Connecticut Unfair Trade Practices Act (CUTPA), the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), the federal Children's Online Privacy Protection Act (COPPA), and the federal Fair Credit Reporting Act (FCRA). In addition, the Section provides the Attorney General with advice on proposed legislation and other matters regarding privacy and data security and engages in extensive outreach to citizens and businesses.

### **Legislation**

The Section monitors federal and state privacy and data security initiatives and provides the Attorney General with counsel on proposed Connecticut legislation. This year, the Office advocated for a bill that would update Connecticut's breach notification statute, including by broadening the definition of "personal information" to encompass passport numbers, individual tax identification numbers, medical information, health insurance information, biometric data, and online account information (House Bill 5310). These categories trigger breach notice requirements and determine whether our Office and affected individuals are alerted when sensitive information has been compromised. The bill passed and was recently signed by the Governor and will take effect in October 2021.

In addition to the breach notice bill, our Section spent a significant amount of time reviewing Senate Bill 893, "An Act Concerning Consumer Privacy", which would establish a comprehensive consumer privacy law in Connecticut. We testified in support of the consumer data rights that the bill would create but urged legislators to address flaws impacting our enforcement authority. We engaged in numerous meetings with stakeholders as we considered critical components of the bill.

We also weighed in on House Bill 6607, a cybersecurity "best practices" bill, which would provide for an affirmative defense against tort claims relating to cybersecurity where the covered entity has adopted one of several cybersecurity frameworks. In addition to our efforts on state legislation, we have been monitoring the Uniform Law Commission committee's efforts to draft a model privacy law, as well as Federal privacy and breach notification legislation.

## **Data Breaches**

The Section reviews all data breaches reported to the Office under Connecticut's breach notification statute. In 2019, the Office received approximately 800 notifications, whereas in 2020, this number grew to over 1,200. This year, we are on track to receive approximately 1,500 breach notifications. We review each notification for compliance with our breach notification and data security laws. That includes a review of the privacy protections offered to affected residents, the safeguards in place at the time of the breach and the post-breach measures taken to improve data security. The Section conducts all necessary follow-up, including requests for further information about the incident itself, copies of consumer notice letters and/or requests for extended protection services where warranted.

## **Multistate Investigations**

The Section also conducts investigations into data breaches involving violations of state consumer protection and privacy laws and/or federal laws protecting personal information. The Section has led or assisted with numerous multistate investigations of large-scale data breaches and other high-profile matters. Recent multistate settlements of note are as follows:

### **Anthem**

On September 30, 2020, the office announced a \$39.5 million multistate settlement with Anthem, Inc. relating to its massive 2014 data breach affecting 78.8 million U.S. residents. Our Section led the multistate investigation and negotiations. Through the settlement, Anthem reached a resolution with the 43-state coalition and, also, California.

In February 2015, Anthem disclosed that cyber attackers had infiltrated its systems beginning in February 2014, using malware installed through a phishing email. The attackers were able to gain access to Anthem's data warehouse, where they collected names, dates of birth, Social Security numbers, healthcare identification numbers, and employment information for 78.8 million Americans. In Connecticut, 1.7 million residents were impacted by the breach.

Under the settlement, Anthem agreed to a series of data security and governance provisions designed to strengthen its practices going forward. Those include: implementation of a comprehensive information security program incorporating principles of zero trust architecture and including regular security reporting to the Board of Directors and CEO; specific requirements with respect to segmentation, logging and monitoring, anti-virus maintenance, access controls, two-factor authentication, encryption, risk assessments, penetration testing, and employee training; and third-party security assessments and audits for three (3) years.

As the sole lead state, Connecticut received **\$3,804,392.00**, which was placed in the General Fund.

## **Community Health**

On October 8, 2020, the office joined a \$5 million multistate settlement with Tennessee-based CHS/Community Health Systems, Inc., and its subsidiary, CHSPSC LLC. The settlement resolved an investigation of a data breach impacting approx. 6.1 million patients. At the time of the breach, CHS owned, leased, or operated, 206 affiliated hospitals. Although none of the hospitals were located in Connecticut, 4,746 Connecticut residents were impacted by the breach. Exposed in the breach were the names, birthdates, social security numbers, phone numbers, and addresses of patients.

Under the settlement, CHS agreed to implement and maintain a comprehensive information security program reasonably designed to safeguard personal information and protected health information (“PHI”). Specific security measures contained in the settlement include the requirements to develop a written incident response plan; to incorporate security awareness and privacy training for all personnel who have access to PHI; to limit unnecessary or inappropriate access to PHI and to implement specific policies and procedures regarding business associates, including use of business associate agreements and audits of business associates.

Connecticut’s share of the settlement was **\$37,760.17**, which was placed in the General Fund.

## **Home Depot**

On November 24, 2020, the Office announced that Connecticut, along with the attorneys general of 45 other states and the District of Columbia, obtained a \$17.5 million settlement against Georgia-based retailer The Home Depot, resolving a multistate investigation into the 2014 data breach which exposed the payment card information of approximately 40 million Home Depot customers nationwide. The breach occurred when hackers gained access to the Home Depot network and deployed malware on Home Depot’s point-of-sale system. The malware allowed the hackers to obtain the payment card information of customers who used self-checkout lanes at Home Depot stores between April 10 and September 13, 2014.

In addition to the \$17.5 million payment, Home Depot has agreed to maintain a series of data security practices, which include: employing a qualified Chief Information Security Officer tasked with reporting to both C-level executives and Board of Directors regarding Home Depot’s security posture; providing appropriate security awareness and privacy training; employing specific security safeguards with respect to logging and monitoring, access controls, password management, two factor authentication, file integrity monitoring, firewalls, encryption, risk assessments, penetration testing, and vendor account management; and undergoing a post-settlement data security assessment.

As a co-lead state, Connecticut received **\$1,093,196.25**, which was placed in the General Fund.

## **CafePress**

On December 8, 2020, our office announced a \$2 million agreement with CafePress to resolve a 2019 data breach that compromised the personal information of approximately 22 million

consumers nationwide. The settlement resolved the investigation of a coalition of seven states. Through our investigation, the states learned that CafePress, an online retailer of stock and user-customized products, failed to take thorough action for months after learning users' personal information was vulnerable. As a result of the breach, consumers' names, email addresses, passwords, physical addresses, and phone numbers were compromised, as well as, in some cases, sellers' full, unencrypted Social Security or tax identification numbers.

Under the agreement, CafePress agreed to make a series of improvements designed to protect consumer personal information from cyberattacks in the future, including: creating a comprehensive information security program that includes regular reporting to the CEO concerning security risks; designing an incident response and data breach notification plan; ensuring personal information safeguards and controls—including encryption, segmentation, penetration testing, logging and monitoring, a risk assessment program, password management, and data minimization—are in place; providing clear notice to consumers concerning account closure and data deletion; and undergoing third-party security assessments for the next five years.

CafePress agreed also to pay a total of \$2 million to the multistate coalition. An immediate payment of \$750,000 was divided amongst the states, while the remainder is suspended based on the company's financial condition. Connecticut's share of the upfront payment was **\$64,168.71** (with \$106,947.85 suspended), which was placed in the General Fund.

## **Sabre**

On December 23, 2020, our office, along with 27 Attorneys General, announced a \$2.4 million settlement with Sabre Corp. that resolves an investigation into a 2017 data breach of Sabre Hospitality Solutions' hotel booking system, which exposed approximately 1.3 million credit cards.

On June 6, 2017, Sabre informed its hotel customers of a data breach involving its hotel booking system that had occurred between August 2016 and March 2017, which the business had disclosed in a 10-Q SEC filing the month before. Sabre failed to provide timely notice and/or detailed information to its hotel customers about the breach. Since it tasked the hotel customers with providing notice to consumers, this resulted in some notices being issued as late as 2018, and some consumers receiving multiple notices stemming from the same breach.

The settlement requires Sabre to include language in future contracts that specifies the roles and responsibilities of both parties in the event of a breach. It also requires Sabre to try to determine whether its customers have provided notice to consumers, and to provide the attorneys general a list of all the customers that it has notified. In addition, the settlement requires that Sabre implement and maintain a comprehensive information security program, written incident response and data breach notification plan and undergo a third-party security assessment.

Connecticut received **\$174,724.78** from the settlement, which was placed in the General Fund.



## AMCA

On March 11, 2021, our office, along with 40 Attorneys General, filed a settlement with Retrieval-Masters Creditors Bureau d/b/a American Medical Collection Agency (“AMCA”). The stipulated judgment resolved claims relating to a June 2019 data breach that exposed the personal information of over 7 million individuals, including 100,266 Connecticut residents and potentially exposed the personal information of up to 21 million individuals throughout the United States.

AMCA filed for bankruptcy in the wake of the breach. While the Attorneys General of Indiana and Texas appeared in the bankruptcy, our office coordinated the multi-state investigation and settlement. Since AMCA filed for voluntary dismissal of the bankruptcy, the settlement requires AMCA, should it begin operations again, to create and implement an information security program with detailed requirements, including an incident response plan, to employ a duly qualified Chief Information Security Officer and to hire a Third-Party Assessor to perform an information security assessment. AMCA is also required to cooperate with the Attorneys General for the related investigations of medical providers that had provided personal information to AMCA. Should AMCA fail to comply with the cooperation provisions, or, if there is evidence it made false statements to the bankruptcy court, AMCA would be subject to the \$21 million penalty currently held in abeyance.

## Medical Informatics Engineering

In May 2019, our office entered into a settlement to resolve a multistate investigation of a data breach of Medical Informatics Engineering’s (“MIE”) systems. The breach exposed the sensitive personal and medical information of 3.9 million individuals nationwide, the majority of whom are Indiana residents (1.5 million). In Connecticut, 6,106 individuals were affected with 4,590 having their SSNs compromised.

We negotiated a settlement with MIE to address our concerns that MIE violated HIPAA and state law by failing to have reasonable security measures in place. Under the settlement, MIE has agreed to injunctive terms requiring MIE to remediate the issues that led to the breach and strengthen its security practices going forward. For example, MIE is prohibited from using generic administrative accounts. MIE must also: require multi-factor authentication for access to any portal it manages in connection with ePHI and for employees’ remote access; implement a Security Incident and Event Monitoring solution and analyze system activity in as close to real-time as possible; require strong, complex passwords and ensure such passwords are securely stored; and have annual risk assessments performed by an independent assessor for 5 years (the resulting reports must be provided to the AGs).

In addition to injunctive relief, MIE also agreed to make a \$900,000 payment to the states, in three (3) annual installments of \$300,000. Connecticut’s share, as an Executive Committee state, totals \$60,886.19. The first payment was due on July 1, 2019 (\$15,221.55); the second payment was due on July 1, 2020 (\$22,832.32); the third payment and final payment was made on June 30, 2021 (**\$22,832.32**). All payments were placed in the General Fund.

## **Education**

Finally, the Privacy and Data Security Section provides education and outreach with public and private entities that have a role or strong interest in privacy and data protection. Section staff have spoken on national panels, including at the Practising Law Institute's Annual Privacy Seminar and at state events, including for the local chapter of the International Association of Privacy Professionals. The Section has further presented continuing legal education regarding data security and privacy.

## **PUBLIC SAFETY SECTION**

This past year the Public Safety Section represented the Department of Correction; the Department of Emergency Services and Public Protection, including the Division of State Police, the Division of Emergency Management and Homeland Security; the Military Department; the State Marshal's Commission and the Department of Consumer Protection Liquor Control Division. The Section 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 Police Special Licensing and Firearms Unit, 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 Section have also represented the Judicial Branch in various litigation matters.

### **The Department of Correction**

The Department of Correction ("DOC") is the Section's largest client agency. With over 6,000 employees, 9,000 inmates and another 5,000 offenders supervised in community placements, all of the attorneys in the Section devote most 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 Section 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. District Court alone continue to represent more than 15% 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 Section'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: litigation relating to the impact of COVID-19 on the prison population, continued defense of the DOC's classification of former death row inmates; 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; class action litigation regarding the provision of treatment for Hepatitis C, litigation challenging DOC's pornography ban and limitations on inmate access to gang materials; environmental claims arising from exposure to Radon, PCBs and other hazardous conditions at several correctional facilities; litigation brought by certain violent groups that seek to be recognized as religious organizations; inmates challenging their classification as members of security risk groups; and inmates challenging the policies and procedures relating to strip searches conducted by correctional staff.

Because the inmate population continues to present exceptionally challenging medical and mental health issues, we continue to see a considerable increase in the number of complex medical cases involving issues such as: suicides; the alleged misdiagnosis of cancer and other serious chronic illnesses; viral infections allegedly resulting in blindness; loss of organ function; medical claims of individuals impacted by the opioid epidemic; and the adequacy of dental care in prisons. Additionally, at least once a month we initiate emergency proceedings to allow for extraordinary measures to reverse the physical effects of inmates actively engaged in hunger strikes or other acts of self-harm. This Section 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 Section 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 parole and pardon eligibility. There has been a resulting rapid increase in the number of parole eligibility cases defended by the attorneys in this Section. We also continue to see an increase in medical claims in habeas court.

With the various waves of the COVID-19 pandemic, inmates have brought a number of new cases, and filed numerous emergency motions in pending cases, challenging DOC's response to Sars-CoV-2 and seeking remedies ranging from money damages to emergency release from custody. Thus far, none of the cases we have defended has resulted in a court-ordered release of an inmate or an award of money damages.

In addition to our litigation commitments, Public Safety attorneys continue to advise the Commissioner of Correction on the legal aspects of a myriad of policy initiatives and legal issues, including: oversight of inmate medical care and the retention of contract providers outside of government; provision of necessary services to inmates discharging from custody; accommodating the practices of several religious faiths of the inmate population; 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. We regularly provide training to DOC staff and supervisors through their academy program.

The Section also continues to monitor compliance with agreements resolving litigation regarding the conditions of confinement in the women's prison and treatment of HIV infected inmates. With the recent class action settlements regarding HCV care and COVID-19 management, our work monitoring compliance will increase in the upcoming fiscal year. As the DOC continues to shift its focus to increasing community placements and reducing the number of inmates assigned to restrictive housing settings, the Section works closely with the agency to implement policies governing these new initiatives that comport with statutory and constitutional mandates. These obligations will continue to challenge the DOC as retirements and budget constraints take a toll on the correctional system.

### **Board of Pardons and Paroles**

The Section 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. More recently, as the standards for the granting of pardons have been relaxed by the legislature, we are seeing an increase in pardon-related litigation in state and federal courts. The Public Safety Section 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**

Section attorneys defend all lawsuits involving the Connecticut State Police (CSP), 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 Section's caseload of police litigation continues to grow in both number and complexity. The cases include false arrest and excessive force claims, wrongful death claims arising from police shootings, Second Amendment challenges to DESPP's practices relating to issuance of handgun permits, administrative proceedings before the Commission on Human Rights and Opportunities (CHRO) arising from racial profiling of persons stopped and/or arrested by CSP, and contract claims

arising from the agency's relationships with outside service providers. During the past year, the Section successfully litigated a number of cases in federal court and received favorable decisions in many of those cases. In addition to the Section's litigation efforts, Section 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.

This Section continues to represent DESPP in revocation proceedings relating to firefighters, private investigators and certain tradesmen involved in fireworks and demolition and to give advice to agency attorneys who prosecute and sit as hearing officers in these administrative proceedings. Section 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. Our attorneys also appear on behalf of DESPP in matters before the CHRO in matters relating to racial profiling and discrimination based on past criminal history.

With the recent passage of significant police accountability legislation, it is likely that this Section will see an increase in police misconduct litigation in state court, as well as an increase in administrative proceedings arising from the revocation of the credentials of municipal police officers by the Police Officers' Standards and Training Council, as well as regulation review to comport with the regulatory requirements of this new legislation.

### **Board of Firearms Permit Examiners**

During the past year, the Section provided legal advice and representation to the Board of Firearms Permit Examiners on a number of issues, including appeals from denials of permits based on mental health and medicinal marijuana use. The Section 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 Section 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 Section continues to work with the Board to enforce the firearms laws of the State of Connecticut.

### **Liquor Control Division**

During the past year, the Section has handled administrative appeals involving permits and licenses that are within the purview of the Liquor Control Division. In addition, Section 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 Section 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. This Section also represented the Commission in actions where individual state marshals challenged disciplinary actions taken against them.

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

The Section continues to defend numerous cases involving the Division of Criminal Justice and the Division of Public Defender Services. These cases often raise constitutional questions involving governmental immunity, and relate to the core duties of prosecutors and public defenders throughout the criminal justice process. In addition, the Section 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. In addition, we serve on the DNA Oversight Committee, which is responsible for overseeing policies governing the state's DNA databank. Finally, the Section oversees the contract between the Office of the Chief State's Attorney and outside labor counsel.

## **Military Department**

The Section continues to work closely with the Military Department on a variety of issues, particularly in review and approval of substantial contracts and funding programs from the U.S. Department of Defense.

## **Prosecution of Home Improvement Contractors**

An Assistant Attorney General in this Section oversees the Attorney General's program for prosecution of fraudulent and/or unlicensed home improvement contractors. Under this program, several of the office's attorneys 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 attorneys review and approve warrant applications leading to the arrest of individuals who violate the laws governing home improvement and new home construction contractors. The attorneys then prosecute the cases to completion in criminal court and recover restitution for victims of unscrupulous home improvement contractors.

## **Wrongful Incarceration Claims**

The Section continues to represent the State in claims for wrongful incarceration brought in the Claims Commission pursuant to Conn. Gen. Stat. § 54-102uu and in the state and federal courts.

Since the legislature created this remedy, more than 40 individuals have filed claims seeking millions of dollars in damages for being wrongfully convicted of, and incarcerated for, crimes they did not commit. This Section 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 Section contested the claim in litigation before the Claims Commissioner. Defense of these claims usually requires lengthy discovery and administrative proceedings before the Commissioner.

### **Contracts**

Each year, the Section works closely with its client agencies, including DOC, DESPP, DEMHS, and the Military Department, to review and approve contracts for the Commissioners' and Major General's signatures. 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 Section reviewed approximately 100 contracts, requiring authorization of the Commissioners and Major General for expenditures totaling in excess of \$50 million dollars.

One attorney in the Section also advises agencies in the negotiation of problematic contractual provisions to ensure agency policies and practices are effectuated. This attorney also educates and trains agency staff in contract law.

### **Appeals**

This Section has a substantial appellate practice in state and federal courts. The issues on appeal range from Second Circuit appeals raising complex constitutional issues to State Appellate and Supreme Court cases arising from habeas court and the regular session of the Superior Court. Our attorneys work closely with the Solicitor General on these appeals.

## **SPECIAL LITIGATION & CHARITIES SECTION**

The Special Litigation Section 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 Department of Consumer Protection, the Department of Revenue Services, 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, the Office

of the Victims Advocate, the Public Utility Regulatory Authority and the Connecticut Siting Council. In addition, through its Public Charities Unit, the Section protects the public interest in gifts, bequests and devises for charitable purposes, and in conjunction with the Department of Consumer Protection, enforces state laws regulating charities and professional fundraisers who solicit from the public.

In the past year, the Section represented the State's interests in a number of important matters, including:

- the successful defense of numerous federal and state constitutional challenges to the Governor's executive orders issued to address the COVID-19 public health emergency, including challenges to masking requirements, restrictions placed on bars, restaurants and other businesses;
- the providing of advice to the Governor and Secretary of State related to election issues during the COVID-19 public health emergency, including in particular the availability of absentee balloting and the process for petitioning candidates to obtain ballot access;
- the successful defense of lawsuits challenging the actions of the Governor and the Secretary to modify voting procedures and ballot access procedures during COVID-19 public health emergency;
- continued litigation challenging the Trump administration's regulations related to reproductive rights, taxation and issues related to immigration and documentation status of Americans.
- advice to the Governor and legislative leaders regarding complex legal issues related to existing and proposed gaming within the State, including sports betting, online gaming, and the development of a gaming facility jointly owned and operated by the Mohegan and Mashantucket Pequot tribes, and related federal court litigation;
- assistance on issues related to COVID-19 vaccination requirements;
- assistance in the implementation of the *SEBAC v. Rowland* settlement;
- defense of first amendment-based challenges to decisions of the State Elections Enforcement Commission relating to campaign finance regulation;
- creation of a voting protection team within the OAG to ensure a safe and orderly election in November 2020;
- securing payment of a \$20,000 fine on behalf of the Office of State Ethics;
- the ongoing lawsuit by the Schaghticoke Tribal Nation alleging that the State breached its duties to the Schaghticoke tribe since the early 1800s;
- representation of the Governor and legislators before the Freedom of Information Commission (FOIC);
- pursuit of a resolution of unique title questions pertaining to the historic Lebanon town green;



- an ongoing investigation of the use of charitable funds designated for first responders involved in the Sandy Hook shooting;
- assistance to agencies on issue related to unclaimed property, the reviewing and approval of state contracts related to goods and services and legal representation;
- training and advising OAG attorneys and support staff on issues related to the Freedom of Information Act and the Freedom of Information Commission;
- training and advising OAG attorneys on issues related to ethics and professional responsibility issues.

In the area of charitable trusts and gifts, the Section was active in investigations and court actions to ensure that charitable gifts are used for the purposes for which they were given. In several matters involving private organizations, Section 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 inflict such organizations where good governance is lacking.

In 2021, a charities attorney in the Section assumed the lead role within the OAG in guiding the OAG's participation in the Connecticut Probate Court's new electronic filing system- TurboCourt. Section attorneys and support staff have coordinated the OAG's TurboCourt implementation in anticipation of an August 2021 rollout of TurboCourt within the OAG. They have studied and addressed the office's overall needs related to individual AAG access to TurboCourt electronic filing and TurboCourt notice procedures for charitable and child support/collection matters. Section attorneys have also assumed leadership roles in a nationwide project to streamline and modernize the paid solicitor registration system through a single multistate portal system which member states will use and share to collect solicitor data. If adopted, this single portal will facilitate solicitor's registration and states' ability to analyze solicitor conduct to better protect charitable donations.

Since 2019, the Section has also included attorneys responsible for advising and representing the Public Utilities Regulatory Authority and the Connecticut Siting Council on complex issues of energy and public utility law, as well as administrative law. These attorneys defend the State's interests in energy and telecommunications issues before state and federal courts, before the Federal Energy Regulatory Commission and the Federal Communications Commission, and in regional and national organizations. In the past year, these attorneys have defended against challenges to the Council's approval of renewable energy facilities (both solar and wind) and telecommunication facilities. They also defended against challenges to the authority of the Public Utilities Regulatory Authority to order consumer relief from utilities company's mishandling of storm-related power restoration.

The Special Litigation Section provides 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. The Section also provides advice and guidance to state officials and agencies on Freedom of Information Act matters.

The Section also 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 Section plays a leading role in the preparation of appeals and opinions in the Office. The Section 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 Section's resources is committed to defending the State's interests in self-represented litigation against judges and other state officials.

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

The Workers' Compensation and Labor Relations Section represents the State Treasurer as the Custodian of the Second Injury Fund, the Workers' Compensation Commission and the Department of Administrative Services in its capacity as the administrator of the state employees' workers' compensation program, as well as DAS Personnel, the Labor Department, the Office of Labor Relations, the Office of the Claims Commissioner, the State Employees Retirement Commission, the Teachers' Retirement Board, and others. The section's workers' compensation attorneys and paralegals represent the Second Injury Fund (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 section's labor attorneys represent the Department of Labor in unemployment compensation appeals to the Superior Court. The section also represents the Department of Labor's Wage Enforcement Division, collecting unpaid wages due Connecticut employees in the private sector. The section'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 state's Appellate and Supreme Courts.

During the past fiscal year, section attorneys and paralegals appeared for the Fund and the State in 2,443 hearings before workers' compensation commissioners and in 52 new unemployment compensation cases in the Superior Court. The section also opened 21 new cases on behalf of Connecticut citizens who were not paid wages by their employers.

Section attorneys and paralegals were responsible for recouping \$177,471.71 for the State of Connecticut and \$100,923.00 through third party interventions in Superior Court and negotiated settlements in lieu of litigation. These sums represent reimbursements to the State of money which was paid out in workers' compensation benefits for injuries caused by third parties.

Finally, section attorneys were responsible for the collection of \$218,600.30 in unpaid wage and civil penalties for Connecticut citizens whose employers failed to pay them in accordance with Connecticut's labor laws.

During the fiscal year that ended on June 30, 2021, the Workers' Compensation & Labor Relations Section was involved in the following significant cases:

- In *Barker v. All Roofs by Dominic*, 336 Conn. 592 (2021), the state Supreme Court affirmed the decision of the Appellate Court that the City of Bridgeport was the plaintiff's principal employer pursuant to Conn. Gen. Stat. Sec. 31-291 insofar as the plaintiff worked for an uninsured subcontractor hired by the city. The city argued that the Second Injury Fund should be responsible for the plaintiff's workers' compensation benefits because the plaintiff's employer was uninsured on the date of injury and the city was not "in the trade or business" of repairing roofs on municipal buildings. The court's majority held that the principal employer statute, which predated the creation of the Second Injury Fund, controlled given case law going back to the court's 1932 decision in *Massolini v. Driscoll*, 114 Conn. 546 (1932). The significance of the decision is that municipalities can be liable as principal employers under Sec. 31-291.
- In *Commissioner of Labor v. Y Knot Enterprises, LLC et al*, HHD-CV-19-6105885S (6- 8-2021), the Superior Court, (Cobb, J.), upheld the findings, awards and orders of the Labor Commissioner that the defendants, a New Milford restaurant and its owner, were liable for unpaid overtime wages, double damages, costs and penalties to a salaried sous chef who routinely worked in excess of 40 hours per week but for whom no wage records were kept to document the overtime hours. The court held that the defendants failed to meet their burden to prove that the employee was exempt from overtime pay due to claimed "managerial duties" or any of the exemptions provided for in Conn. Gen. Stat. Sec. 31-76i. The Director of Wage and Workplace Standards for the state Department of Labor hailed the decision as a great victory and a cautionary tale about the risk of misclassifying non-exempt employees for the purpose of avoiding the payment of overtime wages.
- In *California, et al v. Azar*, Case 3:19-cv-02552-VC (11-17-2020), the U.S. District Court for the Northern District of California vacated the repeal by the U.S. Department of Health and Human Services of a regulation authorizing voluntary payroll deductions from the paychecks of home healthcare workers under the Medicaid programs of several states including Connecticut. While the district court's decision is currently on appeal to the Ninth Circuit, Case No. 21-15091, the Biden Administration is considering withdrawal of the appeal in favor of further rulemaking by the federal agency.

### **INTERNSHIP & VOLUNTEER PROGRAMS**

The Office of the Attorney General continues to maintain strong and robust internship and volunteer programs. These programs allow students, along with some mid-career and retired professionals, to volunteer their time in assisting the work of the Office of the Attorney General. One of the most unique aspects of the program is the variety of applicants which are placed into

positions. Each year, the Office utilizes not only law students, but also high school, special needs, undergraduate, paralegal, graduate, and recently graduated students to assist on substantive projects in each of the 14 departments.

The OAG internship program is organized by the Deputy Director of Constituent Services. During this fiscal year, due to the COVID-19 pandemic, the office utilized both a fully remote and hybrid work arrangement for interns. Each Section worked hard to provide an engaging and interactive experience for their students. Weekly video seminars, led by section chiefs and senior staff, provided interns a comprehensive look at the work of the office and daily meetings were shifted to Microsoft Teams to allow for more direct feedback and supervision.

During the past year, the office utilized over 60 legal, graduate, undergraduate, and high school interns representing schools from within the state and throughout the country. Our interns made up a diverse group of students which represented many Connecticut communities. The internship leadership team expanded their outreach efforts by participating in numerous remote interview events and leading presentations to outside organizations, including the Lawyers Collaborative for Diversity, Kids Speak, and the Public Interest Law Center.