

Office of the Attorney General



At a Glance

GEORGE JEPSEN, Attorney General

PERRY ZINN-ROWTHORN, Deputy Attorney General

Established – 1897

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

Central Office - 55 Elm Street, Hartford, CT 06106

Average number of full-time employees - 297

Recurring General Fund operating expenses - \$\$ 30,574,729

Revenues Generated - \$ 578,303,797

Mission

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

Statutory Responsibility

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

REVENUE ACHIEVED BY THE OFFICE OF THE ATTORNEY GENERAL

During the 2015-2016 fiscal year \$ **578,303,797** was generated by the Attorney General's Office, as described below:

A. Revenue Generated for the General Fund

Tobacco Settlement Fund Collections	\$ 120,448,145
Child Support Collections	44,712,162
Department of Banking Penalties	88,618
Recovery for Environmental Violations	117,700
Environmental Clean-Up Recovery	37,190
Consumer Protection Civil Penalties	120,000
Department of Social Services Collections/Civil	2,869,518
Global Civil Settlements/Anti-Trust	18,944,541
Reimbursement for Court Costs	5,043
HIPAA Penalties	90,000
Miscellaneous Collections	14,438,847
Total Revenue Generated for General Fund	\$ 201,871,764

Revenue Generated for Special Funds

Second Injury Fund	200
Investment Commitment	21,000,000
Total Revenue Generated for Special Funds	\$21,000,200

Antitrust/Fraud Investigations	
Instituted	81
Completed	93
Pending	161
Consumer Investigations	
Instituted	11
Completed	37
Pending	73
Privacy Investigations	
Instituted	576
Completed	478
Pending	303
Miscellaneous Investigations	
Instituted	36
Completed	24
Pending	33
Legal Documents Examined	6,869
Public Inquiries Completed	2,802
Opinions Issued	82

DEPARTMENTS

ANTITRUST AND GOVERNMENT PROGRAM FRAUD DEPARTMENT

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

The Department's Antitrust Section has responsibility for administering and enforcing the Connecticut Antitrust Act, and has authority to enforce major provisions of the federal antitrust laws as well. It also relies on other state laws, including the Connecticut Unfair Trade Practices Act, to support the Attorney General's overall responsibility to maintain open and competitive markets in Connecticut. Utilizing these statutes, the section investigates and prosecutes antitrust and other competition-related actions on behalf of Connecticut's consumers, businesses and governmental entities. In addition, the section provides advice and counsel to the Attorney General on proposed legislation and various issues regarding competition policy.

The primary focus of the Department's Health Care Fraud Section is to detect, investigate and prosecute health care provider fraud that results in financial loss to the State of Connecticut's health and human services' programs, including the Medicaid program and the State Employee and Retiree Health Plan. This section develops cases independently and in conjunction with other state and federal law enforcement and regulatory agencies. The Connecticut state False Claims Act, which makes the submission of a false claim to certain Connecticut health and human service agencies illegal, is the department's chief tool to fight health care fraud.

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

Antitrust Enforcement

During the past year the Antitrust Section continued to build on the successes it has achieved over the last few years in industries that are vitally important to consumers. The section's mandate is focused on identifying and deterring anticompetitive conduct and obtaining restitution and injunctive relief for injured "consumers", including state agencies and government programs, small businesses and individuals.

One of the primary goals of the section 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 August 2010, the Attorney General announced an investigation to determine whether the "Big Five" eBook publishing companies and Apple colluded to raise the price of eBooks. On April 11, 2012 the Attorney General's investigation resulted in 16 states, led by the Texas and Connecticut Attorneys General, filing an antitrust lawsuit in federal court alleging that Apple Inc., and the publishing companies Macmillan Publishers Ltd., Penguin Group (USA), Inc. and Simon & Schuster engaged in an anticompetitive price-fixing scheme for marketing eBooks. Those three publishers and two others who previously settled - - Hachette Book Group, Inc. and HarperCollins Publishers L.L.C - - ultimately agreed to pay \$166 million in restitution to consumers nationwide, with Connecticut eBook purchasers receiving approximately \$3 million in aggregate restitution from the five settling publishers.

A trial against Apple for illegal price fixing commenced in June 2013. On July 10, 2013, the Court found Apple liable for conspiring to raise the retail price of eBooks. Thereafter, in mid-June 2014, Apple and the states announced that they reached a conditional settlement that required Apple to pay an additional \$400 million in restitution unless it prevailed on its appeal of the district court's decision. The United States Court of Appeals for the Second Circuit upheld the district court's decision and the Supreme Court denied Apple's request for a review, which ended the litigation and triggered the settlement. Connecticut consumers injured by the illegal price fixing scheme are estimated to receive in total approximately \$6.4 million worth of credits or restitution. In addition, the Attorney General received \$1.9 million in fees and costs related to the litigation, which will 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. Municipal bond derivatives are contracts that tax-exempt issuers use to reinvest the proceeds of bond sales until the funds are needed, or to hedge interest-rate risk. Connecticut leads the task force. On February 24, 2016 the Attorney General announced settlements with two financial institutions involved in the investigations - Natixis and Societe Generale – whereby the institutions agreed to pay a total of \$53,865,000 into a settlement fund that will be used to provide restitution to municipalities, counties, government agencies, school districts and nonprofits that entered into municipal bond derivatives contracts with the companies. The other financial institutions that entered into settlements with the task force during the eight year investigations are: Bank of America, UBS AG, JP Morgan Chase, Wachovia Bank N.A and GE Funding Capital Market Services, Inc. The total restitution recovered amounts to over \$400 million.

Merger enforcement has been a high priority in the Attorney General's antitrust enforcement efforts and this year was no exception. On December 16, 2015, the Attorney General joined the Department of Justice (DOJ) in a settlement with AMC Entertainment Holdings, Inc. (AMC) and SMH Theaters, Inc. (Starplex Cinemas) to resolve concerns that AMC's purchase of a Connecticut Starplex theater would substantially harm competition for Connecticut consumers. AMC and Starplex Cinemas entered into an agreement for AMC to acquire Starplex theaters, including two theaters in Connecticut: the Berlin 12 and Southington 12 theaters. The Attorney General and the DOJ were concerned that AMC's acquisition of Starplex's Berlin 12 and Southington 12 theaters would result in a substantial lessening of competition in the Berlin market, where AMC already owned another theater. The agreement with Connecticut and the DOJ required AMC to sell the Berlin 12 theater to a different operator as a condition of the merger.

Ensuring open and vigorous competition in Connecticut's health care markets is a chief law enforcement objective of the Attorney General. The benefits to consumers from competitive and efficient health care markets usually take the form of transparent pricing, sufficient consumer choice and access to providers, and high quality care. Healthcare markets include both sellers (*i.e.*, healthcare providers) and buyers, such as health insurers. This past year the Attorney General worked with the DOJ to investigate two separate proposed mergers by large health insurers with significant ties to Connecticut: Aetna's planned acquisition of Humana and Anthem's intended acquisition of Cigna. On July 21, 2016, the Attorney General, along with the U.S. Department of Justice and eleven other states filed a lawsuit seeking to enjoin the Anthem/Cigna merger alleging that the merger, if consummated would eliminate significant competition in the market for healthcare insurance and likely lead to higher prices and diminished services. The Attorney General ultimately decided not to challenge the Aetna/Humana merger.

Ensuring open, competitive and fair markets for Connecticut's small businesses is another of the Attorney General's most important competition enforcement initiatives. This past year, the Attorney General, working with Connecticut's Department of Consumer Protection, entered into a settlement with Ferrandino & Son, Inc., to resolve allegations that the company unfairly inflated a benchmark reference it used to calculate bonuses it paid to its Connecticut subcontractors for commercial snow and ice removal services. Ferrandino & Son, Inc. provides these services to over 100 commercial business locations in Connecticut. The inflated benchmark reference had the effect of reducing the bonuses the company paid to its subcontractors. Under the State's

agreement, Ferrandino & Son, Inc. agreed to pay \$187,095 in restitution to its Connecticut subcontractors and a \$50,000 civil penalty to the state of Connecticut, which will be deposited into the state's General Fund.

Connecticut, like many Northeastern states, is in the midst of combating an unprecedented increase in heroin related overdoses and deaths. Naloxone is a medication used by many first-responders to counter the effects of a heroin overdose. In early 2015, Amphastar Pharmaceuticals, Inc. dramatically - - and without explanation - - increased the price it charged for naloxone, which imposed a significant financial burden on the state and its municipalities that were already grappling with dire budget challenges. Accordingly, in September 2015, the Attorney General contacted Amphastar's Chief Executive Officer and sought to negotiate an agreement with the company that would result in Connecticut governmental purchasers obtaining a rebate for their purchases of Amphastar's naloxone product. On April 5, 2016, the state entered into an agreement with Amphastar that will provide a \$6 per-dose rebate for the purchase of the company's naloxone product. In addition, Amphastar agreed not to increase its wholesale acquisition cost per dose of naloxone for a period of one year. The rebate agreement will be in effect for one year beginning in March 2016.

Government Program Fraud

The Government Program Fraud Section achieved significant success this year by settling a string of investigations and obtaining several large monetary recoveries for the Medicaid program. The Section continued to participate in numerous multi-state health care fraud settlements with pharmaceutical companies related to problematic marketing practices that affected the Medicaid program. In all, the Attorney General entered into fourteen (14) settlements with pharmaceutical companies yielding a total recovery (federal and state) of approximately \$19 million for the Medicaid program. Among the companies that settled with the United States and the State of Connecticut were: Wyeth, Abbott, Cephalon, Inc., Warner Chilcott Plc, Olympus Corporation of the Americas, Novartis Pharmaceuticals Corp., Qualitest Pharmaceuticals and Pediatric Services of America Global.

In addition to the multi-state settlements, the section entered into several Connecticut-specific health care fraud settlements this past fiscal year that provided restitution to the Medicaid program. The settlements include the following

- In July of 2015 the Attorney General reached a false claims act settlement with a social worker and a doctor who agreed to pay a total of \$120,000 to the Medicaid program to resolve claims that the providers devised a scheme to defraud the program for behavioral health services.
- On December 21, 2015, the office entered into a false claims act settlement with a Connecticut dentist resolving allegations that he engaged in a long-term scheme to submit claims to the Medicaid program for services he never provided to his certain of his Medicaid patients. The dentist agreed to pay \$55,000 to resolve the false claims act allegations and agreed to enter into a separate agreement with the Department of Social Services (DSS) to be permanently barred from participation as a dentist in the Medicaid program.

- On March 8, 2016, the Attorney General settled a false claims investigation with a Connecticut psychiatrist who agreed to pay \$404,798 to resolve allegations that while enrolled as a behavioral health and psychiatric services provider in the Medicaid program, the provider engaged in a long-term pattern of submitting "upcoded" or inflated claims to the DSS.
- On May 25, 2016 the Attorney General entered into a joint federal-state settlement with a Connecticut psychiatrist to resolve allegations that he submitted "upcoded" or inflated claims to the DSS. Under the settlement, the psychiatrist agreed to pay \$422,641.70 to the federal and state healthcare programs and will enter into a compliance program.
- On May 31, 2016 the Attorney General entered into a joint federal-state settlement with a former Connecticut group home operator to resolve allegations that the company submitted claims paid by Medicaid for interest expenses that were not allowable under the state's cost reporting guidelines. The group home provider operated under a contract with the Departments of Developmental Services and Children and Families to operate group homes that provided residential and day services to the intellectually disabled and to at-risk youth. The former group home provider agreed to pay the state and federal government \$1.5 million to settle the matter.

Whistleblower Matters

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

CHILD PROTECTION DEPARTMENT

The Child Protection Department, with over 40 attorneys, is dedicated to protecting the children of the State of Connecticut from abuse and neglect. This past year, the Child Protection Department successfully represented the Department of Children and Families (DCF) in thousands of juvenile court cases, to protect children who had been abused and neglected and help their placement in permanent safe homes. The department also successfully defended a number of appeals involving these children before the Appellate and Supreme Courts.

Several appeals before the higher courts challenged the reasonableness of DCF's efforts to reunite children with their parents, e.g. *In re Gabriella A.*, 319 Conn. 775 (2015); *In re Joseph M.*, 158 Conn. 849(2015); *In re Nioshka A. N.*, 161 Conn. App. 627 (2015); *In re Elijah C.*, 164 Conn. App. 518, cert. granted, 321 Conn. 917 (2016); and *In re Quamaine K.*, 164 Conn. App. 775, cert. denied, 321 Conn. 919 (2016). These challenges were based on different factual backgrounds specific to each case. Most of the challenges on appeal were based on claims that the services were insufficient to meet the parent's intellectual deficiencies and the high courts rejected the challenges in these cases upon assessment of the evidence in each individual case, thus supporting the trial court's conclusion.

In *In re Quidanny L.*, 159 Conn. App. 363 (2015), the Appellate Court affirmed a termination of parental rights judgment issued by the trial court on a coterminous petition. The Appellate Court concluded that General Statute § 17a-112(j)(3)(c), plainly encompasses the act of a parent who attempts to suffocate a child, causing the child to turn blue. The Court stated that "[t]hat act of parental commission is a quintessential example of severe physical abuse that compromises a child's physical and emotional well-being." The Court rejected the claim that termination of parental rights cannot be granted unless severe physical injury is proven.

A few appeals attempted to invalidate judgments based on the claim that the trial courts should have ordered a competency evaluation of parents and subsequent hearings in certain cases even though counsel did not request such evaluation, e.g. *In re Glerisbeth C.*, 162 Conn. App. 273 (2016); and *In re Samuel R.*, 163 Conn. App. 314 (2016). The Appellate Court concluded that the true focus of the competency inquiry is the parent's present ability to assist her counsel with a rational and factual understanding of the proceedings at the time of the trial. Consequently, the trial judge is in a particularly advantageous position to observe the parent's conduct and has a unique opportunity to assess her competency.

COLLECTIONS/CHILD SUPPORT DEPARTMENT

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

In fiscal year 2015-2016, department attorneys recovered in excess of 7 million dollars in cash payments on debts owed to the state. During the fiscal year, more than 12,000 cases were opened in all child-support categories. These cases are handled in the J.D. Superior Court-Family Division, the Family Support Magistrate division, and Probate Court, and involve the establishment of paternity and/or orders for support of minor children.

The State of CT-Title IV-D partnership, comprised of the Attorney General's office, DSS-OCSS, and SES, successfully enforced/collected approximately nearly \$301.7 million in court-ordered child support during SFY 2016. The program sent \$208.5 million in parental support to children whose families are not receiving state cash assistance benefits. Another \$17.2 million went to children living out of state. At the same time, state taxpayers benefited from approximately \$15.9 million in child support collected from parents of Connecticut children receiving Temporary Family Assistance. Most of this amount goes back to the state as

reimbursement for public assistance benefits. Another \$20.9 million was collected on past-due amounts and kept by the state in lieu of current or past public assistance benefits.

At the end of federal fiscal year 2015 (9/30/15), the child support caseload was 181,210. More than nine and one half percent (9.03%) of these cases are current assistance (active cash assistance – support assigned to the state); 55.23% are former assistance (payments to the family); and 35.74% are never assistance cases (payments to the family). Some 87% of the caseload has a court order for support and/or health care coverage in place.

Department attorneys actively argued cases on behalf of children who resided in the State of Connecticut, as well as children residing in other states and cooperating countries, pursuant to the Uniform Interstate Family Support Act. In addition to their work establishing paternity and support orders for children, department attorneys appeared and successfully argued hundreds of cases in Probate Court and Superior Court-Juvenile Court, to protect the State's interest and to preserve the legal rights of children to receive financial support from their parents. The Probate Court matters generally involve non-custodial parents seeking to terminate their own parental rights, or the custodial parent seeking to terminate the rights of the non-custodial parent. These matters are often transferred or appealed to Superior Court.

Department staff assisted DSS with the civil enforcement of numerous contested statutory child support liens on behalf of children in need.

Outside the child-support area, department attorneys engaged in excess of 1,500 collection-related litigation matters and managed a large and diverse case load, in numerous venues, including state superior court, probate court, federal district court, and federal bankruptcy court proceedings in Connecticut and throughout the country. The department concluded several litigation collection matters involving the recovery of debts owed to numerous state agencies, boards and commissions. The department's collections efforts resulted in a recovery of \$100,000 or more in approximately twenty (20) or more cases, for a total Department recovery in excess of \$10 million for the state General Fund. The largest of these matters involved a \$670,000 recovery related to the defense of a DAS public assistance lien on an inheritance matter arising out of Probate Court; nearly \$416,000 related to the successful prosecution of a state DRS tax claim in federal district bankruptcy court; and a \$377,000 recovery from the enforcement of a DRS public assistance lien on a personal injury case.

The Department also recovered in excess of \$38,000 on behalf of the Department of Correction for the cost of incarceration debts statutorily owed by inmates. The department also successfully collected \$1.1 million in penalties/fines from foreign (unregistered) businesses, working in cooperation with the Secretary of the State's Commercial Recording Division.

Of the numerous bankruptcy claims that were successfully prosecuted in federal bankruptcy courts, the Department collected in excess of \$ 1.5 million this fiscal year. Additionally, within the Department's bankruptcy case load, staff is litigating two questions of law involving matters of first impression. First, the Department is defending a sudden increase in Chapter 7 bankruptcy trustees seeking to recover or "clawback" tuition payments made by parents of students who subsequently filed bankruptcy on the theory that parents are not legally liable for college tuition and therefore did not receive reasonably equivalent value for the payments. This is an area of first impression in Connecticut that may impact state colleges and universities, and a number of actions have been

both threatened and initiated against various state universities. Department staff is also defending a potentially significant matter that is still pending in federal district court involving an 11th Amendment claim bar defense on behalf of the DOC which could have future implications for statutory DOC cost of incarceration debt collections.

CONSUMER PROTECTION DEPARTMENT

The Consumer Protection Department's focus is on protecting consumers from unfair and deceptive business practices through its representation of the Connecticut Department of Consumer Protection. The department directs and participates in consumer education, complaint mediation, investigations, appearances before state and federal agencies, and litigation under various state and federal laws, primarily the Connecticut Unfair Trade Practices Act (CUTPA).

Mediation

As part of the Attorney General's focus on consumer mediation, the department includes a Consumer Assistance Unit (CAU). The CAU is dedicated to assisting individuals in resolving consumer complaints through voluntary mediation efforts. During the past fiscal year, CAU staff responded to 2,050 written consumer inquiries and many telephone inquiries. More than \$664,237.04 was refunded or credited to Connecticut consumers due to the mediation efforts of CAU.

Consumer Education

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

Multistate Activities

On August 18, 2015, Connecticut joined with 47 other states and the District of Columbia in a \$71 million settlement with biopharmaceutical company AMGEN, Inc. to resolve allegations that the company unlawfully promoted two biologic medications, Aranesp and Enbrel. Connecticut's share of the settlement funds was \$1,026,663.83. The states alleged that AMGEN marketed and promoted Aranesp for treating anemia caused by cancer when it had never received approval from the federal Food and Drug Administration (FDA) to use the drug for that class of anemia. The states also alleged that AMGEN overstated Enbrel's effectiveness and lacked competent and reliable evidence to support the drug's use in the treatment of mild psoriasis. In addition to the settlement funds, the company agreed to significantly reform its marketing and promotional practices.

Since October 2015, our office has been serving as one of six lead states in a coalition of over 40 jurisdictions investigating the use of emissions "defeat devices" in light-duty, "TDI" diesel-powered, passenger vehicles manufactured by Volkswagen and its affiliated companies.

The leadership states engaged in intense and extensive document review, witness interviews, and information-gathering from third parties with knowledge of the underlying facts. The states determined that in late 2006, Volkswagen made the conscious decision to install the defeat devices in the vehicles when it realized that the cars could not perform as promised. Eventually, Volkswagen installed defeat devices of varying designs in nearly 600,000 vehicles in the U.S. In June 2016, the states entered into a settlement with Volkswagen as part of a series of coordinated settlements in consumer class action and federal civil enforcement actions calling for the repair or repurchase of the impacted vehicles, the establishment of multi-billion dollar environmental mitigation and zero-emissions vehicle investment funds, and comprehensive injunctive relief. Under the terms of its settlement with the states, Volkswagen is required to pay \$1,100 per vehicle to resolve the states' consumer protection investigations. Connecticut is expected to receive more than \$16 million from the settlement funds. Still to be resolved are potential claims that Volkswagen violated state environmental protection laws.

Other Unfair and Deceptive Trade Practice Cases

The department resolved a number of matters arising under the Connecticut Unfair Trade Practices Act. Among them, by way of example, in May of 2016, the department successfully negotiated an Assurance of Voluntary Compliance with The Joseph J. Mottes Company and Becker Construction Company. Under the terms of the agreement, the companies will not, until June of 2017, sell material containing stone aggregate from Becker's Quarry in Willington for use in residential concrete foundations. During that time, the companies will also make disclosures to purchasers of material from the quarry that the stone aggregate should not be used in residential concrete foundations. The Assurance of Voluntary Compliance was provided as part of an investigation into reports of crumbling concrete home foundations in northeastern Connecticut. Information obtained through the investigation revealed that a chemical reaction to pyrrhotite, an iron sulfide mineral present in stone aggregate in the quarry, is a likely cause of the deterioration.

Utility Cases

On October 15, 2015, the Public Utilities Regulatory Authority ("PURA") issued a final decision approving a settlement agreement in which electric supply company North American Power, LLC agreed to pay \$2.6 million to the nonprofit Operation Fuel which provides energy assistance to needy households in Connecticut. The settlement resolved a two-year investigation into North American Power's marketing practices. The investigation began following a number of customer complaints that North American Power offered a low introductory rate that was quickly replaced by a variable rate that was higher than the market or standard service rates. The Office of Consumer Counsel was also a signatory to the settlement.

On December 9, 2015, PURA approved the acquisition of UIL Holdings by Iberdrola, SA. The Companies withdrew their initial application for approval after opposition by the Attorney General's Office and others led to a draft decision denying approval. The Companies' revised application provided a number of ratepayer protections that were missing from their initial request, including guarantees that local management control will be maintained and that the local operating utility companies will be "ring fenced" such that they are protected from the financial risks of their parent companies. The revised application also included immediate and long-term benefits to customers, including ratepayer credits, rate freezes and customer service improvements and it ensured PURA's ability to regulate the companies effectively. This approval also paved the way

for expediting the remediation of the polluted English Station site in New Haven under a separate consent order also negotiated by the Attorney General's Office, working with Governor Malloy and the state Department of Energy and Environmental Protection.

EMPLOYMENT RIGHTS DEPARTMENT

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

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

Department attorneys are currently defending the State in approximately eighty-eight employment cases in the state and federal courts, including five Second Circuit Court appeals and five Connecticut Appellate Court appeals. The department is defending 131 complaints before the Connecticut Commission on Human Rights and Opportunities ("CHRO"), Office of Public Hearings, the Equal Employment Opportunity Commission ("EEOC") and Freedom of Information Commission ("FOIC"). The department is also defending thirteen claims in the Office of the Claims Commissioner.

During the past year, the department successfully defended state agencies in numerous cases in the state and federal courts and before the CHRO. Significantly, the department was able to obtain judgment in favor of the defendants on seven summary judgment motions that were filed in federal court and six summary judgment motions filed in state court, eliminating the need for trials in those cases. In two additional cases in federal court, summary judgment was granted in part and denied in part. The department filed approximately thirteen additional summary judgment motions which are pending, eleven in federal court and two in state court during fiscal year 2015-2016. In one additional case, the department was successful in obtaining a judgment for the client after a trial by jury. In other matters, the department successfully avoided financial exposure to the state by entering into settlements on favorable terms.

In addition, department attorneys prevailed in two disability discrimination cases after several days of evidence during public hearings at the CHRO. The department also prevailed in two whistleblower retaliation matters after several days of evidence at the CHRO's Office of Public Hearings.

The Employment Rights Department successfully defended a number of appeals, including an appeal before the United States Court of Appeals for Second Circuit Court challenging a district court's dismissal of a discrimination suit. The department filed briefs in four appeals in Connecticut Appellate Court and in two appeals before the United States Court of Appeals.

THE ENERGY DEPARTMENT

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

During the past fiscal year, the Energy Department recovered more than \$13.4 million through cases before FERC and the state courts. The Energy Department successfully resolved three administrative appeals from PURA decisions, resulting in a significant payment for compliance with the resource portfolio standards, and preventing multi-million dollar additional rate increases. Before FERC, the Energy Department obtained a \$1.6 million refund for Connecticut ratepayers for overpayments collected by an out-of-state transmission company. On PURA's behalf, the Department is active in several FERC and court proceedings to reduce the level of automatic return on equity for electric transmission projects, numerous FERC rate cases regarding gas pipeline charges, and several FERC and court matters concerning the regional electric capacity markets.

The Energy Department also authored a multi-state amici brief to the U.S. Supreme Court in the matter of *Hughes v. Talen Energy*, presenting the states' in a preemption case regarding the intersection of the states' need to ensure reliable and adequate electric generation facilities and the federal government's authority over wholesale electric markets. Although unsuccessful on the ultimate merits, the states' amici brief resulted in a narrower ruling from the U.S. Supreme Court than the decisions below.

The Energy Department successfully defended PURA in a judicial challenge to Connecticut's Comprehensive Energy Strategy in *Connecticut Energy Marketers Association v. Connecticut Department of Energy and Environmental Protection and Connecticut Public Utilities Regulatory Authority* before the superior court, and the appeal to the Connecticut Supreme Court is pending. The Energy Department also prevailed before the superior court in *Town of Middlebury v. Connecticut Siting Council*, where the Council approved an upgrade to an already-approved electric generation facility. Plaintiffs have appealed to the Appellate Court where the case is now pending.

ENVIRONMENT DEPARTMENT

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

In the continuing effort to improve Connecticut's air quality, the department participated in a number of legal actions to enforce the Clean Air Act, including actions seeking to reduce the impact in Connecticut from air pollution generated in other states. Some of these actions included supporting EPA in defending challenges to the Clean Power Plan, which includes rules intended to reduce emissions of CO₂, the main greenhouse gas that causes global warming. In addition, the department worked with other states to support EPA in defending rules that promote cleaner air in Connecticut including rules that establish more stringent controls on mercury emissions. The department worked with the DEEP to negotiate Consent Orders that are intended to ensure that polluted sites will be remediated. This effort included negotiating a Consent Order with United Illuminated to remediate the former English Station power plant in New Haven, creating a pathway to clean the property and return it to productive economic use for the benefit of the community after many years of legal wrangling.

This year the department had a number of legal victories in State court on behalf of the Department of Energy and Environmental Protection ("DEEP") that bolstered the State's efforts to enforce and defend environmental laws. In *Commissioner v. Underpass Auto Parts Co., et al*, the Department was successful in asking the Connecticut Supreme Court to reverse a trial court decision that failed to order the investigation and remediation of the site in compliance with the State's clean up regulations (the Remediation Standard Regulations). The department's attorneys also assisted the agency in successfully defending a number of administrative appeals of challenges to its environmental enforcement orders and the DEEP's enforcement authority. In *Vorlon Holding, LLC v. Commissioner*, 161 Conn. App. 837 (2015), for example, the Department successfully defended an order from the Commissioner applying the Responsible Corporate Officer Doctrine to hold officers of a polluting company personally liable for polluting conditions on a property they controlled. The department's representation of the DEEP in bankruptcy proceedings continues to prevent polluters from avoiding environmental liability by filing bankruptcy. The department attorneys handled numerous bankruptcy filings this year, representing DEEP's interests in bankruptcy courts so as to ensure that contaminated properties are not abandoned and left to taxpayers to clean up.

The department continues to represent and assist the Department of Agriculture ("DoAg") in animal cruelty cases. Of significance, this past year the department successfully defended DoAg's seizure of 32 neglected horses from a privately owned horse farm based on evidence that they were severely malnourished and had been exposed to the elements. This represented one of the largest seizures of horses ever conducted by DoAg. The department's attorneys also defended challenges to DoAg orders intended to protect the public from vicious animals. The Environment Department provided legal support to DoAg in preserving valuable Connecticut farmland by acquiring the development rights through the Farmland Preservation Program, thereby protecting the land from commercial or residential development. The department continues to provide legal support to DoAg's Aquaculture Division and assists DoAg in leasing hundreds of acres for oyster farming and other commercial aquaculture activities, thereby generating millions of dollars for the State's economy.

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

FINANCE DEPARTMENT

The Finance Department provides legal services to state agencies that regulate insurance, banking and securities, as well as the Department of Economic and Community Development (DECD), the Department of Revenue Services, and the Office of Policy and Management.

Legal issues involving consumer financial services formed a major part of this department's work in 2016. For example, department attorneys helped negotiate a \$470 million joint state-federal settlement with mortgage lender and servicer HSBC to address mortgage origination, servicing, and foreclosure abuses. The settlement provides direct payments to Connecticut borrowers for past foreclosure abuses, loan modifications and other relief for borrowers in need of assistance and it grants oversight authority to an independent monitor. Roughly 640 Connecticut borrowers whose loans were serviced by HSBC and who lost their home to foreclosure from January 1, 2008 through December 31, 2012, are eligible for a payment from a national \$59.3 million fund for payments to borrowers.

Department attorneys also played a leading role in a \$136 million national settlement with Chase Bank USA N.A. and Chase Bankcard Services, Inc. (Chase) to resolve allegations that the bank engaged in unfair, misleading and deceptive business practices in connection with its consumer credit card debt collection business. Under the settlement, Chase is required to conduct due diligence on third-party debt buyers and only sell consumer debts to licensed debt buyers. Debt buyers are prohibited under the settlement from reselling the consumer debt they purchase from Chase. Hundreds of Connecticut consumers will be helped under this settlement. Connecticut received approximately \$2.1 million in direct payments under the settlement.

In the student loan area, department attorneys led a national settlement with the Education Management Corporation (EDMC), an operator of for-profit post-secondary educational institutions. The settlement reforms recruiting and enrollment practices at EDMC and forgives more than \$102.8 million in outstanding student loan debt held by more than 80,000 former students. The settlement mandates added disclosures to students, including a new interactive online financial disclosure tool; bars misrepresentations to prospective students; prohibits enrollment in unaccredited programs; and institutes an extended period when new students can withdraw with no financial obligation. Connecticut's share of the settlement allows an estimated \$364,990 in loan forgiveness for former students in the state.

Department attorneys are also part of President Obama's Residential Mortgage Backed Security ("RMBS") Task Force investigating financial institutions' conduct in structuring the securities at the heart of the 2008 financial crisis. Department attorneys are actively engaged in pursuing these important and complex investigations.

The Finance Department works closely with the state agencies it represents, providing informal advice to its client agencies on the numerous legal issues that arise in their daily operations. Department attorneys successfully defended a state law raising mortgage filing fees on those mortgages filed using the Mortgage Electronic Registration Systems, Inc. (MERS) process. After a positive decision on the trial level, the statute was eventually upheld by the Connecticut Supreme Court in this first in the nation case.

Department attorneys have represented the Department of Revenue Services in 278 tax warrant proceedings seeking to collect overdue and delinquent state taxes. Additionally, the Governor's continued emphasis on providing support to businesses operating in or relocating to Connecticut requires department attorneys to provide frequent assistance and advice to DECD regarding grant, loan, and economic stimulus programs administered by DECD.

The Finance Department is responsible for enforcement of the Master Settlement Agreement ("MSA") between the states, including Connecticut, and various participating tobacco product manufacturers, as well as related tobacco issues. The Department works to ensure that Connecticut receives the monetary payments it is owed by tobacco manufacturers, and that tobacco manufacturers, distributors and retailers comply with the public health provisions of the MSA and the requirements of state law.

HEALTH AND EDUCATION DEPARTMENT

The Health and Education Department provides legal services and representation to a large number of state agencies, including the University of Connecticut, the University's Health Care Center and John Dempsey Hospital, the Board of Regents composed of the four Connecticut State Universities and the sixteen Connecticut Community Colleges, the Office of Higher Education, the State Library, the State Department of Education and the Connecticut Technical High Schools. This department also represents the Department of Public Health, the Department of Social Services, the Department of Mental Health and Addiction Services, the Department of Rehabilitation Services, the Department of Aging, the Office of Early Childhood, the Office of Health Care Access, the Psychiatric Security Review Board, the Department of Developmental Services, the Department of Veterans' Affairs, the Commission on Medical and Legal Investigations, the Office of the Chief Medical Examiner and the sixteen health licensing boards and commissions.

The department handles litigation in federal and state courts for these agencies, 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 also advises client agencies on a wide variety of legal and regulatory issues. The department also reviews and approves for legal sufficiency regulations and contracts for its client agencies. Last fiscal year, the Department reviewed approximately two thousand contracts and ten sets of regulations.

In the last year, the department defended the Department of Public Health (DPH) against a number of legal challenges to its regulatory authority. In *Robb v Board of Veterinary Medicine, et al*, the department successfully defended a lawsuit by a veterinarian claiming that federal antitrust law barred disciplinary proceedings against him -- one of the first cases applying a recent antitrust immunity decision from the United States Supreme Court. In *Sensational Smiles v. Mullen, et al*, the United States Court of Appeals for the Second Circuit affirmed the dismissal of a lawsuit

asserting a constitutional challenge to a State Dental Commission ruling that teeth whitening activities are required to be performed by licensed dentists. In *Jackson v. Department of Public Health*, the federal district court dismissed a claim that DPH could not regulate the practice of "Medicine" because that term had secured federal trademark protection. In addition, the department assisted in securing eight (8) consent orders between DPH and health care facilities resolving regulatory violations. The department also successfully defended before the Connecticut Supreme Court, DPH's position that the privacy of records of psychiatric patients in state facilities are protected from disclosure under the Freedom of Information Act.

The department handled a substantial amount of litigation for the Department of Social Services (DSS). In addition to resolving court cases involving issues of Medicaid eligibility, the department assisted DSS with the impact of the bankruptcy filing of the Affinity nursing home chain. The department also provided legal assistance in placing a financially unstable nursing home into receivership, thereby protecting patient care. The department continues its work in representing DSS in two class action lawsuits on the processing of Medicaid and food stamp applications. In addition, the department represents DSS in 146 hospital appeals challenging inpatient and outpatient Medicaid rates, supplemental Medicaid payments and hospital taxes.

During the last year, the department provided counsel to other client agencies in significant litigation matters. It assisted DSS and the Department of Mental Health and Addiction Services (DMHAS) in connection with the settlement of a case addressing community based services for psychiatrically disabled nursing home residents. It represented the State Board of Education and the Department of Education on a variety of significant legal issues, including successfully negotiating a one year settlement agreement in the landmark Hartford school desegregation case, *Sheff v. O'Neill*. The department was also able to secure court decisions rejecting challenges to decisions of the Department of Developmental Disabilities (DDS) placing persons on its abuse and neglect registry, and it continues to represent DDS in on-going settlement compliance in the longstanding Southbury Training School litigation.

The department provides legal services on a broad array of issues to the Board of Regents, which includes the Connecticut State University System, Charter Oak College and the Community-Technical Colleges. Those issues included contract questions, real property matters, issues relating to access to student information, discrimination claims, Title IX claims, and issues arising under the Freedom of Information Act.

As it has in previous years, the department continues to provide comprehensive legal services on a wide array of matters to the University of Connecticut and the University of Connecticut Health Center, including representing these institutions in litigation in federal and state courts and regulatory bodies, and assisting them in the negotiation and approval of highly complex transactions and contracts.

PRIVACY AND DATA SECURITY DEPARTMENT

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

social security numbers and other sensitive information. The department is also responsible for enforcement of federal laws under which the Attorney General has enforcement authority, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Children's Online Privacy Protection Act (COPPA), and the Fair Credit Reporting Act (FCRA). In addition, this department provides the Attorney General with advice and counsel on proposed legislation and other matters regarding privacy and data security, and it engages in extensive outreach to citizens and businesses on matters relating to data protection and privacy.

Education

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

Data Breaches

Effective October 1, 2012, Connecticut law requires notification to the Attorney General of security breaches. The Privacy and Data Security Department reviews all breach notifications submitted to the office, and conducts all necessary follow-up with the reporting company, such as obtaining further information about the incident itself, copies of consumer notice letters, and where warranted, requesting extended protection services. In this past fiscal year, the Privacy and Data Security Department closed approximately 478 data breach matters.

This past fiscal year, the department logged in approximately 572 data breaches – or, nearly 50 per month. While the categories of information compromised varied, more than half of the reported breaches (331 in total) involved the actual or possible compromise of Social Security Numbers. While most of the reported breaches reportedly impacted fewer than 100 Connecticut residents, approximately 93 breaches impacted 100 or more residents, and 25 breaches affected 1,000 or more Connecticut residents.

Attorneys from the Privacy and Data Security Department are currently leading or co-leading a number of important national investigations into large retailer data breaches, including data breaches affecting millions of customers of Anthem, Target and Home Depot. The past year has also seen an important HIPAA settlement by the department in the following matter:

EMC Corporation and Hartford Hospital

In June of 2012, a laptop containing unencrypted protected health information (PHI) of approximately 8,883 Connecticut residents was stolen from an EMC employee's home. EMC had been retained by Hartford Hospital to assist on a quality improvement project on hospital readmissions. The employee had been employed by and received the laptop that was stolen from a company that EMC had previously acquired.

The companies and the Attorney General settled the matter in November 2015. The parties agreed to pay \$90,000.00, and agreed to important corrective actions.

PUBLIC SAFETY DEPARTMENT

The Public Safety Department represents 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 and the law enforcement functions of the former Division of Fire, Emergency and Building Services; the Military Department; the State Marshal's Commission and the Department of Consumer Protection Liquor Control Division. The Department also provides legal services and representation to a number of associated boards, commissions and agencies, including the Division of Criminal Justice, the Division of Public Defender Services, the Office of Adult Probation, the Governor's Office (Interstate Extradition), the Statewide Emergency 9-1-1 Commission, the State Codes and Standards Committee, the Crane Operator's Examining Board, the Board of Firearms Permit Examiners, the Commission on Fire Prevention and Control, the Board of Pardons and Paroles and the Police Officer Standards and Training Council. The Department also continues to provide limited representation to the State Fire Marshal and State Building Inspector, including review of all regulations and changes to the state Building and Fire Codes, even though those offices have been transferred to the Department of Administrative Services. Within the last year, attorneys in the department have also represented several State Universities, the Judicial Branch, and the Department of Children and Families in various litigation matters.

The Department of Correction

With over 6,000 employees, 16,000 inmates and another 3,000 offenders supervised in community placements, the Department of Correction ("DOC") is the department's largest client agency. Nearly all of the attorneys in the department devote at least some of their time to representation of the DOC. Much of this work is done in defense of the agency and its employees in lawsuits brought by and on behalf of prisoners. The department continues to defend a large number of lawsuits in state and federal court challenging conditions of confinement in state correctional facilities and the administration of community programs. The pending corrections cases in the U.S. Federal District Court alone continue to represent more than 10% of the overall federal court docket. These lawsuits collectively seek millions of dollars in money damages and seek to challenge and restrict the statutory authority and discretion of the Department of Correction. The department's efforts in defense of these cases save the State of Connecticut millions of dollars in damages claims, and preserve the state's authority to safely and securely

manage an extremely difficult prison population free of costly and onerous court oversight as has been the experience in other states. Significant areas of litigation in the last year include: continued defense of the DOC's pornography ban; defense of various challenges to limitations on access to courts by inmates; defense of policy restrictions on the ability of restrictive housing inmates to move out of cell without restraints; defending lawsuits brought by death row prisoners challenging their conditions of confinement on death row, and handling ongoing challenges by certain violent groups that seek benefits of religious organizations.

Because the inmate population continues to present exceptionally challenging medical and mental health issues, department attorneys increasingly find themselves defending complex medical cases involving issues such as the alleged misdiagnosis of cancer and other serious chronic illnesses; viral infections allegedly resulting in blindness; loss of organ function; and methadone overdose while in custody. In addition, the department continues to defend a number of medical malpractice and civil rights cases arising from suicides and other acts of self-harm committed by persons in custody. Recent pharmacological advances in infectious disease treatment have led to a corresponding increase in lawsuits seeking Hepatitis medications. This department continues to work with the Department of Correction, the University of Connecticut Health Center, and outside medical and mental health experts to defend litigation, develop policies addressing inmate patient care and identify systemic deficiencies in an effort to improve medical care and reduce the state's exposure to substantial damages awards.

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

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

During the past year, the department represented DOC in discussions with the Office of Protection and Advocacy and the Yale and Columbia Law School clinics in an effort to avoid litigation challenging conditions of confinement at the state's maximum security facility. The department also continues to monitor compliance with agreements resolving litigation regarding the conditions of confinement in the women's prison, treatment of HIV infected inmates and release of offenders sought by immigration authorities for possible deportation. As the DOC shifts its focus to increasing community placements and reducing the number of inmates assigned to restrictive housing settings, the department works closely with the agency to implement policies

governing these new initiatives that comport with statutory and constitutional mandates. Department attorneys also provide instruction at the DOC training academy on legal issues arising in corrections. These issues will continue to challenge the department as budget constraints take a toll on the correctional system.

Board of Pardons and Paroles

The department continues to defend a number of cases involving the Board of Pardons and Paroles. These cases involve challenges to the Board's authority relative to the granting, rescission and revocation of paroles, as well as parole eligibility and changes to the parole statutes. The Public Safety Department continues to provide the Board with advice and training on legal issues involving its hearing procedures and developing legal trends.

Department of Emergency Services and Public Protection

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

The department continues to represent DESPP and its successor agencies in administrative appeals involving the State Building Code and Fire Safety Code, and to review regulations for legal sufficiency implementing the various building codes. Department attorneys also routinely appear on behalf of DESPP in state and federal court and before the Freedom of Information Commission to address the many different statutory provisions that mandate confidentiality, and even erasure, of police records.

Board of Firearms Permit Examiners

During the past year, the department provided legal advice and representation to the Board of Firearms Permit Examiners on a number of issues. The department has handled several appeals to the Superior Court from the Board's decisions, including efforts to compel towns to issue permits in accordance with the orders of the Board. The department continues to provide legal advice to the Board in support of its efforts to enforce the firearms laws of the State of Connecticut.

Liquor Control Division

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

State Marshal Commission

The department continued to provide legal advice to the State Marshal Commission on several matters, particularly with respect to the duties of state marshals and the removal of state marshals. The department's efforts have included supporting the Commission in developing protocols and appropriate training for marshals who have authority to serve criminal process, and developing guidelines for serving process on behalf of pro se litigants.

Division of Criminal Justice & Division of Public Defender Services

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

Military Department

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

Prosecution of Home Improvement Contractors

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

Wrongful Incarceration Claims

The department continues to represent the State in claims for wrongful incarceration

brought in the Claims Commission pursuant to Conn. Gen. Stat. § 54-102uu. Since the legislature created this remedy, more than 25 individuals have filed claims seeking millions of dollars in damages for being wrongfully convicted of, and incarcerated for, crimes they did not commit. This department reviews each claim to determine whether a claimant is eligible for damages, which requires examination of the underlying criminal case files and consultation with prosecutors. In several of the cases where it appeared the claimants were not eligible for damages, the department contested the claim in litigation before the Claims Commissioner.

Miscellaneous Litigation Matters

During the past year, the department continued to work on litigation matters involving other departments, including: the wrongful death and personal injury claims arising from the courthouse shootings in Middletown; a complex litigation matter arising from the suicide of a Southern Connecticut State University student; a wrongful death claim against the state arising from the death of a child in custody of a foster parent employed by the Department of Children and Families, and several claims by the estates of crime victims challenging the release and supervision of offenders in Connecticut and other states.

Contracts

Each year, the department reviews for legal sufficiency contracts for DOC, DESPP, DHS, and the Military Department. This year the Department reviewed over 127 contracts

SPECIAL LITIGATION & CHARITIES DEPARTMENT

The Special Litigation and Charities Department represents the Governor, Lieutenant Governor, the General Assembly, the Judicial Branch, the Secretary of the State, the Treasurer, the Comptroller, the Auditors of Public Accounts, the State Elections Enforcement Commission, the Office of State Ethics, the Gaming Division of the Department of Consumer Protection, the Office of Governmental Accountability, the State Contracting Standards Board, the State Properties Review Board, the Judicial Review Council, the Judicial Selection Commission, the Statewide Grievance Committee, the Probate Court Administrator, the Board of Accountancy, the Office of Protection and Advocacy, the Office of Child Advocate and the Office of the Victims Advocate. In addition, through its Public Charities Unit, the Department protects the public interest in gifts, bequests and devises for charitable purposes, and in cooperation with the Department of Consumer Protection, enforces state laws regulating charities and professional fundraisers who solicit from the public.

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

- the successful defense of gun control legislation enacted in 2013 against a constitutional challenge under the Second Amendment of the federal constitution, seeking to enjoin the State's efforts to protect public safety through reasonable restrictions on ownership of assault weapons and high-capacity ammunition magazines;

- the successful conclusion of the receivership action related to the historic reproduction sailing vessel *Amistad* following the failure of the nonprofit organization that held and managed the vessel, including assisting the court-appointed receiver and the creation of a new organization to take title to the vessel and to pursue a revitalized educational mission;
- the ongoing defense of constitutional challenges to a state law that created a framework providing for transparency in the preliminary efforts of the Mashantucket Pequot and Mohegan Tribes exploring the possibility of a joint gaming facility outside their tribal lands;
- the litigation and settlement of a federal preemption challenge to the State Election Enforcement Commission's authority to investigate violations of state campaign finance laws;
- the review and approval of the conversions to for-profit status of Eastern Connecticut Health Network and Waterbury Hospital in asset sales to Prospect Medical Holdings, Inc.;
- defense of a class action alleging that the State's response to the 2014 Ebola outbreak was unconstitutional, raising numerous novel questions of law;
- complex state and federal court litigation involving efforts by a payday lender associated with a federally recognized Indian tribe to avoid penalties for violations of state banking laws;
- the sale of the John Slade Ely House in New Haven, to avoid the closure of and to preserve this 50-year old arts institution used by local arts organizations;
- the ongoing defense of a federal commerce clause challenge to the method under state law for allocating the cost of recycling of electronic device waste on manufacturers;
- the successful defense of a federal constitutional challenge to provisions of Connecticut franchise law pertaining to payments made by auto manufacturers to auto dealers for warranty repairs;
- the successful defense before the state supreme court of the appellate court's suspension of an attorney under its inherent power to discipline attorneys;
- participation in a nationwide multi-state settlement against the Cancer Fund based on massive charitable fraud; and
- several cases involving access of candidates to primary ballots, including claims based on federal First Amendment rights.

In addition, a considerable portion of the department's resources is committed to defending the State's interests in a growing body of self-represented litigation against judges and other state officials.

In the area of charitable trusts and gifts, the department was active in investigations or court actions to ensure that charitable gifts are used for the purposes for which they were given. Department attorneys were involved in several matters with municipalities and private groups to

protect parks, open space, school properties and museums that were donated for those charitable purposes. Assistance and guidance is offered to develop new and effective mechanisms for management of community foundation funds. Members of the charities unit regularly offer guidance on best practices for governance of charitable organizations, with the goal of avoiding problems that often afflict such organizations when good governance is lacking. In addition, the department has been actively involved in a multistate effort to develop a single portal website for public charity registration.

The attorneys in the Special Litigation Department provide ongoing advice to the Governor's office, the legislature, constitutional officers, commissioners and others on a wide variety of constitutional and other important legal questions, and assistance on possible First Amendment, commerce clause and other constitutional implications of proposed legislation. The department also provides advice and guidance to 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 provides advice to numerous state agencies regarding issues of Indian law and issues connected to the two federally recognized Indian tribes in Connecticut and the operation of their casinos, as well as issues relating to gaming generally.

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

TORTS/CIVIL RIGHTS DEPARTMENT

The Torts/Civil Rights Department defends state agencies and employees in tort and civil rights actions, including high exposure personal injury and wrongful death actions. Many of the department's cases are brought by parties alleging injuries or civil rights violations at state facilities or while receiving services from state agencies. The department's cases reflect the wide and varied activities and programs in which the state is involved: administering technical high schools and colleges; providing care and assistance to persons with mental illness, substance use disorders, and intellectual or developmental disabilities; maintaining recreational parks and swimming areas; owning buildings and land; protecting abused or neglected children; and providing numerous other services. Claimants often seek large sums of money damages. The department has saved the state and its taxpayers millions of dollars through the years by obtaining favorable judgments and fair settlements in the state and federal courts, as well as at the Office of the Claims Commissioner (OCC).

Of the 117 cases the department closed this fiscal year, the state prevailed in 62 after department attorneys filed dispositive motions or conducted trials on the merits; and obtained withdrawals in 31. In seven cases, department attorneys were successful in negotiating reasonable and just settlements. Of the remaining 17 cases, three were claims in which the Claims Commissioner made monetary awards, eight were claims for which the Claims Commissioner or General Assembly granted permission to sue the state in the Superior Court, one was not pursued by the claimant, and five were transferred to other departments within the Office of the Attorney

General. The department represented the state or its employees or officials from 28 state agencies in these cases, and successfully argued in most that the claims lacked merit, had jurisdictional defects, or failed to state a legally sufficient cause of action.

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

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

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

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

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

TRANSPORTATION DEPARTMENT

The Transportation Department of the Office of the Attorney General provides representation for the following state agencies: Department of Transportation ("DOT"), Department of Administrative Services ("DAS"), Bureau of Enterprise Systems and Technology ("BEST"), Division of Construction Services ("DCS") both divisions of DAS, Department of Motor Vehicles ("DMV"), Department of Housing ("DOH"), Department of Energy and Environmental Protection ("DEEP") for real property matters, and the State Historic Preservation Office. In addition, the Transportation Department provides representation for various occupational licensing boards within the Department of Consumer Protection ("DCP"). The representation of the foregoing state agencies/boards includes, but is not limited to, counseling and

advice on legal issues, the prosecution or defense of lawsuits or claims in both federal and Connecticut courts and before various administrative entities, including the defense of claims filed with the Office of the Claims Commissioner pursuant to Chapter 53 of the Connecticut General Statutes.

Contracting matters

As a result of the large number of public works projects undertaken by the State during any given year, and the broad scope and complexity of many of these projects, there is a continuing need for the attorneys in the Transportation Department to provide legal assistance to the DOT, DCS, DAS, DMV, Housing and other state agencies, such as the General Assembly's Joint Committee on Legislative Management ("JCLM"). The Department also provides counsel on and drafting of many of the state's significant transactional matters. In conjunction with agency staff, the department has been assisting with the development and amendment of various master contracts for use in all areas of contracting at the DOT, DAS, DCS and DOH with the goal of streamlining the State's contracting process.

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

- Review and negotiation of a lease amendment for the State property located at 55 Elm Street in Hartford;
- Review and approval of various assistance agreements and infrastructure agreements for DOH;
- Review, negotiation and approval of a contract for ticket vending machines in connection with the CTrail Project;
- Assisted DAS with the closing of the sale of the Norwich Hospital property;
- Review and approval of various procurement and IT contracts for DAS;
- Reviewed the form contract for DAS to use with the National Association of State Procurement officials contracts (contracts that Connecticut would originate and that other states may later join);
- Assisted DCF with a contract for substance abuse treatment whereby treatment services would be performed by private entities and the State would only reimburse those entities for the cost of the services once their efficacy has been demonstrated;
- Assisted DAS with the review of a license for the operation of ATM's on State property by Webster Bank;
Review, negotiation and approval of documentation for the purchase of property located on Sheldon Street in Hartford;

- Review and negotiation of a contract for a manager of the CTrail line;

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

Litigation Matters and Construction Claims

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

During the past fiscal year, department staff have been involved in the prosecution and defense of several major lawsuits and appeals, including suit seeking damages for construction defects at the York Women's Prison in Niantic. The department has also in this fiscal year handled an eight day arbitration hearing for a construction claim involving a project in the City of New Haven for new traffic signals and also had a nine day trial in Superior Court involving a property claim against DOT. Finally, the department finalized a settlement in conjunction with the U.S. Attorney's Office for recovery of money against a DOT inspection contractor who failed to properly ensure a staff member had the proper qualifications.

The department argued four cases at the Supreme Court including successfully defending DAS's safety risk determination under the Freedom of Information Act.

The department defended a construction claim for the Department of Development Services that totaled \$103,230.42 and was resolved for \$45,000 a total savings to the State of \$58,230.42.

During the past fiscal year the department defended DOT in claims with a total claimed value of \$10,919,112.87 and which were resolved for \$2,444,970.04, a total savings to the State of \$8,474,142.83. The department is representing DOT in several other pending claims against the State. The department also handled 527 Highway Liability claims and 462 Auto Liability claims.

Property Matters

The department's representation of DOT also included the provision of legal services and advice relating to: eminent domain; rights-of-way; surplus property divestitures; service plazas and other properties and facilities along I-95 and the Merritt Parkway; Transit Oriented Development projects in various towns; ports; public transit and rails; the State Traffic Commission; and environmental matters involving permitting, salt shed and maintenance facilities located throughout the State. We also counseled the DOT regarding the divestiture of 55 surplus properties representing \$855,000 in sales of state property.

The department resolved three eminent domain appeals filed against DOT by trial, twelve by

stipulated judgment and five were withdrawn. There are currently 36 eminent domain appeals in litigation, including 24 new appeals filed during the last fiscal year. The litigation outcomes of the concluded eminent domain appeals resulted in savings to the State of \$1,452,449.00.

The Department provided assistance to DOT regarding the condemnation of Certificates of Public Convenience and Necessity for various bus companies. The bus companies challenged DOT's authority to take the Certificates and the department received a favorable decision from the Superior Court that affirmed DOT's authority to condemn the Certificates. The case is currently pending at the Supreme Court. The litigation threatened to impede the operational efficiencies implemented by the DOT as part of the new CTfastrak service.

The Transportation Department represented DEEP in real property matters. Of particular significance was the department's work with DEEP in connection with the procurement of conservation easements, resulting in the dedication of thousands of acres to public recreation. These conservation easements equal the value of the grants that DEEP provided for land purchases by other entities, specifically municipalities and land trusts. There were 23 conservation easements and 19 deeds for purchase of land that DEEP bought directly for the State for a total of \$10,138,924 and cover a total of 2,688.94 acres of land. The department also regularly provided legal advice to DEEP on complex property law issues, including, but not limited to, the lease by DEEP of submerged State lands associated with lighthouses sold by the U.S. Government to private entities for preservation purposes, and the transfer of the DOT assets, consisting of the State Pier in New London and associated properties, to the new Connecticut Port Authority.

During the past year, the department provided DAS and DCS with legal counsel and review of 33 leases, 10 agreements and 124 contracts.

Housing Matters

The Transportation Department is also responsible for representing the Department of Housing. These matters include representing the Department at the Commission of Human Rights and Opportunities for housing discrimination complaints, administrative appeals, disputes with residents of state-owned residential properties and foreclosures involving real property in which the state has an interest in the property. A total of 54 foreclosure matters were filed this fiscal year naming the state as a defendant.

State Historic Preservation Office

The Department represents the State Historic Preservation Office and is occasionally called upon to seek the court's protection of historic properties on the National Register of Historic Places, which face destruction by owners or developers.

Department of Motor Vehicles

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

Environmental Matters

In addition, the department is deeply involved in various environmental matters associated with public works projects, road and bridge projects, and other activities of its client agencies. Staff continues to provide legal assistance and guidance to those agencies to ensure that there is compliance with applicable federal and state environmental laws in the planning of projects and the operation of state facilities. In particular, the department assists these agencies in complying with the requirements of the National Environmental Policy Act ("NEPA"), the Connecticut Environmental Policy Act ("CEPA") and other federal and Connecticut regulations that have been enacted to balance the need to develop our state economy and governmental services with the need to protect the air, water and other natural resources of the state. In this regard, the department assists the agencies in preparing and obtaining required environmental permits from both Connecticut and federal regulatory agencies, including the DEEP and the United States Army Corps of Engineers. The department also defends client agencies in court when environmental challenges are brought.

WORKERS' COMPENSATION & LABOR RELATIONS DEPARTMENT

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

During the past fiscal year, department attorneys and paralegals appeared for the Fund and the State in 3,215 hearings before workers' compensation commissioners and in 201 new unemployment compensation cases in the Superior Court.

Department attorneys and paralegals were responsible for recouping \$1,591,473.48 for the State of Connecticut and \$79,725.98 for the Second Injury Fund through third party interventions in Superior Court. This money represents reimbursements to the State or the Fund of money which has been paid out in workers' compensation benefits for injuries caused by third parties. Finally, department attorneys were responsible for the collection of \$144,230.85 in unpaid wages and civil

penalties for Connecticut citizens whose employers failed to pay them in accordance with Connecticut's labor laws.

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

In *Amaral Brothers, Inc. v. Department of Labor*, HHB CV 14-6025194S (July 8, 2015), the Superior Court, Schuman, J., affirmed the ruling of the Department of Labor that the plaintiff (Domino's franchisees in Mystic and Groton) may not take a "tip credit" to reduce the minimum wage paid to its delivery drivers. The court found that the applicable regulations governing "service" employees were subject to judicial scrutiny, and that there had been legislative acquiescence in their application. The court further determined that the department is entitled to deference with respect to its interpretation of the longstanding regulations which were found to be reasonable and valid. The plaintiff appealed this decision, and the Supreme Court transferred the case to itself. On appeal, the plaintiff contends that the Department of Labor is not entitled to deference because the longstanding service employee regulations have never been applied to delivery drivers.

In *Northeast Landscape and Masonry Associates, Inc. v. Connecticut/Department of Labor*, U.S. District Court, District of Connecticut, No. 3:15-CV-01815 (MPS) (April 13, 2016), the department was successful in having the case dismissed by the federal court in Connecticut after it was transferred for improper venue by a federal district court in New York state. The case involved a constitutional challenge on procedural due process grounds to the Labor Department's procedures for administering Connecticut's prevailing wage law which requires the withholding of funds from contractors on public works projects pending investigation by the Department of Labor ("DOL"). This is a key component of the Labor Department's enforcement of Connecticut's prevailing wage law.

In *Southwest Appraisal Group, LLC v. Administrator, Unemployment Compensation Act*, Judicial District of Ansonia/Milford, No. AAN-CV-13-5010931-S (August 12, 2015), the Superior Court held that Part C of the ABC test for employment under the Unemployment Compensation Act requires an employer to prove that individuals claiming to be employees performed services *for third parties* for them to be exempt from unemployment insurance coverage requirements (i.e. not to be considered "employees") under the Act. This is an important decision in the development of state labor law following the Supreme Court's strict construction of Parts A and B of the test in *Standard Oil of Connecticut, Inc. v. Administrator, Unemployment Act*, 320 Conn. 611 (2016). The *Southwest* decision was appealed and is currently pending before the state Supreme Court.

INTERNSHIP & VOLUNTEER PROGRAMS

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

Students are offered opportunities to learn about the law inside the state's largest public interest law firm through unpaid internships, and in cooperation with their sponsoring school, externships for course credit, work-study or legal fellowship positions.

While the Office's greatest need is for law students, positions are open to graduate, undergraduate, paralegal and highly motivated high-school students. Through an arrangement with West Hartford Public Schools, the Office also provides work experience for several special needs students.

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

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

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

During fiscal 2015-16, 137 students participated in internship, externship, work-study or legal fellowship programs. The Office also received assistance from six volunteer advocates, two volunteer professionals and five special needs students.

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

AFFIRMATIVE ACTION

The Office of the Attorney General is firmly committed to equal employment opportunity. Nearly **57.4%** of the full-time attorney workforce consisted of women and minorities. Women and minorities comprised **70.6%** of entry level attorneys and **50.7%** of middle and high level attorneys.