

# Office of the Attorney General



## *At a Glance*

**GEORGE JEPSEN, Attorney General**

**NORA DANNEHY, Deputy Attorney General**

**Established – 1897**

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

**Central office - 55 Elm Street, Hartford, CT 06106**

**Average number of full-time employees - 308**

**Recurring General Fund operating expenses - \$28,415,000**

**Revenues Generated - \$456,934,117**

## **Mission**

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

## **Statutory Responsibility**

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

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

During the 2011-2012 fiscal year, **\$456,934,117** was generated by the Attorney General's Office, as described below:

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

Tobacco Settlement Fund Collections	\$123,798,921
State Child Support Collections	40,454,322
Tax Collection	5,674,147
Recovery for Environmental Violations	799,829
Consumer Protection Penalties, Costs and Forfeitures	806,096
Charitable Trusts/Solicitations—Civil Penalties	13,056
Department of Social Services Collections/Civil	1,398,847
Global Civil Settlements	7,692,621
Department of Banking Penalties	1,149
Tobacco Assurance Voluntary Compliance	5,204
Department of Administrative Services Collections	6,639,638
DOT Damage To State Property	11,025
Antitrust Fees, Costs & Civil Penalties	4,786,266
Multistate Mortgage Settlement	27,100,000
Department of Banking Mortgage Settlement	1,000,000
CT Lottery Corporation	13,000
Tobacco – Grand River	400,509
SOS, DOC, OSE, UConn (misc.)	1,381,759
Recoup & Recovery of Medicaid Advances	1,200,000
Miscellaneous Collections	160,873
<b>Total Revenue Generated for General Fund</b>	<b>\$223,337,262</b>

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

John Dempsey Hospital	\$ 271,613
Second Injury Fund	210,527
Workers' Comp re State Employees	2,444,879
Unpaid Wage and Unemployment Tax	749,160
Department of Social Services IV-D Liens	96,049
SEP's	218,749
CT Environmental Benefit Project	360,000
Restitution to BoA	67,413
<b>Total Revenue Generated for Special Funds</b>	<b>\$4,418,390</b>

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

Consumer Protection Restitution AVC & Litigation	\$ 751,992
Consumer Protection Mortgage mediation/modification	1,114,815
State Child Support Collections for Connecticut Families	226,073,823
Consumer Restitution from Home Improvement Contractors	225,887
Antitrust Restitution	140,170
Recoveries for Environmental Projects (Natural Resources Damages)	210,283
Consumer Health Insurance Restitution	646,565
Illegal Billing – Medicaid	8,395
Other Revenue Generated for Individuals	6,535
<b>Total Revenue Generated for Consumers and Businesses</b>	<b>\$ 229,178,465</b>
<b>TOTAL REVENUE ACHIEVED</b>	<b>\$456,934,117</b>

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

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

Court Cases	
Instituted	17,704
Completed	17,261
Pending	18,274
Appeals	
Instituted	134
Completed	105
Pending	163
Administrative proceedings	
Instituted	1242
Completed	1006
Pending	1679
Antitrust Investigations	
Instituted	12
Completed	13

Pending	8
Legal documents examined	14,835
Formal opinions issued	15

## **LEGISLATION**

During the 2012 legislative session, the Attorney General proposed and supported a number of pieces of legislation that will protect consumers, homeowners, workers, and victims of domestic violence. Among other things, the Attorney General proposed legislation that will better protect potential victims of identity theft by requiring those responsible for data security breaches to provide notice to the Attorney General. This legislation will help the Attorney General enforce existing laws requiring proper notices to affected consumers. The Attorney General also proposed legislation that amends Conn. Gen. Stat. Sec. 31-323, the statute permitting injured workers to obtain writs of attachment to secure payments of compensation against uninsured employers. This statute was rarely, if ever, used by claimants who invariably chose to assert claims against the Second Injury Fund, which is liable under Sec. 31-355 to pay compensation to claimants when their employers fail to have workers' compensation insurance coverage. The amendment to the statute permits the Fund to petition compensation commissioners for such writs of attachment in order to secure the property of uninsured employers who are liable to the Fund when the Fund is ordered to pay claimants pursuant to Sec. 31-355. This statutory amendment not only provides the Fund with the means to obtain reimbursement of expenditures for benefits paid to claimants from uninsured employers, but also provides our Office with leverage to compel uninsured businesses to settle the claims by their injured workers directly.

The Attorney General also supported legislation extending greater protections to condominium owners. Among other things, that legislation requires community association managers to complete certain educational requirements and pass an examination in order to receive, maintain or renew a certification as an association manager. It also requires real estate brokers and salespersons to complete coursework in the practices and laws concerning common interest communities.

In addition, the Attorney General supported and helped craft legislation extending greater protections to consumers under home heating oil and propane contracts. That legislation contains a comprehensive set of reforms to Connecticut's laws governing the sale of home heating fuel and associated services and equipment. Among other things, the legislation prohibits home heating fuel dealers from assessing unnecessary charges and fees. It also requires such dealers to clearly disclose to consumers in writing the nature of any charges or fees that are permissible under the law. In addition, the law prohibits dealers from charging fees or surcharges under automatic delivery agreements and limits the kinds of fees dealers may charge for deliveries initiated by a consumer outside an automatic delivery agreement. The bill also makes important changes to the existing laws governing guaranteed price plans. Among other

things, the bill requires dealers offering guaranteed price plans to enter into financial arrangements with third-parties that will ensure the dealers can meet their obligations to consumers under those agreements. It also requires dealers to disclose the nature of those transactions to the Department of Consumer Protection (“DCP”) and vests in the Commissioner of DCP the authority to investigate dealers who DCP suspects have failed to comply with the law’s requirements.

The Attorney General also supported and helped craft legislation amending Connecticut’s “Do Not Call” law by prohibiting telephone solicitors from intentionally transmitting inaccurate or misleading caller identification information. Under existing law, telephone solicitors were prohibited from intentionally using a blocking device to circumvent a consumer’s caller identification service. While this provision is an important and effective way to ensure that consumers and law enforcement are able to identify or contact solicitors, some solicitors circumvented the requirement by installing equipment that transmitted inaccurate or misleading caller identification information. As a result, consumers were deceived into answering a call they otherwise would avoid or unable to identify a solicitor who may have violated the law. In addition, the Department of Consumer Protection and the attorneys in our Office were unable to assist consumers because there was no way to verify the identity of or otherwise contact such solicitors. Amending the law to prohibit such activity will help ameliorate this increasingly common practice.

The Attorney General also supported legislation that strengthens the existing protections for victims of domestic violence. Among other things, that legislation lengthens the duration of civil protective orders to one year from the current duration of six months and allows, at the option of a victim of domestic violence, for the distribution of the protective order to public and private institutions of basic, vocational, and higher education. Additionally, the new law adds stalking to its definition of “Family Violence,” and expands the definition of “threatening,” both of which reduce ambiguity within the current statutory scheme. The legislation also includes provisions to include computer or phone-based stalking and threatening as grounds for both obtaining a protective order, as well as for violating a protective order. Finally, the legislation creates a model policy for police officers to follow when responding to domestic violence incidents. Taken together, these new provisions strengthen the existing protective order scheme and help reduce domestic violence.

In addition, the Attorney General supported legislation that permits family child care providers and personal care attendants who provide services under state-subsidized programs to form unions and bargain collectively with the State concerning the terms and conditions of their participation in the subsidized programs, including, but not limited to: (1) state reimbursement rates; (2) benefits; (3) payment procedures; (4) contract grievance arbitration; and (5) training and professional development. Each and every day, thousands of workers covered by this proposal provide vital services to children and other vulnerable members of our community. They do so in accordance with state policies and programs and are compensated with state funds. This legislation provides them with a strong voice when it comes to issues of training, professional development, and fair compensation and will improve these programs and the State’s ability to attract, recruit and retain the most skilled workers for these crucial programs.

Finally, the Attorney General supported legislation creating a Commission on Judicial Compensation. Beginning in January 2013 and every four years thereafter, the new Commission

will provide a report to the Governor and General Assembly containing recommendations about appropriate levels of compensation for state judges. This new process will enhance the state's ability to recruit and retain a qualified and diverse group of judges. It also will insulate the judicial branch from the kinds of political considerations that may influence decisions about judicial compensation and ensure the Judicial Branch's efficient and fair administration of justice, which is fundamental to our democracy.

## **DEPARTMENTS**

### **ANTITRUST DEPARTMENT**

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

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

#### **Anticompetitive Practices**

In fiscal 2011-12, the Department continued its emphasis on investigating and prosecuting anticompetitive and illegal practices engaged in by insurance brokers. Over the last several years, these practices: bid rigging, price-fixing, steering of business to preferred insurers in return for lucrative undisclosed compensation, and other anticompetitive and deceptive behavior, have resulted in higher insurance premiums for Connecticut citizens - - both individuals and corporations, as well as Connecticut municipalities and state agencies. On October 28, 2011, the Attorney General, along with the Connecticut Insurance Commissioner, announced a \$1.7 million settlement with Massachusetts-based insurance broker William Gallagher Associates, Inc., (WGA) to resolve allegations that WGA misrepresented and concealed fees and commissions, ultimately overcharging a Connecticut client millions of dollars over several years. The state alleged that WGA violated the state's Unfair Insurance Practices Act and Unfair Trade Practices Act in its dealings with Milford Power Company, LLC. Under the terms of the agreement, the company paid the state \$100,000 in civil penalties and forfeited \$1.6 million to be deposited in the state's General Fund.

In the Spring of 2008, the Attorney General, along with a number of other state Attorneys General, formed a task force to investigate allegations that certain large financial institutions, including national banks and insurance companies, and certain brokers and swap advisors, engaged in various schemes to rig bids and commit other deceptive, unfair and fraudulent conduct in the municipal bond derivatives market.

In fiscal year 2010-11 the state task force settled two cases - - the Bank of America and UBS AG - - which returned approximately \$126 million in restitution to state agencies, municipalities and nonprofits throughout Connecticut and nationwide that were harmed by these schemes. Building on these two settlements, the Attorney General and the state task force reached three additional settlements: a \$92 million settlement with JP Morgan Chase & Co. (“JPMC”) in July 2011, a \$58.75 million multistate settlement with Wachovia Bank N.A. in early December, 2011 and a \$34.25 million settlement with GE Funding Capital Market Services, Inc. (“GE Funding”) in the last week of 2011. In addition to civil penalties and paying for the costs of the investigation, the JPMC, Wachovia and GE Funding settlements returned an additional \$150 million in restitution to victims in Connecticut and throughout the United States. Apart from the restitution, the State received an additional \$2.675 million in fees and costs - - the highest amount of any state in the task force - - in recognition of the lead role the Attorney General’s Antitrust Department played in the investigation. The settlement funds were deposited into the General Fund. The task force’s investigation is ongoing.

### **Unfair Trade Practices in Trash Removal Services Industry**

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

On April 14, 2011, the Attorney General settled the unfair trade practices and antitrust lawsuit against Galante. The lawsuit alleged that in 2002 and 2004, Galante ordered employees at two of his companies to raise prices by 10 percent for certain commercial customers under the false representation that they were mandatory increases for disposal-site costs. The lawsuit also alleged two incidents of bid-rigging by American Disposal Services of Connecticut, another Galante-owned company. Under terms of the settlement, Galante paid the state \$600,000. After the \$600,000 state settlement was approved by the court last year, eligible customers were notified about the process for reimbursement and 73 former customers submitted claims worth approximately \$166,000. The remaining \$425,000 of the settlement was transferred to the General Fund.

### **E-Books Antitrust Lawsuit**

One of the primary goals of the Antitrust Department is ensuring that innovative products have the ability to effectively compete in what are often fast-paced and burgeoning markets.

Electronic books (“eBooks”) and electronic book readers (“eReaders”) are two such areas of growth. In a relatively short period of time, the sales of eBooks have outpaced the sales of physical or hardcopy books. One reason for this growth was the introduction in January 2010 of Apple Corp’s iPad, one of the most popular consumer electronic products - - computer tablets - - which support the use of eBooks.

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

On April 11, 2012, following the Attorney General’s investigation, 16 states, led by the Texas and Connecticut Attorneys General, filed an antitrust lawsuit in U.S. District Court in Texas alleging Apple Inc., and publishing companies Macmillan Publishers Ltd., Penguin Group (USA), Inc. and Simon & Schuster engaged in an anticompetitive price-fixing scheme for marketing electronic books. At the same time, the Attorney General announced that Connecticut and Texas had reached agreements with two other publishers: Hachette Book Group, Inc. and HarperCollins Publishers, LLC,. Subsequent to the filing of the lawsuits Simon & Schuster also agreed to settle. The details of the settlement are still being worked out but will provide restitution to eBook consumers affected by the alleged illegal conduct.

### **Credit Rating Agencies**

In July 2008, the Attorney General filed lawsuits against three major U.S. credit rating agencies: Moody’s Corporation (“Moody’s”), Standard & Poors (“S&P”) and Fitch, Inc. (“Fitch”) for their role in an alleged systematic scheme to deceptively and unfairly underrate tax free debt issued by the state of Connecticut and its municipalities. Subsequent to the filing of the lawsuits, Moody’s, S&P and Fitch reformed how they rate public bonds in the United States and these reforms have resulted in higher credit ratings -- and corresponding lower interest rates -- for many Connecticut cities and towns.

On October 14, 2011, the Attorney General entered into settlements with each of the credit rating agencies, resolving claims that the companies allegedly misrepresented the meaning of their public bond credit ratings and unfairly gave lower credit ratings to public bonds. As part of the settlements, the rating agencies will credit the State approximately \$900,000, which will be used to offset the expense of obtaining future credit ratings on sales of State bonds -- a direct cost savings to the State of Connecticut. Under the terms of the settlements, Moody’s, S&P and Fitch have also agreed to meet with public bond issuers in Connecticut to explain their credit rating scales and the factors the rating agencies look to when rating public bonds in Connecticut.

Additionally, a key reform sought by the State’s lawsuits was included in the federal Dodd- Frank Wall Street Reform and Consumer Protection Act, enacted after the lawsuits on July 21, 2010. The Dodd - Frank Act now requires rating agencies to clearly define the meaning of their rating symbols and to apply such symbols consistently across all securities, including public and corporate bonds, for which the symbols are used.

## **Merger Enforcement**

Merger enforcement has long been a high priority within the Attorney General's antitrust enforcement responsibilities and this year was no exception due to a trend of consolidation in the healthcare industry. In Connecticut, several hospitals have announced plans to merge, including LHP Hospital Group, Inc.'s planned acquisition of St. Mary's Hospital and Waterbury Hospital; Yale-New Haven Hospital's (YNHH) acquisition of The Hospital of St. Raphael (HSR) and Hartford Hospital's planned purchase of William W. Backus Hospital in Norwich. In June, 2012, the Attorney General announced that he will not seek to block the merger of YNHH and The HSR. This decision followed a lengthy investigation coordinated with the Federal Trade Commission to determine whether YNHH's acquisition of HSR would substantially lessen competition for medical services in the Greater New Haven area. Although not a condition of the Attorney General's decision, YNHH agreed to the Attorney General's request that it maintain current levels of charitable healthcare and financial assistance, and provide the same level of service and assistance to patients receiving care on the HSR campus.

## **Investigation of Retail Securities Brokers**

Ensuring open and competitive financial markets for small investors is one of the Attorney General's most important antitrust enforcement initiatives. In keeping with that priority, in June 2011 the Attorney General launched an investigation of possibly collusive conduct by several retail securities brokers and firms that assist the brokers in executing their orders on an exchange, which may have hindered competition in the retail brokerage industry. In March 2012, the Attorney General announced the first agreement to result from the investigation: an agreement with online retail broker Scottrade, Inc. Under the agreement, Scottrade will cooperate with the investigation and also create and implement an antitrust compliance policy and training program for all Scottrade employees.

## **Education and Training**

The Attorney General believes that efforts to enhance the public's understanding of the work of his office is of paramount significance. In the context of antitrust enforcement, an adjunct to that goal is the need to provide education and training to public entities and business professionals to help them detect and deter antitrust schemes aimed at taxpayer or corporate funds. In March 2012, the Attorney General hosted the first in a series of antitrust seminars. The March event, entitled "*Price Fixing, Bid Rigging & Market Allocation Schemes: What They Are and What to Look For and How to Prevent Them,*" was designed for state and municipal purchasing authorities. The seminar drew nearly 200 participants representing more than 25 state or quasi-public agencies and the Connecticut university system and nearly 40 municipalities and school boards. Additional seminars are planned.

## **CHILD PROTECTION DEPARTMENT**

This department is dedicated to protecting the children of the State of Connecticut from abuse and neglect. It represents the Connecticut Department of Children and Families (DCF) in state and federal court proceedings. To this end, the Department represents DCF in thousands of child protection cases before the civil session of the Superior Court for Juvenile Matters in fourteen venues statewide. The vast majority of these cases are initiated by DCF through various proceedings, such as neglect petitions, applications for orders of temporary custody, review of permanency plans, transfer of guardianship, reinstatement proceedings, and termination of parental rights petitions. The objective of these proceedings is to protect abused and neglected children, ensure that they live in safe and nurturing home environments and assist in securing permanent and safe homes for them.

The Department also successfully represented the State in a vast number of appeals involving these children before the Appellate and Supreme Courts. Of particular note are the following cases:

- In *In re Jose B.*, 303 Conn. 569 (2012); and *In re Jessica M.*, 303 Conn. 584 (2012); the Supreme Court affirmed the Appellate Court's holding that the Superior Court for Juvenile Matters cannot exercise its statutory authority over a person who has reached the age of eighteen years as neglected or uncared for nor commit such person to the care of DCF, even if the petition was filed before that person's eighteenth birthday.
- In *In re Kamora W.*, 132 Conn. App. 179 (2011); the Appellate Court rejected a father's claim that he had no fair warning that continued association with the child's mother would jeopardize his chances at reunification, holding a continuation of a relationship previously marked by domestic violence could have an impact on chances of reunification with the child.
- In *In re Christopher L.*, 135 Conn. App. 232 (2012); the Appellate Court upheld the trial court's decision to terminate the mother's parental rights, rejecting her claim that DCF failed to make reasonable efforts to reunite her with the child, noting that the services offered were aimed to help her with her alcohol-abuse problems and even if additional services might have been beneficial, it would not render the decision clearly erroneous. The evidence showed that the mother would need to maintain her sobriety for a minimum of two years, a period too long under the circumstances based on the child's age and needs.
- *In re Iliana M.*, 134 Conn. App. 382 (2012); is a case of first impression, addressing the applicability of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) to child protection proceedings. It also has significant implications on cases where parents attempt to evade the State's efforts to protect a child at high risk by absconding to another state. The case involved a removal of a child who

was initially removed from the maternity ward of a hospital in Massachusetts by Connecticut DCF workers acting on a court order of temporary custody. The Appellate Court affirmed the trial court's conclusion that Connecticut was the child's home state, rejecting a claim of the parents, residents of the State of Connecticut with no ties to Massachusetts, that the UCCJEA and due process mandate that the matter should have been brought before a court in Massachusetts. The Court also noted that although a Massachusetts court could have made the initial child custody determination, it would not necessarily have initial jurisdiction or priority over a Connecticut court.

- In *In re Jeffrey M.*, 134 Conn. App. 29; *cert. denied*, 304 Conn. 297 (2012), a delinquency matter, the Appellate Court reversed a lower court's determination that it is authorized to commit a convicted delinquent to the Commissioner of DCF and order his placement in a facility out of state, contrary to the Commissioner's position or without her consent. The Court concluded that the applicable statutes authorize the Commissioner to make such a placement. This ruling is currently subject to further review by the Supreme Court.

The Supreme Court also granted certification on three other cases of potential significance. In *In re Emoni W.*, 129 Conn. App. 727; *cert. granted*, 302 Conn. 917 (2011); the Supreme Court agreed to consider whether a non-custodial parent who demanded to transfer to his care and custody children who were removed from the care of their custodial parent under an order of temporary custody, should be the subject of the scrutiny of the Interstate Compact pursuant to Conn. Gen. Stat. § 17a-175 to determine his suitability to safely care for said children. In *In re Kaleb H.*, 131 Conn. App. 829; *cert. granted*, 303 Conn. 829 (2011); the Supreme Court may review whether the same due process right for competency evaluation that exists in termination of parental rights also attach to commitment proceedings. Finally in *Frank v. DCF*, 134 Conn. App. 288, \_\_\_ Conn. \_\_\_ (2012); the Supreme Court agreed to review the Appellate Court's reversal of the trial court's determination that DCF correctly substantiated neglect by the Plaintiff. Specifically, the Supreme Court will examine the validity of the Appellate Court's conclusion that Conn. Gen. Stat. § 46b-129, which defines neglect and abuse, is constitutionally vague as applied to the plaintiff's class-room conduct and mistreatment of a student, because he could not have been on notice that this behavior could be considered emotional abuse as defined by DCF's regulations.

## **COLLECTIONS/CHILD SUPPORT DEPARTMENT**

The Collections/Child Support Department is dedicated to the expeditious recovery of monies due to the State and the establishment of orders for the support of children. Its major client agencies are the Department of Administrative Services/Collection Services in matters involving the recovery of reimbursable public assistance benefits, other state aid and care, and costs of incarceration, and the Bureau of Child Support Enforcement within the Department of Social Services in matters for the establishment of child support orders. Additionally, the Department provides legal services in connection with the enforcement of child support orders at the request of the Support Enforcement Services division of the Judicial Branch. Department

staff also provide a full range of litigation services for the collection of debts, other than child support, owed to the Departments of Social Services, Revenue Services, Correction and Higher Education, as well as the Unemployment Division of the Labor Department, John Dempsey Hospital, the Second Injury Fund, the Connecticut State University System, the Office of the Secretary of the State, the State Elections Enforcement Commission and various other state agencies, boards and commissions on a case-by-case basis.

In fiscal year 2011-2012 Department attorneys recovered more than \$15 million in cash payments on debts owed to the state.

The Department's activities in the establishment of child support orders traditionally produce exceptionally large caseloads. In fiscal year 2011-2012, more than 10,000 cases were opened in all child support categories and approximately 9,000 files were closed during the period. These cases occurred in both the J.D. Superior Court-Family Division and the Family Support Magistrate division, and involved the establishment of paternity and/or orders for support of minor children.

The State of CT-Title IV-D partnership, comprised of the AGO, DSS-BCSE, and SES, successfully enforced/collected in excess of \$308 million. Of that amount, approximately \$250 million was collected by the enforcement efforts of the State of CT Title IV-D partnership; of which \$208 million was paid directly to in-state custodial parents, and \$ 40,000,000 to the state General Fund. The State also collected another \$17 million on behalf of out-of-state custodial parents. The remaining \$41 million was passed through to Non-IV-D custodial parent cases in which the State has no open child support case file, but is merely effectuating the garnishment of the obligor's wages.

Department attorneys actively argued cases on behalf of children who resided not only in the State of Connecticut, but also in other states and cooperating countries, pursuant to the Uniform Interstate Family Support Act. In addition to their functions establishing paternity and support orders for children, the Department's attorneys appeared and successfully argued hundreds of cases in Probate Court and Superior Court-Juvenile Court, to protect the State's interest and to preserve the child's legal obligation to receive financial support from their parents. The Probate Court matters involved the State as a statutory third party, but brought by non-custodial parents seeking to terminate their own parental rights or the custodial parent seeking to terminate the rights of the non-custodial parent. Often the Probate Court matter is transferred or appealed de novo to the JD- Superior Court- Juvenile Division.

In addition to their responsibilities in the child support area, Department attorneys were engaged in a wide variety of other collection-litigation activities. The litigation activities of the Department's attorneys include protecting the creditor rights of various state agencies in federal bankruptcy court proceedings. During this fiscal year, the Department's attorneys managed more than 650 active cases, including bankruptcy proceedings in Connecticut and throughout the country. The department successfully closed at least ten (10) significant collections cases in which the State collected in excess of \$100,000. The largest of these resulted in \$543,189 collected per the enforcement of a state statutory lien (CGS 17b-94) on settlement proceeds from a decedent's malpractice case.

The Department also pursues collection efforts through complex bankruptcy matters. The Department's bankruptcy litigation resulted in more than \$5 million dollars in recoveries. A recent example was a case involving an employment agency which, due to the nature of the

business, incurred significant sales and unemployment tax liabilities to DRS and DOL. The company is currently in Chapter 11 bankruptcy and the case is pending in the bankruptcy court for the District of New Haven. During the previous fiscal year, the department's efforts resulted in the collection of \$916,000 in sales and unemployment taxes that accrued after the debtor filed for bankruptcy.

Continuing with an initiative started several years ago, a Department attorney worked in conjunction with members of the Office of the Secretary of the State to recover payment of fees, penalties and interest due from foreign corporations and other foreign business entities doing business in Connecticut without first having complied with the statutory registration requirements for legally conducting business in Connecticut. This initiative resulted in the collection of approximately \$ 1.3 million in fees, penalties and interest during the 2011-2012 fiscal year.

The Department concluded 2,266 litigation collection matters involving the recovery of debts owed to the numerous state agencies, boards and commissions for which collection services were provided during this fiscal year. In addition to the more routine debt collection cases, Department attorneys litigated numerous cases involving significant payments on debts owed to the state.

## **CONSUMER PROTECTION DEPARTMENT**

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

### **CONSUMER EDUCATION**

The Department continues to further its core mission by maintaining the lines of communication with the community. For example, the Department's actively engages in efforts to educate consumers by participating in events such as senior fairs and forums. At such events, we discuss consumer issues that may affect seniors and provide information to them on ways to avoid becoming victims of fraud. In addition, the Department also represents the Attorney General on the Connecticut Triad Advisory Board and in Triad-related activities. Triad is a national initiative whereby law enforcement, senior citizens, and community groups work together to reduce the victimization of senior citizens. As part of the Board, the Department supports the establishment of new local Triads, provides support and guidance to local Triad groups, and organizes statewide educational forums. In March 2012, the Advisory Board hosted a Spring Seminar and presented the film "Last Will and Testament," a documentary focusing on criminals who exploit senior's vulnerabilities — such as dementia, illness or isolation — and insinuate themselves into a victim's life and finances. Further, members of the law enforcement community, including an FBI special agent, spoke about common scams targeting seniors and how to protect against them. The Department has begun to plan for the annual Triad Fall Conference, which in the past has included speakers, panels, and break-out sessions about such topics as internet safety and disaster preparedness.

In addition, as part of Consumer Protection Week, Department staff helped facilitate a poster contest aimed at heightening awareness among grade school children about Internet safety. Finally, our office posts alerts about scams that might victimize unwary consumers and businesses.

## **MEDIATION**

As part of the Attorney General's focus on consumer mediation, the Department's staff and volunteer advocates responded to 3,778 consumer complaints during this fiscal year. More than \$1,114,815 was refunded or credited to Connecticut consumers due to the mediation efforts of the Department.

## **MULTISTATES**

The Connecticut OAG joined 46 other States in reaching a \$100 million settlement with Abbott Laboratories to resolve state consumer protection claims relating to the off-label promotion of Depakote. While Depakote was only approved for treatment of seizure disorders, mania associated with bipolar disorder, and prophylaxis of migraines, it was alleged that Abbott unlawfully promoted Depakote to treat a variety of other conditions including schizophrenia, agitated dementia, and autism. Connecticut's share of the consumer protection settlement is \$1,529,542. In addition to the monetary relief, the settlement provides for broad injunctive terms that prohibit Abbott from engaging in deceptive or off-label promotion of Depakote.

Connecticut, the Federal Trade Commission (FTC), 42 states and the District of Columbia reached a coordinated settlement with Skechers USA, Inc. over allegations that Skechers made deceptive and unsubstantiated health-related claims in the marketing, packaging, advertising, offering and selling of certain athletic shoes: rocker-bottom Shape-Ups, Tone-Ups and the Skechers Resistance Runner athletic shoes. The settlement provides for \$40 million in consumer refunds and an additional \$5 million to the states. The settlement prohibits Skechers from making unsubstantiated claims about its products. Connecticut's share of the settlement was \$88,208.

This office, along with 37 other states, reached a \$40.75 million settlement with pharmaceutical company GlaxoSmithKline, LLC over alleged substandard drug manufacturing processes and distribution of those drugs to the general public. The drugs affected were: Kytril, a sterile drug used to prevent nausea and vomiting caused by cancer chemotherapy and radiation therapy; Bactroban, an antibiotic ointment used to treat skin infections; Paxil CR, the controlled release formulation of the antidepressant drug Paxil; and Avandamet, a combination Type II diabetes drug. The settlement prohibits GSK from making claims about the drugs that are false, misleading or deceptive as a result of how the drugs are made. In addition, the companies agree not to represent that the drugs have characteristics, benefits, uses, qualities or ingredients they do not have, because of the way the drugs are manufactured. Connecticut's share of the settlement was \$756,280.

The AG's office participated in a multistate investigation of DIRECTV to address concerns about DIRECTV's advertising, sales, installation, and cancellation practices, the States entered into a Stipulated Judgment with the company in 2011. Pursuant to the Judgment, DIRECTV remitted to the States a payment of \$13.25 million for future consumer protection

purposes. As a participating state, Connecticut received \$185,000 last year as forfeiture. Importantly, DIRECTV also committed to a broad, consumer-restitution program requiring the company to make efforts to resolve all existing consumer complaints subject to the Judgment. In May 2012, the office received correspondence from DIRECTV documenting its determinations under the restitution program with respect to Connecticut consumers. The correspondence indicates that Connecticut consumers received up to \$14,719 in restitution during the multi-state investigation, and that an additional \$12,938 will be provided to Connecticut consumers as part of the resolution program.

The office entered into a stipulated judgment with Second Chance Body Armor to resolve a multistate investigation into the offer/sale of defective body armor. The State's award and restitution will be adjusted to an amount determined by a process approved by the bankruptcy court. The settlement also calls for injunctive relief and an award of civil penalties of \$1.928 million which is subject to, and limited by, the bankruptcy code priority rules.

Finally, the Department assisted in negotiating the terms of several store-closing sales, including the redemption of consumer gift cards and store credits, and the sale and labeling of supplemental merchandise in the bankruptcy proceedings of discount clothing retailer, Filene's Basement et al., with locations in multiple states.

#### **OTHER UNFAIR & DECEPTIVE TRADE PRACTICES CASES**

The Office brought a sovereign enforcement action against Aquarian Ventures under the Connecticut Unfair Trade Practices Act (CUTPA). The state alleged that Aquarian Ventures made material false representations concerning its HVAC (heating, ventilation, air conditioning) maintenance and cleaning services and used high-pressure sales tactics to solicit consumers to pay for unnecessary goods and services. After a hearing in damages, the court granted the State's request for injunctive relief, ordered \$27,453 in restitution and/or disgorgement of ill-gotten gains, \$54,000 in civil penalties, \$1,500 in attorney's fees and \$96 in costs.

In another matter, MetLife agreed to pay \$10,000 after a document containing certain private information about current and former MetLife customers was posted to the Internet by an employee of the company. The funds were placed in a special fund used to reimburse the State's investigative and enforcement costs, or reimburse these or future consumers for losses. MetLife also agreed to reimburse the cost of placing and lifting once security freeze per credit file per customer. In addition, MetLife agreed to enhance its employee training policies and procedures about the legal requirements to protect personally identifiable information and specifically to prohibit posting such information to Internet websites.

The Department recently filed a joint enforcement action with the Federal Trade Commission (FTC) in federal court in Connecticut for alleged CUTPA violations relative to the sale of weight-loss supplements. The defendants—LeanSpa, LLC, Nutraslim, LLC, Nutraslim UK, Ltd., and Boris Mizhen—are alleged to have used various deceptive practices in the sale of their products, including the use of false Internet news sites that purport to objectively tout the benefits of their products; misleading "trial offers," and various deceptive representations regarding the efficacy of their products. On Nov. 22, 2011, the U.S. District Court of Connecticut issued an order providing, inter alia, that a temporary receiver be appointed to

operate the business during the pendency of the litigation and ordering an asset freeze for all assets of the defendants.

The office also prosecuted a sovereign enforcement action against Magner Management, LLC et al, a cemetery management company, and its owner pursuant to CUTPA. The State alleged that Defendants committed unfair and deceptive acts or practices in connection with the management of a Connecticut cemetery owned by the Danbury Cemetery Association (“DCA”). The State alleged that while operating illegally, the Defendants allegedly collected thousands of dollars from consumers for burial goods and services that were not provided. In November 2011, the State entered into a Stipulated Judgment with the Defendants, which includes broad injunctive relief. Further, a fund in the amount of \$55,000 has been established with the DCA to resolve consumer claims.

## **UTILITY CASES**

The Department was actively involved in negotiations over the proposed merger of Northeast Utilities (“NU”) and NSTAR. The companies announced their intention to merge on October 18, 2010. Two of NU’s four utility companies, the Connecticut Light and Power Company and Yankee Gas, serve roughly 1.2 million customers in Connecticut. Although NU and NSTAR sought regulatory approval for their merger in other jurisdictions, they did not do so in Connecticut, arguing that their proposed merger did not fall within the State’s merger review statutes. The proposed merger raised significant concerns that Connecticut customers would be disadvantaged because other states would have been able to condition approval of the merger on terms favorable to those states, perhaps even to the further disadvantage of Connecticut. Thus, on the day the proposed merger was announced, the Office filed a petition with the Connecticut Public Utilities Regulatory Authority (“PURA”) seeking such review. Although the Public Utilities Regulatory Authority (PURA) initially denied the petition, it reversed itself in January 2012 after further litigation at PURA and in Superior Court that was initiated by the AG and the Office of Consumer Counsel (“OCC”). Shortly thereafter, NU, the AG, OCC and the Department of Energy and Environmental Protection (“DEEP”) agreed to engage in negotiations that resulted in a settlement agreement with the utilities that brought important benefits to Connecticut. During these negotiations, which lasted approximately six weeks, the Attorney General represented the public parties. The benefits achieved for the State included a \$25 million rate credit, a distribution-rate freeze until December 2014, \$15 million of Company money for energy efficiency initiatives, meaningful protections of important job functions, civic and charitable commitments in Connecticut and tangible progress toward electric system “hardening” in light of the 2011 storms and outages. The Settlement Agreement also secured the preservation of 1,000 acres of high-value open space.

## **EMPLOYMENT RIGHTS DEPARTMENT**

This department defends state agencies and state officials in employment-related litigation and administrative complaints and provides legal advice and guidance to state agencies on employment issues. We are currently defending the state in approximately 115 employment cases in the state and federal courts, as well as more than 131 complaints before the Connecticut

Claims Commissioner, Connecticut Commission on Human Rights and Opportunities and the Equal Employment Opportunities Commission.

During the past year, the department successfully defended state agencies in several significant cases. In addition, the State prevailed in numerous other cases in the state and federal courts. Significantly, the department was able to obtain favorable rulings on 22 summary judgment motions that were filed in federal court and three summary judgment motions that were filed in state court, eliminating the need for trials in those cases. We also filed an additional eight such motions, which are pending before the courts. We also are awaiting rulings on two additional motions that were filed in the prior fiscal year. We obtained verdicts in favor of state agencies in two cases that were tried in the courts, and are awaiting a ruling in one other such case. Proceedings at the Office of Public Hearings at the Commission on Human Rights and Opportunities were suspended for much of this fiscal year; therefore there were no public hearings conducted during this fiscal year. In several other cases, we were able to achieve settlements on terms that were favorable to the state, saving the state thousands of dollars. We were also able to collect several thousands of dollars in reimbursed court costs in cases where we obtained judgments. We routinely appeared on behalf of state agencies before the Commission on Human Rights and Opportunities at mediation and fact-finding sessions.

During the past year, we have, with the assistance of the Special Litigation Department, defended approximately five appeals in the 2<sup>nd</sup> U.S. Circuit Court of Appeals and in the Connecticut Appellate and Supreme Courts. Most notably, in the case of *Duart v. Department of Correction*, S.C. 18476, we successfully defended an appeal of a jury verdict in favor of the DOC, in which the plaintiff sought a new trial. In addition, we are working on approximately 14 pending appeals in the state and federal appellate courts. In *Saeedi v. Department of Mental Health and Addition Services*, we are continuing to defend DMHAS in a case involving the confidentiality of treatment records of agency clients.

The department regularly provides legal advice and counsel, both orally and in writing, to state agencies on a variety of employment matters, as employment law is continuing to evolve. During the past year, we participated in training sessions and seminars for state employees on employment-related issues. We continued to assist in training employees who have been designated to represent their agencies in discrimination complaints filed with the Commission on Human Rights and Opportunities and the Equal Employment Opportunities Commission, pursuant to statute.

## **ENERGY DEPARTMENT**

In fiscal year 2011-2012, the Energy Department represented the Public Utilities Regulatory Authority (PURA) and the Connecticut Siting Council. The Department defends challenges to rulings by the PURA on issues regarding electric, gas, and water rates, transfer of assets, acquisition of control, safety, service and consumer-billing issues. The Energy Department also defends the Siting Council's decisions on placement of facilities.

With respect to the PURA, the Department defended the agency's decisions in both state and federal court and provided extensive advice as to the implementation of P.A. 11-80. Over the past year, the Energy Department has successfully defended Siting Council decisions regarding the placement of cell towers, and presented cases that further developed principles of

administrative law. Finally, the Department participated in and monitored various proceedings pending before the Federal Energy Regulatory Commission and the Federal Communications Commission that impact ratepayers in Connecticut.

## **ENVIRONMENT DEPARTMENT**

During the past fiscal year, the Environment Department had several important successes in abating pollution and in obtaining civil penalties for environmental violations. The department, on behalf of the Department of Energy and Environmental Protection (DEEP), sued Covanta Energy Corporation and related corporations for dioxin exceedances from its trash-to-energy facility in Wallingford. In *Marella v. Covanta*, we obtained a \$400,000 penalty, and an order that the facility not be allowed to restart operations until it investigated the reasons for the excess emissions and fixed the problem. We also obtained an injunction requiring the immediate shut down of the facility in the event that it violates dioxin limits in the future.

We had sued Kohler Mix Specialties for numerous violations of its water discharge permit from its facility in Newington. This past year, we obtained a judgment of \$299,000 in penalties and an injunction preventing future violations of the company's water discharge permit.

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

In *McCarthy v. John's Refuse*, we obtained a judgment for violations of the state's solid waste laws. We had sued John's Refuse alleging that it was operating an illegal transfer station and that it violated a storm-water general permit at its facility in North Branford. The judgment required the payment of a \$30,000 penalty, and the cessation of the illegal activities.

This year we had another significant victory in our battle against climate change. Along with a coalition of states, we had sued the Environmental Protection Agency ("EPA"), seeking to have greenhouse gases from motor vehicles regulated. The U.S. Supreme Court agreed that EPA could regulate greenhouse gases and ordered it to decide if greenhouse gases were endangering public health and welfare--a necessary predicate to regulation. EPA subsequently made the "endangerment determination" and several parties sued EPA, arguing that it was improper for EPA to conclude that greenhouse gases were endangering public health and welfare. Along with several other states, we intervened to support EPA's findings. This past year, the court ruled that EPA's endangerment determination was legally supportable, paving the way to regulation of greenhouse gas emissions.

Also in the arena of air pollution enforcement, we continued our litigation against Midwest power producers who violated the Clean Air Act by making major modifications at their aging facilities without installing pollution controls. Prevailing winds carry much of this pollution into Connecticut. We completed the liability trial against Allegheny Energy in the fall of 2010, and are awaiting the court's decision. We continue to pursue our case against Reliant Energy. A trial in that case has been scheduled for April of 2013.

We successfully defended the first challenge of its kind to the state's certificate of permission process for the construction of docks in Long Island Sound. The Appellate Court accepted our argument in *Lane v. DEEP* that an existing dock had to be continuously maintained and serviceable in order to be eligible for a certificate of permission instead of a permit.

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

We represented DEEP in issuing a cease and desist order to parties who wished to demolish the former English Station Power Plant in New Haven. The order prohibits the demolition of the highly contaminated building until the PCBs on the site are remediated so that the building can be safely removed.

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

Our representation of the DEEP in bankruptcy proceedings continues to prevent polluters from avoiding their environmental liability by filing bankruptcy.

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

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

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

## **FINANCE DEPARTMENT**

The Finance Department provides legal services to state agencies that regulate insurance, banking, and securities, as well as the Department of Economic and Community Development, the Department of Revenue Services, the Division of Special Revenue and the Office of Policy and Management. Legal issues involving state regulation of the financial services formed a major part of this department's work in 2011-12.

With the difficult economic climate and the continuing decline in the national housing market, many Connecticut homeowners continue to have difficulty paying their mortgages and are facing the threat of foreclosure. As a result, the Finance Department has devoted significant

resources to assisting individual consumers with complaints against banks and mortgage companies or who may be facing foreclosure. Together with the Department of Banking's Foreclosure Assistance Hotline, Finance Department attorneys attempt to mediate informally a resolution of payment disputes; to assist in obtaining loan modifications, including facilitating application and acceptance to the federal Making Home Affordable Modification Program (HAMP), and offer other help to distressed homeowners. Toward this end, and together with Governor Malloy and the Department of Banking, the Finance Department has helped to organize three multi-servicer mortgage assistance events at different locations around the state. These daylong events offer Connecticut citizens the opportunity to meet face to face with their banks, and to work out a loan modification or other assistance on the spot. These servicing events have become a national model and Finance Department attorneys have been contacted by other Attorneys General from around the country for advice on organizing similar events in their states. Over the past year, the Finance Department has offered assistance to several hundred Connecticut citizens who have contacted the office.

Additionally, in October of 2010, it became clear that many national loan-servicing companies had filed in courts across the country, including in Connecticut, thousands of foreclosure affidavits that were illegally signed outside the presence of a notary and by persons with no knowledge of the facts stated in the affidavits. In order to combat this nationwide problem, the Attorneys General of every state came together to form a multistate task force to investigate these so-called "robo-signing" practices, as well as other potentially illegal practices by some loan servicers. In February 2012, after 17 months of negotiations, a \$25 billion national foreclosure settlement was reached among state attorneys general, federal authorities, and the nation's five largest banks. The settlement imposed nationwide servicing standards on the nation's largest banks and provided approximately \$17 billion in loan-modification relief to borrowers, \$2.5 billion in direct payments to states, \$1.5 billion to consumers who have lost their homes to foreclosure, and \$4 billion in interest-rate relief to borrowers whose homes are worth less than their mortgage because of the down turn in housing values.

The national foreclosure settlement is the largest joint state/federal settlement in history. The Connecticut Attorney General was a member of the Executive Committee of the multistate task force and is represented on a day-to-day basis by attorneys from the Finance Department. Attorneys from the Finance Department continue to participate on the multistate committee monitoring implementation of the national settlement.

The Finance Department works closely with the state agencies it represents. For example, Department attorneys successfully defended the Department of Revenue Services in an important case upholding a taxing statute's retroactive application. The Finance Department continues to be involved in providing legal advice, and defending in court, its client agencies' numerous decisions regarding licensees under their respective jurisdictions.

When requested, the Department provides legal advice and opinions to its client agencies on the meaning and application of Connecticut law. For example, Department attorneys drafted a legal opinion for the Department of Economic and Community Development concluding that housing agencies operating in Connecticut must be qualified under Connecticut law, not merely the law of another state. Department attorneys also provided frequent assistance and advice to the Department of Economic and Community Development (DECD) regarding the grant, loan,

and economic stimulus programs administered by DECD. These activities were particularly important in 2012 given continued slow growth in the economy.

The Finance Department is responsible for enforcement of the Master Settlement Agreement (MSA) between the states, including Connecticut, and various participating tobacco product manufacturers, as well as related tobacco issues. The Department worked to ensure that Connecticut receives the monetary payments it is owed by tobacco manufacturers. Department attorneys are currently representing Connecticut in the nationwide arbitration of a dispute over approximately \$1 billion in MSA payments that tobacco manufacturers claim they do not owe the states. Connecticut has approximately \$100 million at stake in the proceeding.

## **HEALTH AND EDUCATION DEPARTMENT**

The Health and Education Department provides legal services and representation to a broad spectrum of state agencies, which include the University of Connecticut, the Connecticut State University System, the Connecticut Community College System, the State Department of Education and all other state agencies that have an educational purpose. This Department also represents the Department of Public Health, the Department of Social Services, the Department of Mental Health and Addiction Services, the Office of Health Care Access, the Psychiatric Security Review Board, the Department of Developmental Services, the Department of Veterans' Affairs, the Commission on Medical and Legal Investigations overseeing the Office of the Chief Medical Examiner and the sixteen health licensing boards and commissions.

The Department's workload addresses the entire spectrum of litigation in federal and state courts for these clients including, but not limited to: class action lawsuits, administrative appeals, regulatory enforcement actions, non-employee discrimination claims, civil rights actions, probate proceedings, bankruptcy and receivership actions. The Department also is involved in a variety of administrative proceedings representing the adjudicating agency (e.g. licensing boards), the prosecuting agency (e.g. day care and health care facility prosecutions) and defending agencies in proceedings before the Office of the Claims Commissioner, the Freedom of Information Commission and the Commission on Human Rights and Opportunities,. The Department advises and counsels client agencies on wide spectrum of issues. These include, *for example*, regulatory issues for health care facilities and professions; emergency medical services; child day care services and environmental health, such as public water supply, lead paint, and asbestos; Medicaid and other welfare programs, such as Food Stamps, SAGA, WIC, HUSKY, Charter Oak Healthcare; nursing home rates; health care facility certificates of need; HIPAA, FERPA and confidentiality of medical records; gestational carrier agreements; stem cell and human subjects research; scientific misconduct; civil commitment law; medical/psychiatric treatment at state facilities; NCAA requirements; property acquisitions; state contract law; ADA accommodations for students and faculty; college tenure; federal higher education law, and oversight of public and private educational entities. The Department also reviews and approves for legal sufficiency, regulations and contracts for its client agencies. Last fiscal year, the Department reviewed approximately 2,300 contracts and 23 sets of regulations.

As in past years, the Department was very busy with nursing home issues on behalf of the Department of Social Services. The Department was active in achieving conditions to permit the sale of a nursing home that had filed for bankruptcy under Chapter 11. In addition, the Department was instrumental in securing receivers to operate the two nursing homes that were in financial jeopardy. During the past year, the Department assisted the Department of Social Services to secure recovery of approximately \$1.2 million in Medicaid advances to distressed nursing homes.

Given the expanding and critical growth and investment of biotech programs and centers at the University of Connecticut, an important accomplishment this past year was the Department's success in securing a favorable decision by the Connecticut Supreme Court in University of Connecticut v. Freedom of Information Commission, finding that the University could create and protect trade secrets. In addition, in Electrical Contractors, Inc. v. Department of Education, the Connecticut Supreme Court found the state immune from claims by unsuccessful bidders to state-financed construction contracts involving almost \$87 million in expenditures. In Okeke v. Department of Public Health, the Connecticut Supreme Court affirmed the Department's decision that no change in a birth certificate was required as a result of a dispute arising from the name on the birth certificate and that listed on the acknowledgement of paternity signed by the father. The Supreme Court affirmed the Department's position that the acknowledgement of paternity form could not be used to require an amendment of the birth certificate and that the dispute had to be resolved in court. In Sgritta v. Commissioner of Public Health, the Appellate Court agreed with the Commissioner that the landlord could be subject to orders by a local health department to abate public health nuisances or illegal activities conducted by the landlord's tenant.

The Department worked with the Department of Public Health to further its role as a health regulatory and enforcement agency. These activities included, among others, assisting in the investigation of the Charter Oak Health Care Center arising from unreported case of tuberculosis, leading to findings of widespread system failures and problems with management of the facility. The Department secured a consent order replacing the management of the facility with temporary manager and new clinical leadership in critical areas. We were also successful in defending a number of challenges on appeal to the regulatory authority of DPH and decisions of the licensing boards for health care professionals.

In Giammatteo v. Newton et al, the 2<sup>nd</sup> U.S. Circuit Court of Appeals affirmed the complete dismissal of a federal civil rights complaint against the Board of Examiners for Physical Therapy, former board members, the Department of Public Health and its Commissioner and its in-house prosecutors related to proceedings against a licensed physical therapist. The complaint sought both injunctive relief and damages.

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

The Department also provides services for the wide variety of legal matters involving the University of Connecticut. This responsibility continues to increase as the University grows and higher education matters become more complex. Counsel is provided on issues including public safety, security, liability, data transfer, risk management, Title IX and VI compliance, FOIA and trade secrets, and intellectual property rights. The Department attorneys expend substantial time on legal review, negotiation and approval of highly complex transactions and contracts. These range from a television and production agreement to broadcast football and men's basketball games to review of templates and lease agreements for the growing statewide technology incubation program to contracts for use by the Connecticut Center for Entrepreneurship and Innovation. This year resulted in many changes in the University's senior administrative leadership, beginning with the transition to its 15th President, Susan Herbst, and many Strategic Redesign Initiative recommendations regarding key non-academic operations at the University. These administrative changes and other restructuring efforts resulted in the department's review and advice concerning University Bylaw and policy changes, review of separation agreements and negotiation of new employment contracts.

Of particular note was the extensive continuing legal work on the Storrs Center Development Project that will result in a mixed-use, pedestrian-oriented, sustainable college town center, providing the University community with new retail, restaurant, office, residential and green public spaces and conservation areas to include a 135-acre wildlife sanctuary. The Department provides representation on behalf of the University before administrative agencies such as the Office of the Claims Commissioner, the Freedom of Information Commission and the Commission on Human Rights and Opportunities, as well as in state and federal court.

The University of Connecticut Health Center continues to present broad and challenging legal issues that arise from the operation of an academic health center with a budget approaching \$800 million. Significant legal advice was given in the areas of human resources, human subjects research, scientific misconduct, medical treatment, HIPAA compliance including the HITECH amendments, the hospital's medical staff, medical and dental student and residency programs, and the Health Center's Correctional Managed Care program. In addition, our office appeared regularly at probate hearings relative to the John Dempsey Hospital's two locked psychiatric wards, engaged in a broad range of lease and contract negotiations, reviewed over 400 contracts, and appeared before multiple administrative agencies including the Claims Commissioner, the Freedom of Information Commission and the Commission on Human Rights and Opportunities, where we are currently defending fifteen (15) cases. Our office helped bring to successful conclusion two important aspects of the Governor's Bioscience Connecticut initiative as reflected in Public Act 11-75. The first involved the finalization of the transfer of operation and control of the John Dempsey Hospital's Neonatal Intensive Care Unit to the Connecticut Children's Medical Center. Our office oversaw and coordinated the negotiation, drafting and implementation of a master space lease for Connecticut Children's to operate the NICU within the John Dempsey Hospital, a master service agreement wherein multiple services are provided by John Dempsey to Connecticut Children's Medical Center, and a neonatal services agreement whereby John Dempsey provides staff to care for the neonates admitted to the Connecticut Children's NICU in Farmington. The second project involved the oversight and coordination of negotiations relative to the upcoming location of a new Jackson Laboratory facility on the

campus of the University of Connecticut Health Center. Our office played an important role in the negotiation of both ground and space leases, intellectual property agreements, an academic affiliation agreement, and a collaborative research agreement as well as providing advice on the applicability of local zoning and building codes. We continued to be successful in litigation avoidance relative to the hospital, the medical school, the dental school and the research enterprise.

The members of the Health and Education Department worked hard to provide the legal services required by the many agencies we represent and advise. At the end of the fiscal year, this Department had 129 state and federal court cases pending at the trial or appellate level, as well as 127 administrative proceedings pending before various state agencies.

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

Attorneys in the Health Care Fraud Unit filed the first state-initiated case under the new Connecticut False Claims Act. The case involves allegations of substantial Medicaid fraud by numerous individuals and entities associated with a number of dental practices. In addition, during this fiscal year, the department continued to participate in numerous multistate global settlements, largely concerning the impact of problematic marketing practices of the pharmaceutical industry on the Medicaid program. For this fiscal year, the Health Care Fraud Unit recovered more than \$8 million for the State of Connecticut, bringing the total for the fifteen years of its existence to approximately \$178 million.

The Whistleblower Unit, in cooperation with the Auditors of Public Accounts, investigated a variety of complaints alleging corruption, unethical practices, mismanagement, gross waste of funds and abuse of authority including allegations of a breach in the security of the state's email system – an allegation which ultimately was not substantiated. The Unit continues to investigate a number of complaints that require in depth review. The Whistleblower Unit also implemented the Attorney General's directive to notify whistleblowers about the outcome of the review of their complaints following the conclusion of our investigation.

The Health Care Advocacy Unit ("HCAU") has continued to assist patients and their doctors by resolving disputes with managed care. The broader issues addressed during the fiscal year have been related to managed care denials of coverage, with the most pressing concern related to denials of coverage for medically necessary care. HCAU attorneys have been designated the representative of the Connecticut Long Term Care Ombudsman and have been involved in various matters, including statutorily mandated reporting for facilities in bankruptcy, investigations of various patient complaints and probate proceedings pertaining to long-term care patients. The HCAU continues to work with the Child Advocate to ensure that children in this state receive the healthcare they require. It has also helped consumers recover more than \$650,000 dollars during the fiscal year, derived primarily from improperly denied claims and illegally billed services. HCAU has settled a number of HIPAA privacy complaints that have resulted in the implementation of significant corrective actions plans and systemic reforms.

In September 2011, the Attorney General announced the creation of a Privacy Task Force to help educate the public about data protection requirements and to focus the office's response to Internet privacy concerns and data breaches that affect consumers. The Task Force is responsible for investigating complaints of consumer privacy breaches and helping to educate the public and business community about their responsibilities, including protecting personally sensitive data and promptly notifying affected individuals when breaches do occur.

## **PUBLIC SAFETY DEPARTMENT**

During the 2011-2012 fiscal year, this department represented the Department of Correction; the Department of Emergency Services and Public Protection, including the Division of State Police; the Division of Emergency Management and Homeland Security; the Division of Fire, Emergency and Building Services; the Military Department; the State Marshal's Commission and the Department of Consumer Protection Liquor Control Division. The Department also provides legal services and representation to a number of associated boards, commissions and agencies, including the Division of Criminal Justice, the Division of Public Defender Services, the Office of Adult Probation, the Governor's Office (Interstate Extradition), the Statewide Emergency 9-1-1 Commission, the State Codes and Standards Committee, the Crane Operator's Examining Board, the Board of Firearms Permit Examiners, the Commission on Fire Prevention and Control, the Board of Pardons and Paroles, the Police Officer Standards and Training Council, and the Office of Victim Services. The department continues to provide representation for the State Fire Marshal and State Building Inspector, including review of all regulations and changes to the state Building and Fire Codes.

### **Department of Correction**

The Department of Correction (DOC) is the department's largest client agency. With more than 6,500 employees and 16,000 inmates, the DOC requires the attention of nearly all of the attorneys in the department. Much of this work is done in defense of the state in lawsuits brought by and on behalf of prisoners. Department attorneys continue to defend a large number of lawsuits challenging conditions of confinement in state correctional facilities and the administration of community programs. Pending corrections cases in the district court alone continue to represent more than 10 percent of the federal court docket. These lawsuits collectively seek millions of dollars in money damages and seek to challenge and restrict the statutory authority and discretion of the Department of Correction. The successful defense of these cases saves the State millions of dollars in damages claims, and preserves 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. In addition, this department has assisted in the recoupment of thousands of dollars in costs of incarceration.

In the last fiscal year, the department has spent considerable time and effort defending increasingly complicated medical malpractice claims. The inmate population is an exceptionally difficult one to care for, and inmates come into custody with a myriad of complex medical and mental health needs. As a result, we increasingly find ourselves defending cases ranging from the alleged misdiagnosis of cancer and other serious chronic illnesses, viral infection resulting in

blindness and loss of organ function to methadone overdose while in custody. In addition, we continue to defend a number of medical malpractice and civil rights cases arising from suicides committed by persons in custody. We continue to work with the Department of Correction, the University of Connecticut Health Center and outside medical and mental health experts to defend the state and identify systemic changes in an effort to improve medical care and reduce the state's exposure to substantial damages awards.

A great number of inmate claims addressing conditions of confinement continue to be brought as habeas corpus cases, and in that forum we continue to defend inmate challenges to prison conditions and the application of the "good time" statutes to multiple sentences. With the recent passage of a "Risk Reduction Earned Credit" program, designed to further reduce the inmate population, we have experienced a significant increase in habeas litigation challenging the grant, denial and taking away of prison credits. In addition, we are representing DOC in arranging the trial of a class action brought by death-row inmates challenging the constitutionality of their sentences.

Once again, during this past fiscal year we experienced an increase in proceedings related to Freedom of Information requests from inmates for such dangerous materials as sewer plans for prisons, personnel files of DOC employees, photos and police reports listing the victims of several inmates' crimes, and documents that the Commissioner of Correction has determined to present a risk of harm in the prison environment. Despite statutory changes to the Freedom of Information Act creating exemptions to disclosure of such materials, several of our FOI administrative cases became the subject of appeals to the Superior Court.

During the last year, we undertook the defense of the DOC in a class-action lawsuit brought by immigrants held in correctional facilities on detainers issued by the Immigration and Customs Enforcement Agency. This case will continue through the next fiscal year.

In addition to our litigation commitments, we continue to advise the Commissioner of Correction on a myriad of legal issues, including: implementing the new Risk Reduction Earned Credit program; operating a statutorily required residential treatment program for sex offenders; preparing for possible executions of death sentences and the management of death-row and other high-profile inmates; maintaining appropriate services for mentally ill offenders; developing and maintaining appropriate administrative directives; working with federal authorities to effectuate the deportation of offenders who have been ordered to leave the United States, and implementing safety and security procedures to protect staff and the public, while also accommodating evolving constitutional standards as articulated in developing case law. Our attorneys also provide instruction at the DOC training academy on legal issues arising in corrections.

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

We continue 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 DOC and BOPP continue their efforts to safely reduce the inmate population, we will continue to work on protocols designed to safeguard against release of offenders who are likely to reoffend. In addition, we will begin working on expanding

compassionate parole release for offenders with serious medical needs that can be more appropriately managed in the community. Our department continues to provide the Board with training on legal issues involving its hearing procedures and developing legal trends.

### **Department of Emergency Services and Public Protection (DESPP)**

The Department defends nearly all of the lawsuits involving the State Police seeking money damages, the exception being those lawsuits involving employment matters and cruiser accidents. The department's caseload of police litigation continues to grow in both number and complexity, and includes false arrest and excessive force cases, wrongful death claims arising from police shootings and contract claims arising from the agency's relationships with outside service providers. In the past year, department attorneys successfully litigated a number of cases in federal court and received favorable decisions in many of those cases. In addition to our litigation efforts, we meet regularly with State Police command staff and counsel to review the agency's policies and procedures and to address legal issues relating to release of confidential information, compliance with subpoenas and relations with other agencies.

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

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

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

### **Liquor Control Division**

During the past year, we have handled a number of administrative appeals involving permits and licenses that are within the purview of the Liquor Control Division. In addition, we provided the Division with advice on legal issues concerning enforcement of the liquor law.

## **State Marshal Commission**

We continue to provide legal advice to the State Marshal Commission on several matters during the past year, particularly with respect to the duties of state marshals and the removal of state marshals. Our efforts have included assisting the Commission in responding to complaints regarding state marshals, developing protocols and appropriate training for marshals who have authority to serve criminal process, and guidelines for serving process on behalf of pro se litigants.

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

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

## **Military Department**

The department continues to work closely with the Military Department on a variety of issues, including litigation arising from construction projects in and around Camp Hartell and claims from one of the ceremonial military units seeking to operate independent of the authority of the Military Department. During the past year our department reviewed contracts involving military construction projects worth millions of dollars.

## **Home Improvement Contractors**

An AAG from this department coordinates the AG's program for prosecution of fraudulent home improvement contractors. Serving as special assistant state's attorneys, AAGs throughout the office prosecute new home construction contractors and home improvement contractors for a multitude of crimes including failure to obtain proper licensing, refusing to refund deposits, and with the consent of local prosecuting authorities, felonies such as larceny and related crimes against the elderly. The office represented the State in criminal prosecutions of 83 home improvement contractors and unlicensed real estate brokers and agents, resulting in nearly \$225,886 in court-ordered restitution to consumers. In addition five of the contractors were sentenced to jail time.

## **SPECIAL LITIGATION & CHARITIES DEPARTMENT**

This Department represents the Governor, Lieutenant Governor, the General Assembly, the Judicial Branch, the Secretary of the State, the Treasurer, the Comptroller, the Auditors of Public Accounts, the State Elections Enforcement Commission, the Office of State Ethics, the Office of Governmental Accountability, the State Properties Review Board, the Judicial Review

Council, the Judicial Selection Commission, the Statewide Grievance Committee, the Probate Court Administrator, the Board of Accountancy, the Office of Protection and Advocacy for Handicapped and Developmentally Disabled Persons, the Office of the Child Advocate, and the Office of the Victims Advocate. In addition, through its Public Charities Unit, the Department protects the public interest in gifts, bequests and devises for charitable purposes, and in cooperation with the Department of Consumer Protection, enforces state laws regulating charities and professional fundraisers who solicit from the public.

In the past year, the Department represented the State's interests in a number of important cases, including the successful defense of the Governor and the legislature in constitutional challenges to the enactment of the state budget and the Governor's authority under the budget law; litigation seeking to compel the State by court order to maintain minimum staffing levels for the state police; representation of the State Board of Education in expedited litigation in the Connecticut Supreme Court in statutory and constitutional challenges to the Board's reconstitution of the Bridgeport board of education; continued litigation related to the changes to the State's bottle deposit law and claims of unconstitutional takings; ongoing litigation involving a constitutional challenge to the rule of professional conduct prohibiting non-lawyer investment in law firms; assistance and advice in connection with the State's DSNAP fraud investigations and litigation; the successful appeal allowing recovery of sales tax assessments due from Scholastic book sales involving statutory and constitutional claims; defense of Governor's authority to issue executive orders with regard to the election of a majority representative for family child care providers and personal care attendants; and several appellate cases involving complex sovereign immunity issues. In addition, a considerable portion of the Department's resources is committed to defending the State's interests in a growing body of pro se litigation against judges and other state officials.

In the area of charitable trusts and gifts, the Department was active in investigations or court actions in more than a hundred different matters to ensure that charitable gifts are used for the purposes for which they were given. In the lawsuits resolved during the year, the Department recovered assets taken from an elderly man before his death by his caregiver; recovered assets from a corporate trustee that had abused its discretion by distributing excessive trust assets to life beneficiaries; and protected title to land in Litchfield on which services to Connecticut youth had been offered for nearly 100 years. The Department is engaged in pending merger and non-profit hospital conversions to ensure ongoing protection of the charitable assets. The Department also worked with Lyme Academy to facilitate court approval for use of endowment assets to ensure that the Academy can improve its infrastructure in a way that will ensure its ongoing operations as one of the few art institutions in the country recognized for its focus on figurative art; assisted in the wind-up of the Norwich YMCA's charitable operations; worked with several municipalities to protect parks, open space, wildlife refuges, school properties and museums that were donated for those charitable purposes; and participated in the drafting committee for a new Probate Practice Book.

The Department plays a leading role in the preparation of appeals and opinions in the Office. This year, the Department's attorneys briefed and argued a number of cases involving diverse issues of important state policy in the state and federal courts. The Department also plays an important role in the Office's participation as *amicus curiae* in litigation involving other

states, the federal government and private parties in which important state interests are implicated.

The attorneys of the Special Litigation Department provide ongoing advice to the Governor's Office, the legislature, constitutional officers, commissioners and others on a wide variety of constitutional and other important legal questions. The Department also provides advice and guidance to agencies and other departments on Freedom of Information Act matters.

The Department represents the interests of the State in matters related to federal tribal recognition and in litigation involving land claims brought by groups claiming Indian ancestry. The Department also provides advice to numerous state agencies regarding issues of Indian law and issues connected to the two federally recognized Indian tribes in Connecticut and the operation of their casinos, as well as issues relating to gaming generally.

## **TORTS/CIVIL RIGHTS DEPARTMENT**

The Torts/Civil Rights Department defends state agencies and employees in tort and tort-like civil rights actions, including high-exposure personal injury and wrongful death actions. The department's cases involve many agencies and reflect the varied activities and services in which the state is involved -- providing direct treatment to those with mental illness or mental retardation, operating schools and colleges, operating recreational parks and swimming areas, being a landowner and controlling many buildings and other premises, obtaining custody of abused/neglected children, or holding those arrested by police in judicial cells. Many of these cases seek large sums in damages from state taxpayers' funds. Department attorneys have saved the State millions of dollars by obtaining favorable judgments and settlements for the State in the courts and at the Claims Commission.

We have aggressively pursued indemnification and hold harmless provisions in contracts between state agencies and contractors providing services who, under their contracts, were responsible for the activities resulting in the personal injury actions. Where state contractors and/or their insurers have not quickly stepped up to defend and indemnify the State in these actions, we have sought and obtained substantial compensation for our attorneys' time and for expenses.

In the past year, we negotiated favorable settlements in one state and two federal civil rights cases. We also obtained judgment for the defendant on a motion for summary judgment in a claim filed by a state university student who claimed that she was retaliated against when she complained about age and gender discrimination. The department successfully defended a claim against a DCF foster parent, resulting in a dismissal of the claim. After a trial in a wrongful death case involving a highly unusual event where a log flew a long distance from a tree-cutting operation, the judge found against the State, even though the judge agreed that the State had met the standard of care in the industry; the State's appeal of this decision is now pending.

The Department was successful in the majority of the many slip-and-fall actions filed. In addition, when any dangerous condition or practice is revealed during our representation, the

Department advises agencies regarding the need for physical or policy changes to increase safety.

## **TRANSPORTATION DEPARTMENT**

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

As a result of the large number of public works projects undertaken by the State during any given year, and the broad scope and complexity of many of these projects, there is a continuing need for the attorneys in the Transportation Department to provide legal assistance to the DOT, DCS, DAS and all other state agencies on public contracting issues. The Department also provides counsel on many of the state's transactional matters. Other legal assistance is provided in the resolution of bid protests, the interpretation of and drafting contract language, and other problems that eventually arise during the course of large construction and statewide procurement projects.

This past fiscal year's activities have included the prosecution and defense of several major lawsuits and appeals. The department is pursuing damages in several ongoing cases: State of Connecticut v. Lombardo Bros. et al., involves the construction failures at the UCONN Law Library that resulted in massive leaking and significant damage to the building. In State of Connecticut v. Bacon Construction et al, the State is seeking damages resulting from the construction failures that resulted in the massive leaks at many of the prison buildings at York Women's Prison in Niantic. These cases are currently on appeal, which could significantly impact their prosecution as well as other construction cases since the issues involve the applicability of statutes of limitation and repose in construction cases, as well as the interpretation of a key term in Connecticut General Statute § 4-61, all matters of first impression for the Court.

Procurement issues, bid protests and responsibility determinations of apparent low bidders on DOT and DPW construction projects and DAS procurement awards continue.

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<sup>1</sup> The Legislature in its last session has consolidated several of the agencies represented by the Transportation Department. Department of Public Works merged into DAS except for its construction responsibilities, now Department of Construction Services. Department of Information Technology was also merged into DAS. The Historical Commission is now part of DECD. The Transportation Department will continue its representation of these new entities as well as its current client agencies.

Department attorneys regularly counsel the DOT, DCS and DAS on all procurement and construction and bidding matters.

The attorneys in the Transportation Department regularly assist agency personnel with early analysis and settlement negotiations in construction-related disputes in an attempt to quickly reach a resolution and minimize the potential adverse financial impact of such claims on the public treasury. Nevertheless, a certain number of claims, both legal and monetary, end up in court or arbitration. In White Oak v. DOT, a claim involving a Bridgeport bridge repair project to improve and widen the I-95 corridor, the arbitration panel awarded White Oak \$8.4 million in damages and the Superior Court denied the state's motion to vacate the award. The office has appealed the decision, which involves interpretation of jurisdictional issues pursuant to Conn. Gen. Stat. §4-61.

The department also represents the State in matters relating to eminent domain and rights-of-way issues; surplus property divestitures (including DCS surplus property); issues relating to properties and facilities, including all I-95 and the Merritt Parkway service plaza facilities; aviation and ports; public transit; rails; the State Traffic Commission; Siting Council issues relating to the use of DOT's rights of way by transmission facilities, and telecommunication facilities; and all environmental matters including permitting, salt shed and maintenance facilities located throughout the State. We disposed of five eminent domain appeals by trial, 16 eminent domain appeals by stipulated judgment, five voucher approvals, and received 22 new appeals during the last fiscal year. There are currently 61 eminent domain appeals in litigation. The litigation outcomes of the concluded appeals resulted in savings to the State of \$1,986,210. We also counseled the DOT regarding the divestiture of 62 surplus properties.

During the fiscal year, department attorneys advised DOT extensively on the extension and renewal of the air carrier agreements in place at Bradley Airport. In this past legislative session the Connecticut Airport Authority ("CAA") was statutorily created as the operating and governing authority for all state-owned airports, including Bradley.

Among many of the cases this Department handles are all matters involving the Department of Motor Vehicles, including all drunk driver cases, and cases involving complaints regarding dealers and repairers, registrations, the emissions program as well as safety inspections.

The Department is also responsible for representing the Historic Commission and is occasionally called upon to seek the court's protection of historic properties which face destruction by owners or developers. See C.G.C. §22a-19a. In addition, the department is responsible for handling housing matters for the Department of Economic and Community Development (DECD) as well as all employee housing matters throughout the state and the many foreclosures in which the state has an interest in the property. Finally, in conjunction with agency staff, we have been assisting with the development of various master contracts for use in all areas of contracting at both the DOT and DCS with the goal of streamlining the contract approval processes.

The department also represents the Department of Energy and Environmental Protection (DEEP) in property matters. Department attorneys regularly provide legal advice and services to

DEEP in connection with the procurement of conservation easements resulting in the dedication of thousands of acres to public recreation and on complex property law issues. During the past fiscal year, the department assisted DEEP with 75 conveyances of real property, nine leases, 19 open-space grant agreements, 23 conservation easements, and a total of 24 easements and other agreements.

Our representation of the Department of Construction Services (DCS) focuses primarily on construction matters, leasing, property management, and environmental challenges on siting issues. During the past fiscal year, the department provided legal counsel and review of 22 leases, 19 agreements, 107 contracts, and five deeds. We also continued to represent DCS on several open claims involving significant amounts of money. The department favorably resolved several significant claims, including a contractor's claim regarding the A.I. Prince Tech Regional High School Project. In addition, the Superior Court entered a judgment in favor of the State in a lawsuit regarding a construction project at Engleman Hall on the SCSU campus; we are currently defending an appeal of that decision.

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

## **WORKER'S COMPENSATION/LABOR RELATIONS DEPARTMENT**

A significant accomplishment of the Worker's Compensation/Labor Relations Department during the fiscal year was revenue generated for special funds. State employee third party recovery collections increased 177 percent over the prior fiscal year and unpaid wage and unemployment tax collection increased 153 percent. When adding in Second Injury Fund recoveries, the department's total revenue generated by special funds increased by 134 percent over the prior fiscal year.

During the fiscal year, department attorneys successfully represented the state in several significant worker's compensation appeals:

- In Sapko v. State of Connecticut, 305 Conn. 360 (2012), the Connecticut Supreme Court affirmed the dismissal of a claim for death benefits brought by the estate of a claimant who died as a result of an overdose of drugs that he was taking for a work-related injury and an unrelated psychiatric condition. The Court found that the decedent's death was due to a superseding cause, the overdose of both

medications. The Court confirmed that the doctrine of superseding cause applies in workers' compensation claims in Connecticut. This doctrine holds that if there is an intervening act that, in and of itself, causes further injury, then the primary accident (the workers' compensation claim) may no longer be viable. The Court adopted the "direct and natural result" rule, which states that if the injury is the natural and foreseen consequence of a work injury, then the claim remains a compensable injury. But, if a new unforeseen aggravation causes further injury, then the causal link may be cut. The Court ultimately confirmed that the commissioner is the fact finder re: proximate cause issues and that his/her decision will not be overturned unless no reasonable fact finder could have decided the proximate cause issue as the commissioner resolved it.

- In State Comptroller, Retirement Division v. Dutil-Layman, Case No. 10-03068, the state Comptroller brought an action in the United States Bankruptcy Court to recover an overpayment of disability retirement benefits paid a former state employee on the basis of fraud. The Bankruptcy Court granted a motion for summary judgment on the ground of the collateral estoppel effect of decisions of the State Employees' Retirement Commission and the State Medical Examining Board consistent with the defendant's failure to disclose certain activities that were inconsistent with her claimed physical disability. The case is significant in that it upholds the State's right to pursue an overpayment of disability benefits in the federal bankruptcy court as an exception to the provisions allowing for the discharge of debts in bankruptcy. The Court made a finding of an overpayment totaling in excess of \$166,000 and further action will be taken to collect the overpayment.
- In Sulik v. State Department of Correction, KWL-CV-10-5014112, the Court dismissed the Union's application to vacate an arbitrator's award in a case in which a DOC employee was terminated for sexual harassment. The case is important because it affirmed the agency's right to enforce the zero-tolerance provision pertaining to sexual harassment contained in the collective bargaining agreement between the State and the union.
- In Eddy v. Connecticut State Employees Retirement Commission, HHB CV 10-6008605, department attorneys successfully defended an administrative appeal by a former state employee who had alleged that his retirement benefit was improperly calculated. The plaintiff, who had retired on April 1, 2003 under the state's Early Retirement Incentive Plan, challenged the Retirement Commission's practice of using the employee's "closing age" (i.e., age rounded off to the employee's closest birth date) rather than "actual age" purposes of calculating his spousal option election. Following a trial, the Court dismissed the appeal, finding that the Retirement Commission's practice was reasonable, legal and non-arbitrary.

- In Murray v. Connecticut Department of Administrative Services, HHB CV 10-6003197, the Court dismissed an appeal brought by a former state employee who claimed that he was denied payment for sick-leave accrual when he retired. Plaintiff had accrued the sick during his state service from 1976 to 2003 when he was a member of the State Employees Retirement System (SERS). However, in 2003 he elected membership in SARS (State's Attorneys' Retirement System). The Court agreed with the state's position that the plaintiff was not eligible for his sick-leave accruals because the relevant statute required that he retire directly from SERS in order to receive such payment.
- Department of Labor v. Flaggers A Head and Department of Labor v. White Mountain, were enforcement actions brought under the prevailing wage statute at the request of the state Labor Commissioner. In both cases, the issue was whether the firms that were awarded construction contracts by a wholly-owned municipal public utility company were required to comply with the prevailing wage statute. After extensive negotiation, the matters were resolved without resort to litigation. Without admitting liability, Flaggers A Head paid \$187,500 and White Mountain paid \$62,500 to the Labor Commissioner for distribution to the underpaid workers.

### **AFFIRMATIVE ACTION**

The Office of the Attorney General is firmly committed to equal employment opportunity. Nearly 53% of the full-time attorney workforce consisted of women and minorities. Women and minorities comprised 61.3% of entry level attorneys and 52.1% of middle and high level attorneys.

### **VOLUNTEER PROGRAMS**

The Office of the Attorney General welcomes the assistance of law students, paralegal students, undergraduates and high school students through its Volunteer Internship Program. Students are assigned to departments within the Office for the fall or spring semesters or the summer. Many students volunteer their time, but in some cases, earn work-study stipends or course credit.

Internships provide students with a valuable inside look at the state's largest public interest law firm. The assignments vary, but all provide opportunities for critical thinking, research and writing. Law students also gain practical experience in drafting legal documents and trial work.

In addition, the Volunteer Advocate Program provides opportunities for adults to assist the Office in helping consumers to resolve problems they encountered when purchasing goods and services. The advocates also helped consumers obtain refunds or bill credits to which they were entitled.

During fiscal 2011-12, 121 students took part in the internship program, along with six volunteer consumer advocates. Both programs provided valuable assistance to the Office and its work on behalf of the state.

The total cost for the volunteer programs was approximately \$300 for incidental expenses.