

Office of the Attorney General

<b>At a Glance</b>	<b>Mission</b>
<p><b>RICHARD BLUMENTHAL,</b>  <i>Attorney General</i>  <i>Established – 1897</i>  <i>Statutory authority – CGS Sections 3-124 to 3-131</i>  <i>Central office – 55 Elm Street, Hartford, CT 06106</i>  <i>Average number of full-time employees - 325</i>  <i>Recurring General Fund operating expenses-\$26 million</i>  <i>Revenues generated - \$347,361,135</i></p>	<p><i>Among the critical missions of this office are to represent and advocate the interest of the state and its citizens as vigorously as possible, to ensure that state government acts within the letter and spirit of the law, that public resources are protected for present and future generations, that the quality of life of all our citizens is preserved and enhanced, and that the rights of our most vulnerable citizens are safeguarded.</i></p>

**Statutory Responsibility**

The Attorney General is the chief legal officer of the state. The Attorney General's Office serves as legal counsel to all state agencies. The Connecticut Constitution and Connecticut statutes 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 2004-2005 fiscal year: \$347,361,135

**A. Revenue Generated for General Fund**

Tobacco Settlement Fund Collections	\$113,000,000
State Child Support Collections	\$ 43,100,000
Tax Collection	\$ 9,917,212
Health Care Fraud Recovery	\$ 6,412,753

Second Injury Fund	\$ 315,961
Workers' Comp re State Employees	\$ 943,714
Unpaid Wage and Unemployment Tax	\$ <u>633,689</u>
Total Revenue for Special Funds	\$ 2,075,504

Penalties for Environmental Violations	\$ 3,764,146
Antitrust/Consumer Protection	\$ 2,115,014
Department of Social Services	\$ 1,916,730
Department of Administrative Services	\$ 5,665,325
Miscellaneous Collections	\$ 3,112,837
Treasurer	\$ <u>234,831</u>
Total Revenue for State's General Fund	\$189,248,848

**B. Revenue Generated for Special Funds**

John Dempsey Hospital	\$ 182,140
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**C. Revenue Awarded or Paid to Consumers**

Consumer Restitution	\$ 7,450,856
Antitrust consumer restitution	\$ 4,280,385
Environmental Remediation	\$ 2,982,369
Charitable Trusts & Fund Recovered or Preserved for Charitable Purposes	\$ 29,500,000
Recovered Funds for Connecticut Resources Recovery Authority	\$ 111,000,00
Health Insurance Advocacy	\$ 785,309
Renters' security deposits	\$ <u>37,864</u>
Total Revenue Generated for Consumers	\$156,036,783

**TOTAL REVENUE ACHIEVED** \$347,361,135

## **Public Service Provided by the Office of the Attorney General**

The Office of the Attorney General is divided into 14 departments, each designated to represent agencies which provide particular categories of service to State residents. The Attorney General also participates in the legislative process, maintains an active communication with citizens and investigates, in conjunction with the State Auditors, Whistleblower complaints. During fiscal year 2004-2005 the office generated approximately 347 million in revenue for the general fund, special state funds and for consumers. The overall work completed by this office in fiscal year 2004-2005 is summarized as follows:

Court cases completed	25,509
Court cases pending	19,566
Legal documents	
Examined	5,042
Administrative	
Proceedings	5,227
Appeals completed	108
Appeals pending	247
Formal opinions issued	30

### **Legislation**

During the 2005 General Assembly session, the legislature approved many of the Attorney General's recommendations for ethics in state contracting reform including the establishment of an independent contracting review board.

The Attorney General's office successfully advocated for strong consumer laws to protect consumers from identity thieves, to require heating oil dealers to maintain adequate supplies of oil to supply their prepaid oil contract customers, and to ensure consumers obtain refunds when returning legitimate purchases to retailers. The Attorney General opposed efforts to weaken the ban on smoking in public places and assisted in the drafting of legislation to tighten regulations on the delivery of alcohol purchased through the Internet to ensure that minors do not receive such deliveries.

### **Health Care Fraud/Whistleblower**

The Healthcare Fraud/Whistleblower/Health Insurance Advocacy Department had another important and busy year. The Whistleblower Unit issued a major report concerning the illegal award of a \$40 million food service contract without competitive bidding at Central Connecticut State University. The responsible individual was terminated based upon the facts uncovered in our investigation. Another investigation concerned the illegal transfer of \$1 million of trucks and trailers to CWPM, Inc. by the former management of the Connecticut Resources Recovery Authority. As a result of the investigation, the new management at CRRA "unwound" the deal, recovered title to the equipment and a substantial amount of money. Yet another report concerned the improper receipt of labor and materials by a Department of Environmental Protection employee who had a retaining wall built at his residence by a company which was doing business with his unit of DEP.

In addition to whistleblower investigations, the Department is also litigating a case against numerous corporations doing business with the State and former state officials alleged to have engaged in various unfair trade practices. We are also suing a former high ranking official in the Connecticut State Police concerning his failure to pay appropriately for housing provided by the State.

The Health Care Advocacy Unit has continued to assist patients and their doctors by resolving disputes with managed care companies. The larger issues arising during fiscal year 2005 have

been denials of coverage for medically necessary care, health insurer compliance with the state cancer clinic trials mandate and retroactive terminations of individual health care policies. The Health Care Advocacy Unit continues to have great success in achieving favorable coverage determinations for consumers who require life-saving treatments such as stem cell transplants. The Health Care Advocacy Unit has worked closely with the Child Advocate over the past fiscal year to ensure that children in this state receive the healthcare they require. The Unit has also helped consumers recover over three-quarters of a million dollars for illegally billed services and improperly denied claims.

The Health Care Fraud Unit recovered over \$7 million dollars, bringing the Unit's total recoveries over \$47 million in eight years. The majority of the dollars recovered this year came from settlements involving the pharmaceutical industry. Another case of particular note involved the Hillcrest health care facility in which the total lack of care to numerous patients resulted in a joint recovery by our office and the U.S. Attorney of \$750,000.

In addition, the Department of Social Services upheld a statement of charges of fraud and abuse that this office filed against an oxygen provider, suspending the company and owner for five years and ordering approximately \$200,000 to be paid in restitution. The Department also filed suit against several medical providers who were illegally billing Medicaid and commercially insured patients.

This Department also continued to represent the Connecticut Resources Recovery Authority seeking to recover the \$220 million lost by CRRA in a failed, illegal deal with the now bankrupt Enron. On behalf of CRRA we have filed actions against Enron's investment banks, former officers and directors, as well as others who created the Enron financial mirage, which remain pending in the federal district court in Houston. CRRA also continues aggressively to pursue its claims against Murtha Cullina, Hawkins Delafield & Wood, and LeBoeuf Lamb, the law firms that crafted the improper loan. In a significant victory, on January 20, 2005, the Enron Bankruptcy court approved a complex, multi-party settlement resulting in a \$111 million payment to the CRRA. The settlement was the product of lengthy proceedings and negotiations, conducted and directed by this Office, with the assistance of bankruptcy counsel that began in May 2004, and continued into January 2005.

### **Antitrust**

This Department's primary responsibility is to administer and enforce the Connecticut Antitrust Act, and has authority to enforce major provisions of the federal antitrust laws. The Department also relies on other federal and state laws, including the Connecticut Unfair Trade Practices Act, to ensure the Attorney General's overall responsibility to maintain open and competitive markets in Connecticut. Utilizing these statutes, we investigate and prosecute antitrust and other competition-related actions on behalf of consumers, businesses and governmental units. In addition, this Department provides advice and counsel on proposed legislation and various issues regarding competition policy. In the past few years, the Attorney General served as the chair of the Antitrust Committee of the National Association of Attorneys General and remains active within that organization.

This past year has been an extremely busy one for the Department, as several new investigations were launched, and several lawsuits filed. A major initiative by the Attorney General has been to address a myriad of anticompetitive practices engaged in by insurance brokers and insurers. The practices at issue: bid rigging, steering of business to preferred insurers in return for lucrative undisclosed compensation, and other anticompetitive and illegal behavior, have increased the cost of insurance for Connecticut citizens – both individuals and corporations, as well as Connecticut municipalities and state agencies. Through the investigations spawned by this initiative, and subsequent litigation, the Attorney

General has returned hundreds of thousands of dollars to the State's coffers, and millions of dollars in restitution to Connecticut consumers.

In December, 2004, the Attorney General entered into an agreement with CIGNA Health Care to pay the state \$870,388 as a result of CIGNA's improper payments of insurance commissions in connection with the state's Employee and Retiree Dental Benefits Plan. The agreement came after an investigation that proved that CIGNA had improperly paid commissions to an agent - - unknown to the state - - and built the cost of these commissions into the state's premiums. In January, 2005, the Attorney General sued insurance broker Marsh & McLennan, Inc., and insurer ACE Financial Solutions, Inc. as a result of a scheme in which ACE paid Marsh a secret \$50,000 commission to steer an \$80 million state contract to the company. In the lawsuit, the Attorney General contended that Marsh, the DAS' broker and advisor on the contract, abrogated its fiduciary duty to the state by accepting undisclosed compensation from ACE and further failing to inform the state that ACE was in serious financial difficulty at the time it sought the state contract. In March 2005, the Attorney General entered into a \$190 million national settlement with Aon Corporation. This settlement, which will return millions to Connecticut citizens, corporations and municipalities, was the result of an investigation and subsequent lawsuit alleging that Aon solicited and accepted kickbacks to steer business to favored insurers. The scheme had the effect of inflating prices these consumers paid for their insurance, and stifled competition through Aon's scheme to place its own interests ahead of its clients. The settlement involved Attorneys General from Connecticut, Illinois and New York. In addition to these lawsuits and settlements, the Antitrust and Competition Advocacy Department has several other ongoing insurance-related investigations.

Another high priority of the Attorney General is combating the continuing high cost of prescription drugs. The Antitrust Department has filed and settled many lawsuits against major drug manufacturers engaged in conduct that illegally drove up the price of prescription drugs. In May, 2005, the Attorney General, as part of a joint investigation with other states, negotiated and settled a \$10,000,000 settlement with SmithKline Beecham Corporation ("SKBC"). The settlement resolved the states claim that SKBC delayed generic competition by fraudulently listing and prosecuting litigation concerning the drug nambumetone, an anti-inflammatory drug sold under the brand name Relafen. Delaying entry of generic competition costs consumers and the state because without access to the generic equivalent, they must pay for the cost of the more expensive brand drug.

In addition, the Department opened several new investigations against drug manufacturers suspected of marketing their drugs for off-label uses. While doctors may prescribe drugs for off-label uses, it is illegal for a drug company to market a drug for a use not approved by the U.S. Food and Drug Administration ("FDA"). Off-label marketing, however, can result in consumers paying higher prices if the unapproved use results in unintended health consequences or if it has a less than efficacious effect. In both instances, it may be necessary for patients to receive costly additional medical treatment. Among the drug manufacturers whose products are under investigation by the Attorney General are Pfizer for issues related to the off-label use of the anti-depressant Zoloft, and Cephalon, for its proprietary drugs Actiq, Gabitril and Provigil. In May, 2005, the Attorney General submitted a Citizen Petition to the FDA demanding that the agency strengthen warnings to doctors and patients about the risk of potentially fatal blood clots when the drug Thalomid (thalidomide) is used off-label. The petition also asks the FDA to consider price controls on Thalomid because its skyrocketing price - up at least 105% since 2003 - may force patients to buy the drug overseas or on the Internet, thus bypassing stringent controls put in place to protect patients from serious health consequences associated with the drug.

Along with the latter two settlements, the Department has a number of investigations into various aspects of the drug industry, including an investigation of whether Purdue Pharma L. P. violated antitrust laws by illegally preventing the advent of generic competition for its narcotic painkiller, OxyContin®.

Further, in light of his concerns with Connecticut consumers' ability to gain access to affordable prescription drugs from Canada, and consistent with his competition advocacy program, the Attorney General has continued efforts to press the federal government about the need for immediate action to help State pharmaceutical programs, including the Connecticut Medicaid program, deal with the high cost of prescription drugs, and has proposed several strategies that could allow the States to work with the FDA and its Canadian counterpart, Health Canada, so the States could import FDA approved prescription drugs from Canada.

This past fiscal year also saw activity in the investigation and enforcement of mergers that could have the potential to negatively impact competition for certain services in the state. In the telecommunications industry, the Attorney General, along with the U. S. Department of Justice, entered into an agreement to ensure that wireless competitors in Connecticut would be able to continue to compete against Cingular, which sought to merge with AT&T. The agreement required Cingular to divest certain AT&T assets in Litchfield county. Additional telecommunication merger reviews are still underway, as the Department is working with the Department of Justice on the proposed Verizon/MCI and SBC/AT&T mergers.

### **Consumer Protection Department**

The focus of this Department is consumer protection through counsel and representation of the Department of Consumer Protection; consumer education and complaint mediation; investigations; written comment to state and federal agencies; and litigation under various state and federal laws, with a major reliance on the Connecticut Unfair Trade Practices Act (CUTPA).

As part of his core mission, the Attorney General continues his efforts to educate and mediate matters on behalf of consumers on how to avoid consumer scams. Indeed, our Consumer Assistance Unit, 13 senior volunteer advocates and other staff, responded to 3,456 consumer complaints during this fiscal year. Over \$1,534,000.00 was refunded or credited to Connecticut consumers due to the mediation efforts of the department.

Our department's intensive litigation efforts this year resulted in numerous judgments mandating consumer restitution and monetary forfeitures to the State. For example, the Attorney General settled a lawsuit against SBC Yellow Pages for alleged misrepresentations the company made about the telephone directories it would publish. As part of the settlement, SBC provided approximately \$3 million in restitution, forgave approximately \$1 million in unpaid bills, paid the State \$1 million, and was made subject to significant injunctive provisions governing SBC's future conduct. Previously, SBC had also agreed to republish several directories at a cost of approximately \$3 million.

In addition, the Department obtained significant relief for consumers in a Stipulated Judgment with Pinnacle Communities of New Jersey and its subsidiary, Pinnacle West Hartford Developers, the developers of condominiums at the Promenade in West Hartford. The State contended that the companies marketed the condominiums as featuring a variety of amenities that were not included in the condos, and misrepresented the dates on which purchasers could move in. The Pinnacle companies were ordered to reimburse purchasers for all monies expended in reliance on the companies' alleged misrepresentations, and to also pay the consumers for the amenities that allegedly were not provided - a total of almost \$400,000. The final judgment puts the companies under strict injunctions for their future conduct, and provides for a payment to the State of \$170,000.

Moreover, the Attorney General on behalf of the State settled its lawsuit against The Readers Digest Association over the company's sweepstakes marketing practices. The State alleged, among other things, that Readers Digest sweepstakes promotions misled consumers into purchasing subscriptions or

products to increase their chances of winning a prize. Readers Digest agreed to improve its sweepstakes disclosures and to abide by significant injunctive restrictions. Readers Digest also agreed to pay the State \$25,000 for legal fees and costs and to pay consumer restitution and other costs totaling more than \$171,000. South Beach Beverage Company (SoBe) also agreed to cease making claims about the health benefits of its products that the Attorney General contended were unproven, and to pay the state \$219,000 as a civil penalty and for legal expenses.

In Internet-related matters, a settlement was reached with Alyon, a New Jersey based company which allegedly frequently billed the wrong people, falsely claimed that telephone subscribers were responsible for charges incurred by their minor children, and downloaded unauthorized dialing software programs onto consumers' computers. Alyon agreed to a consent judgment with injunctive measures, consumer restitution of \$11,000, and a payment of almost \$4,000 to the State. In another matter, the Department obtained a Stipulated Judgment against a unlicensed physician who provided medical services over the Internet. The judgment included injunctive relief and a payment to the State of \$15,000.

Moreover, the Attorney General successfully defended a decision by the Connecticut Commissioner of Consumer Protection against Acme Rent-A-Car which the company appealed to the Connecticut Supreme Court. Acme had installed GPS (global positioning system) devices in its rental cars which it used to track the speed of the cars and assess a penalty of \$150.00 for each speeding occurrence. The Court upheld the Commissioner's finding that the speeding fee was an unconscionable penalty that violated CUTPA. Consumer restitution in the case totaled \$22,500.

In addition, the Department filed suit against Lloyds Fur Studio, Inc., d/b/a/ Lloyds and Robarts for misleading consumers into believing that it would store, repair and return their garments for a negotiated fee. The Court entered judgment granting civil penalties, an order of restitution, an accounting, and injunctions against Lloyds. A receiver was also appointed which took possession of all the remaining garments so they could be returned to consumers. Moreover, a Stipulated Judgment was reached with Mitlitsky's Egg Farm prohibiting them from selling eggs described as "Connecticut Grown" when the eggs were actually produced outside the State. Mitlitsky's Egg Farm also agreed to pay the State \$70,075 and to stop using "farm" in its trade name.

A number of remedies benefiting Connecticut consumers were obtained in cooperation with the Department of Consumer Protection ("DCP") through Assurances of Voluntary Compliance among them: North Fork Bank agreed to cease billing Connecticut consumers \$75 "satisfaction fees" in order for it to process releases of mortgages. North Fork Bank paid \$5,000 to the State, and provided restitution to 1,300 Connecticut consumers, in an amount totaling over \$106,000. CP Management, Inc. agreed to discontinue imposing a \$5.00 surcharge on tenants who paid rent by check instead of using Electronic Funds Transfer (EFT). The company reimbursed its tenants almost \$5,000 and paid the State \$2,500. Blockbuster video advertised the "End of Late Fees" without disclosing that under certain conditions the consumer would be charged for either the purchase price of the video or a restocking fee. As part of a 47 state working group the Department worked with DCP to require Blockbuster to do corrective advertising for 6 months, and make clear and conspicuous disclosure of the qualifying terms and conditions of its offer in all future advertising. Consumers of participating stores who submitted claim forms were entitled to reimbursement of the restocking or purchase fees, and those who rented from nonparticipating stores were entitled to coupons for free rentals. Blockbuster also paid the states \$630,000 in investigative fees and costs. Furthermore, Connecticut joined a multistate settlement in an ongoing investigation of NorVergence, Inc., a telecommunications company which leased equipment to businesses based on false promises that the businesses would obtain discounts on telecommunications services. A settlement was reached giving sixty-four (64) Connecticut businesses forgiveness for more than \$1.6 million owed to financial services companies which either financed consumer's agreements with NorVergence or purchased NorVergence leases. The investigation into other Connecticut businesses harmed by

NorVergence's claims continues. Finally, Connecticut joined 41 other states in a settlement with the National Research Center for College and University Admissions for improperly selling confidential personal information the company collected from prospective college students. The settlement requires the company to clearly disclose how it uses student information and give students the opportunity to limit colleges who receive the information.

In addition, the Office remains active in criminally prosecuting unscrupulous home improvement contractors, accepting 208 cases this year for prosecution.

The Department also continued its representation of the Attorney General before the Department of Public Utility Control (DPUC). In a proceeding regarding issues surrounding Locational Installed Capacity (LICAP) currently at the Federal Energy Regulatory Commission (FERC), FERC seeks to impose substantial new charges on the costs of electricity for Connecticut residents, likely to be approximately \$350 million a year. The costs are paid directly by consumers and will be paid to electric generation facilities. These charges are supposed to create incentives for new generators to invest and locate in Connecticut. We will continue to fight against these charges because they will not lead to the building of new generation facilities since such facilities cannot be sited or built until new transmission lines are constructed in southwest Connecticut. As a result, LICAP is a windfall for energy companies and hurts ratepayers.

The Attorney General opposed three Connecticut generation owners attempts to obtain Reliability Must Run Agreements (RMR) from the FERC for their plants. The agreements, which FERC has preliminarily approved, are costing ratepayers more than \$300 million a year. These types of agreements are normally intended for old, inefficient units that are needed for reliability and would otherwise shut down, but some of the units for which the companies are seeking RMR coverage are brand new and do not meet the criteria for RMRs.

In the case of the Phase II, 345 kV line before the Connecticut Siting Council, CL&P and UI proposed to build a 69 mile, 345 kV electric transmission line from Middletown to Norwalk. The impact of this case is enormous, as the line requires massive poles and wires through 18 municipalities. The Attorney General strongly argued that the Siting Council should seek to underground as much of the line as is technologically feasible, take all reasonable measures to protect the public from the potential health impacts of electric and magnetic fields ("EMF"), and mitigate the impact of this line on the towns and citizens it passes by. Clearly, the Attorney General recognized the need for a reliable electric transmission infrastructure but stressed that it had to be built in an environmentally sound and sensitive manner. The Council approved a configuration that included 24 miles of underground cable, from Norwalk to Milford, a bypass around a residential neighborhood in Durham and a number of measures to reduce EMFs. The Attorney General continues to be active at the legislature and in the development and management phase of this matter to ensure that the line is designed and constructed in a manner that protects citizens.

The DPUC conducted a case to investigate CL&P's streetlight policies and practices. The Attorney General maintained that for years, municipalities have been subject to unfair treatment regarding streetlights, paying high rates for limited services. For example, the company's records often did not accurately reflect the streetlight that existed, such that towns in some cases were billed for lights that simply did not exist. The Attorney General urged the DPUC to require the Company to reform its practices and to place towns in a fair position to evaluate the economics of purchasing versus renting their streetlights. The DPUC ruled in favor of the Office, requiring the Company to changes its practices, re-do settlement agreements in a manner that is more favorable to towns, and to provide towns with better information regarding the cost of their lights so towns can make a more informed decision regarding purchase.

## Child Protection Department

This year, the Child Protection Department continued to represent the Department and Families in thousands of child protection cases before the Superior Court for Juvenile Matters in cases filed in the interest of abused and neglected children seeking their placement and, in appropriate cases reunification with their family, in a safe nurturing environment, and when reunification is not appropriate, seeking the endorsement and implementation of an adequate permanent plan including termination of parental rights for placement in adoption. The Child Protection Department also represented the State in a significant numbers of appeals involving these children before the Appellate Court and the Supreme Court.

In 2004, in *In re Jeisean M.*, the Supreme Court rejected a challenge to the constitutionality of Conn. Gen. Stat. § 17a-112 (j). The Appellant claimed that the State was required to prove, in addition to applicable statutory grounds, that the child, who is the subject of termination of parental rights proceedings, would be in immediate physical danger if he would be returned to the care of the non-custodial parent in question. The Supreme Court also emphasized the importance of permanency in the lives of children and noted that children need and benefit from continuous, stable home environment.

Similarly, in *In re Tyqwane V.*, the Appellate Court held that children are in need of permanency and stability and should not be left in legal limbo even if there are some positive feelings between the children and the mother. The Court also rejected a claim that the constitution requires a *de novo* review of appeals from termination of parental rights judgment.

In *In re Javon R.*, the Appellate Court held that a finding concerning further efforts to reunify the child with a parent, made by the trial court upon review of DCF's permanency plan, can and should be immediately appealed by a parent who disagrees with said finding. The Court reasoned that a subsequent attempt to challenge the finding in the context of termination of parental rights proceedings will not be allowed as it is a collateral attack on a final judgment that was not appealed in a timely fashion.

In *In re Jermaine S.*, the Appellate Court rejected a challenge to the trial court's finding that the child was neglected based on the mother's claim that the child was not neglected by her because the child was removed by the State after his birth leaving her no opportunity to care for the child. The Court stated that when, as in this case, a parent has a chronic substance abuse problem and has not seriously committed herself to treatment of the problem, the adjudication of neglect is permissible based on the potential for harm or abuse to occur in the future. The child does not need to suffer an actual injury before the courts can intervene.

In *Teresa T. v. Ragaglia*, the Supreme Court held that the statutory authority to remove a child under a 96 hour hold order, vested in the Commissioner of DCF pursuant to §17a-101 g (c), is discretionary not mandatory. This question was certified by the U.S. Court of Appeals for the Second Circuit seeking clarification of the statute in the context of a §1983 action brought on behalf of children whose sibling was killed by their father while DCF provided the family with services after it investigated an earlier report of suspected abuse. The Plaintiffs, the surviving siblings, claimed that they had an entitlement to be removed by DCF pursuant to the due process clause. The Supreme Court concluded that removal under the statute is directory, not mandatory. The Court also endorsed our position that when the Commissioner has reasonable cause to believe that a child is at risk, the 96 hour hold need not be involved if the circumstances allow for an application for an ex parte order of temporary custody (OTC) at the Juvenile Court. The Court emphasized that in situations involving unstable families, maximum flexibility is required on the part of the DCF's officials and employees.

## Environmental Department

We devoted a great deal of resources this past year to our continuing battle against Midwest power plants under the Clean Air Act for spewing millions of tons of pollution into our air. Our efforts paid off. We obtained a stipulated agreement with Ohio Edison which will substantially reduce the amount of pollution that gets dumped into our air. In addition to paying millions of dollars in penalties, Ohio Edison is required to install modern pollution controls at many of its facilities. Ohio Edison is also funding projects in Connecticut that will reduce the pollution in our air. This settlement will permit our citizens to breathe easier.

We carried on our battle against American Electric Power (AEP) and the Cinergy Company for their violations of the Clean Air Act, and filed another lawsuit against Allegheny Energy Inc. for its violations of the Clean Air Act leading to increased air pollution in our state.

This past year, we filed a ground breaking lawsuit against the five largest power producers in the United States -- AEP, Cinergy, TVA, The Southern Company, and Xcel Energy, Inc. -- to ask that the court order these companies to reduce the damage being caused to our state by global warming. We were joined by several other states in this novel application of long-standing nuisance principles. In addition, we carried on our fight against the Environmental Protection Agency (EPA) for declining to regulate carbon dioxide, the major cause of global warming.

We obtained an important victory in our court challenge to EPA's rollback of protective laws relating to air quality---The New Source Review Laws. EPA substantially weakened the protection of the Clean Air Act by changing regulations designed to require old facilities to install modern pollution controls when making major modifications to their power plants. In June of 2005, the court agreed with many of our arguments, and ruled that some of the most damaging EPA provisions were illegal.

This past year we assisted in the state's fight to stop the closure of the Groton/New London Submarine base. We analyzed the environmental laws and applicable environmental agreements pointing out that the assumptions made by the federal government in deciding to close the base were seriously flawed, and that the submarine base should remain operational.

We continued our efforts to protect Long Island Sound against environmentally destructive intrusions. We fought to oppose the Islander East pipeline before a variety of federal agencies and we continued our representation of DEP in its denial of state certifications for the project.

We continued our representation of the Department of Agriculture in saving abused animals by going to court for orders to allow the Department to seize the animals. An example of the types of cases we worked on is *CT, ex rel Maureen Griffin vs. 21 Dogs, 4 Parakeets, 2 Lovebirds 3 Geese, 2 Turkeys, 2 Horses and 1 Cat*. In that case the court turned ownership of the neglected animals over to the state. The state nursed the animals back to health and then allowed them to be adopted.

Our representation of the Department of Environmental Protection continued in a variety of cases, suing to enforce our state environmental laws, and to obtain penalties and injunctions to clean-up the environment. This past year, we settled a case with Tyco Printed Circuit Group Limited Partnership and related companies for \$2 million in penalties, plus supplemental environmental projects, and sweeping injunctive relief requiring compliance with the law. We collected over \$3.7 million this past year in penalties.

We filed a landmark case enforcing the farmland preservation rights acquired by the state on the Landis Farm. Although Landis' predecessors sold the farm land preservation rights to the state, the

Landis family attempted to develop the land for a golf course. We sought and obtained a restraining order prohibiting any activity on the land until our case could be heard. The trial is expected to occur next fiscal year.

We continued our successful programs of representing the Department of Environmental Protection in bankruptcy proceedings where the state has a claim or interest; of protecting wetlands and watercourse by intervening in appeals of local wetland agency decisions; and of providing a full range of legal services to the Department of Environmental Protection and the Department of Agriculture including contract review, legal advice and counsel.

### **Finance and Public Utilities Department**

The Finance and Public Utilities Department provides legal services to state agencies that regulate insurance, banking, securities, and public utilities, as well as the Department of Economic and Community Development, the Department of Revenue Services, the Office of Policy and Management, the Bond Commission, and the Insurance Policy and Risk Management Board. Legal issues involving state regulation of the financial services industry form a major part of this Department's work. In addition, this Department is responsible for enforcement of the master settlement agreement between the states, including Connecticut, and various participating tobacco product manufacturers and related tobacco issues.

We are increasingly involved in matters that challenge federal efforts to restrict the regulatory authority of states in the banking field. This includes a major lawsuit of national significance in which Wachovia Bank, a nationally chartered bank, has sued to prevent the State from regulating its state-chartered mortgage lending subsidiary. The maintenance of state regulatory authority is vital to the protection of consumers from abusive or deceptive practices, including predatory lending. This office continues to combat predatory lending, in which consumers are enticed into purchasing high cost, high fee home loans that they cannot repay or refinance.

We are also involved in ensuring that consumers' voices are heard in mergers and other structural changes in the banking and insurance industries. This office has successfully pressed for changes that favor the interests of consumers and the public, for example, in the New Havens Savings Bank demutualization and the Fleet-Bank of America and the Travelers-St. Paul Companies mergers.

This department also represents the Department of Public Utility Control (DPUC) and the Connecticut Siting Council in all legal matters at the state and federal level, including representing the State's interest in several matters before the Federal Energy Regulatory Commission that have a great impact on rates paid by Connecticut consumers. This office is actively involved in important issues such as the decommissioning of the Connecticut Yankee Atomic Plant, the storage of spent nuclear fuel, and improving the electric transmission line infrastructure in Connecticut.

### **Child Support & Collections**

The mission of the Collections/Child Support Department is to expeditiously recover monies due to the State and to secure the establishment of orders for the support of children. Its major client agencies are the Department of Administrative Services Financial Services Center in matters involving the recovery of reimbursable public assistance benefits and the Bureau of Child Support Enforcement within

the Department of Social Services in the establishment of child support orders. Department staff also provides a full range of litigation collection services for debts other than child support owed to the Departments of Social, Revenue Services, Correction, Higher Education, as well as John Dempsey Hospital, the Second Injury Fund, the Connecticut State University System, the Secretary of State, the State Elections Commission and various other agencies on a case-by-case basis as well as provide legal services in connection with the actual enforcement of child support orders at the request of the Support Enforcement Services division of the Judicial Branch.

In fiscal year 2004-2005 Department attorneys recovered cash payments on debts owed to the State of approximately 18 million dollars. In addition to these cash receipts, security interests in the form of judgment liens, mortgages and statutory liens provided security for more than \$500,000.00 in additional payments due to the State.

Child support establishment activities are a critical part of our work to help the children of Connecticut. In fiscal 2004-2005, more than 10,200 cases were opened in all categories and more than 8,700 files were completed.

Department attorneys were engaged in a wide variety of litigation activities and won important judicial victories during the year. In *Peters v. Department of Social Services*, the Connecticut Supreme Court agreed with this office that a hearing provided by the Department of Social Services on the imposition of a lien by the Department of Administrative Services against the proceeds of a cause of action to secure reimbursement of public assistance benefits was not a “contested case” under the Uniform Administrative Procedure Act and could not be appealed. In the *Stanwich Financial Services Corp.* and *DB Mart* bankruptcy proceedings, a Department attorney recovered in excess of 2.9 million dollars in corporation taxes and more than 2.2 million dollars in fuel taxes, respectively. In the *K-Mart* bankruptcy matter, another Department attorney recovered \$900,000.00 in sales taxes owed to the Department of Revenue Services. Further, in the *Task Force Management* and *Entrata Communications, Inc.* bankruptcy matters, Department attorneys acting on behalf of the Department of Labor recovered wages in excess of \$150,000.00 owed to more than 300 employees of the bankrupt companies. In addition, more than 2 million dollars in reimbursable public assistance benefits were recovered in proceedings involving the *Estate of Alya Lai* (\$600,000.00), *Estate of Alexander Benton* (\$485,825.41), *Estate of Christopher Smith* (\$418,635.51), *Estate of Wilfredo Nazorio* (\$215,500.00), *Estate of James Woolford* (\$234,928.00), *Estate of James DeMattia* (\$151,528.78), and in *State v. Michael DeZenzo*, a Department attorney obtained and secured payment of a judgment for \$80,000.00 against the leasor of a Long Island Sound oyster bed for breach of his lease contract with the Department of Agriculture.

### **Employment Rights**

This department defends state agencies and state officials in employment related litigation and administrative complaints and provides legal advice and guidance to state agencies on employment issues. We are currently defending the state in approximately 188 employment cases in the state and federal courts, as well as more than 200 complaints before the Connecticut Commission on Human Rights and Opportunities and the Equal Employment Opportunities Commission.

During the past year, the department successfully defended state agencies in a number of significant cases. In *Piscottano v Murphy*, the Court upheld the Department of Correction’s right to take disciplinary action taken against correction officers who were members of or associated with the Outlaws Motorcycle Club, an organization that law enforcement agencies have deemed to be a criminal enterprise. We are now defending the plaintiffs’ appeal of that ruling. In *Abbey v Rowland*, we successfully defended a challenge to the Governor’s deficit reduction plan, which called for the elimination of certain

job classifications. We are currently involved in several cases challenging the physical fitness test used by law enforcement agencies in their hiring and training process.

We continued to assist the Department of Correction in implementing the terms of a stipulated agreement that made improvements in the manner in which the DOC deals with sexual harassment complaints made by its employees.

We continued to provide legal advice and counsel to state agencies on employment matters. During the past year, we participated in several training sessions pertaining to the requirements of a statute that re-defined the role of state agency Affirmative Action Officers and changed the manner in which agencies are represented before the CHRO.

In addition, we have successfully litigated several cases in state and federal court and received favorable jury verdicts. We prevailed on motions filed in several other cases, and achieved numerous settlements on terms that were favorable to the state, saving the state millions of dollars. We routinely appear on behalf of State agencies before the Commission on Human Rights and Opportunities at fact-finding sessions and public hearings.

### **Public Safety and Special Revenue Department**

This department represents the Department of Public Safety, including the Division of State Police, the Division of Fire, Emergency and Building Services; the Military Department; the Department of Correction; the Department of Homeland Security; the Division of Special Revenue and the Department of Consumer Protection, Liquor Control Division. It 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, Police Officer Standards and Training Council, the Office of Civil Preparedness, the State Marshal Commission, Office of Victim Services and the Gaming Policy Board.

### **Representation of the Department of Correction/Board of Pardons and Paroles**

Although we provide legal services to and represent a variety of state functions in the area of public safety, criminal justice and special revenue, a substantial portion of our work is in defense of the state in lawsuits brought by and on behalf of prisoners. We continue to defend a large number of lawsuits challenging conditions of confinement in state correctional facilities and the administration of community programs. 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. Our efforts in these cases save the State of Connecticut millions of dollars in claimed damages and preserve the state's authority in administering a growing prison population. In addition, this department has assisted in the collection of thousands of dollars in costs of incarceration.

We continue to defend numerous challenges to the application of the "good time" statutes to multiple sentences. We successfully argued two cases in the Appellate Court which upheld the manner the Department of Correction calculated "good time" as to multiple sentences. In addition, we are involved in a class action lawsuit challenging the Department of Correction's strip search policy.

We successfully defended a number of challenges to the execution of Michael Ross in state and federal courts. This department, along with the Special Litigation Department, devoted a substantial

amount of time and resources to enable the Department of Correction to carry out the court ordered execution. Our efforts included filing numerous briefs in the Connecticut Supreme Court and the United States Supreme Court.

This department negotiated a settlement agreement in Office of Protection and Advocacy v. Choinski, et al., an action brought by the Office of Protection and Advocacy for Persons with Disabilities challenging the provision of mental health treatment for inmates confined in the Northern and Garner Correctional Institutions. The settlement is awaiting approval of the court.

### **Representation of the Department Of Public Safety**

We have the responsibility for the defense of almost all the lawsuits against the State Police seeking money damages. Our caseload of police litigation continues. In the past year, we successfully litigated a number of cases in federal and state courts and received favorable decisions in many of those cases.

We continue to represent the Department of Public Safety in administrative appeals involving the State Building Code and Fire Safety Code. We also routinely appear on behalf of the department before the Freedom of Information Commission and we have reviewed a number of contracts and regulations for the department.

### **Representation of the Division Of Special Revenue**

During the past year, we continued to provide legal advice and representation to the Division of Special Revenue regarding a variety of complex and significant issues related to legalized gambling, including gambling at the state's two casinos. We have written significant advisory opinions concerning permissible activities under the Gaming Compacts with the Mohegan Tribe and the Mashantucket Pequot Tribe.

### **Representation of the Liquor Control Division**

During the past year, we provided the Liquor Control Division with advice on a number of legal issues concerning enforcement of Connecticut's liquor laws. In addition, we have handled a number of administrative appeals involving the Division.

### **Representation of the Juvenile Detention Facilities**

We were involved in defending a complex class action lawsuit challenging the constitutionality of the policy of strip-searching youths detained in the juvenile detention facilities. We prevailed in the District Court, and received a partial favorable decision from the Second Circuit Court of Appeals. As a result of the decision, we were able to reach a settlement with the plaintiffs which permits the detention centers to take measures to protect the safety and security of the youths detained at the facilities. We are also involved in the Emily J. consent decree in the United States District Court which affects the State's juvenile detention centers.

### **Transportation, Housing and Public Works Department**

The Transportation Department of the Office of the Attorney General provides representation for the following state agencies: Department of Transportation ("DOT"); Department of Public Works ("DPW"); Department of Administrative Services ("DAS"); Department of Motor Vehicles ("DMV"); Department of Information Technology ("DOIT"); Department of Economic and Community

Development, Housing Matters ("DECD"); and the Connecticut Historical Commission. In addition, the Transportation Department provides representation for various occupational licensing boards within the Department of Consumer Protection ("DCP"). The representation of the foregoing state agencies/boards includes, but is not limited to, counseling and advice on legal issues, the prosecution or defense of lawsuits or claims in both federal and Connecticut courts, and before various administrative entities, including the defense of claims filed with the Office of the Claims Commissioner pursuant to Chapter 53 of the Connecticut General Statutes.

As a result of the large number of public works projects undertaken by the State during any given year, and the broad scope and complexity of many of these projects, there is a continuing need for the attorneys in the Transportation Department to provide legal assistance to the DOT, DPW and DAS on public contracting issues, the resolution of bid protests, the interpretation of contract language, and other problems that eventually arise during the course of large construction and procurement projects.

This past year has been consumed with the continuing investigations of corruption in public bidding, solicitation of proposals, procurement, and contracting including the ongoing investigation of Tomasso Bros. Inc. on DPW projects for the Connecticut Juvenile Training School and the Bridgeport Juvenile Detention Facility and Court house; Tunxis Management, a Tomasso entity regarding its property management contract for Fairfield Hills; the investigation of Worth Construction as to allegations of its organized crime affiliations; and the investigation of DOT's public transportation employees' mishandling of contracts at the Stamford and New Haven Train Stations.

Despite the best efforts of all involved, some construction problems simply cannot be resolved to the satisfaction of the parties and thus claims for money damages are made against the State. The attorneys in the Transportation Department assist agency personnel with early analysis and settlement negotiations in an attempt to quickly resolve outstanding disputes and minimize the potential adverse financial impact of such claims on the public treasury. Nevertheless, a certain number of claims, both legal and monetary end up in court or arbitration.

During the past fiscal year, this Department was successful in protecting the interests of the State and its taxpayers in several cases. Several large complex litigation cases are noteworthy. After a year of hearings in the arbitration of the White Oak claim on the Tomlinson Bridge (\$90 million), the arbitration panel denied the entire claim of White Oak and instead ordered White Oak to pay the State over \$1.1 million dollars. White Oak is seeking to vacate the award in Superior Court. The Gold Star Bridge arbitration, ongoing for nearly ten years, settled for approximately the same amount of money the State offered to the contractor ten years ago. The Department represented the DMV in a lawsuit brought by the state-wide emissions testing vendor, Agbar, after DMV suspended the emissions testing program in April, 2004 because of the many testing errors found by the State's auditor. After extensive negotiations, Agbar resumed the testing program in November and dropped its lawsuit against the state.

Our DOT representation also covers all matters relating to eminent domain and rights-of-way issues; any issues as to properties and facilities including all I-95 and the Merritt Parkway facilities; aviation and ports; public transit; rails; the State Traffic Commission; Siting Council issues relating to the use of DOT's rights of way by transmission facilities; and all environmental matters including permitting salt shed and maintenance facilities located throughout the State. We disposed of 75 eminent domain appeals by trial or settlement and received 38 new appeals during the last fiscal year.

The Department is responsible for handling housing matters for the Department of Economic Control and Development as well as all employee housing matters throughout the state.

The Department represents both the Department of Environmental Protection (“DEP”) and the Department of Agriculture (“Agriculture”) in property matters. Of particular significance: the preparation of a management agreement between that agency and Quinnipiac University for the creation of a marine educational and aquaculture experimentation facility; the divestiture of Shakespeare Festival Theater to the Town of Stratford; and extensive negotiations and the preparation of conservation and public recreation easements to allow public access on property known as Wimler Farm in Durham and Guilford. The value of our legal services to the DEP in real property transactions totaled \$6,986,154. These services included 13 conveyances of real property, 14 hunting leases, 19 open space grant agreements, 18 conservation easements, 2 assignments of conservation restrictions, a large scale long term management agreement, and a total of 8 easements and other agreements.

In connection with our representation of Agriculture for its Farmland Preservation Program, this Department commenced an injunction action in the Superior Court, and obtained temporary injunctive relief to prevent farmland, on which the State holds Farmland Development Rights, from being converted to a golf course. That litigation is ongoing. The Agriculture transactions totaled \$2,234,932 which included the acquisition of Farmland Development Rights in two farms having a value of \$831,305, and 14 leases of facilities at the Connecticut Regional Market having a value of \$1,403,628.

Our representation of DPW also consists of construction matters as well as handling a large amount of leasing, property management, and environmental challenges on siting issues. During the past year, we provided legal counsel and review of 184 leases, license agreements, contracts and personal service agreements for DPW. This is exclusive of DPW real estate transactions in the form of purchase and sale agreements, deeds, easements, and consents to assignment, which numbered approximately 15.

In addition to the noted construction contracting matters, the Transportation Department is deeply involved in various environmental matters associated with public works projects, roads and bridges projects, and other activities of our client agencies. A major continuing responsibility is to provide appropriate legal assistance and guidance to these agencies to ensure that there is compliance with applicable federal and state environmental laws in the planning of projects and the operation of state facilities. In particular, we have worked to assist these agencies in their efforts to comply with the requirements of the National Environmental Policy Act (“NEPA”), the Connecticut Environmental Policy Act (“CEPA”) and other federal and 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 (e.g., wetland permits) from both Connecticut and federal regulatory agencies.

### **Special Litigation Department**

This Department represents the Governor, the Judicial Branch, the General Assembly, the Secretary of the State, the Treasurer, the Comptroller, the Auditors of Public Accounts, the State Elections Enforcement Commission, the State Citizens Ethics Advisory Board, the State Properties Review Board, the Judicial Review Council, the Judicial Selection Commission, the Office of Protection and Advocacy for Handicapped and Developmentally Disabled Persons, the Accountancy Board, the Office of the Child Advocate, the Office of the Victims Advocate, the Commission on Children, and the Latino and Puerto Rican Affairs Commission. 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, administers and enforces state laws regulating charities and professional fundraisers who solicit from the public.

In the area of charitable trusts and gifts, the Department brought actions against several entities to ensure that charitable gifts were being used for the purposes for which they were given. In the area of charitable solicitations, the Public Charities Unit initiated and/or settled a number of significant cases involving misuse of funds solicited from the public.

The Department continues to monitor solicitations by charitable organizations, and provides information to members of the public to assist them in making informed decisions on charitable giving. Currently, 8,700 charities, and 107 professional fundraisers are registered with the state. Of \$8 million donated to professional telephone solicitors for charitable organizations in 2003, only \$2.8 million, or 35.5 % of the total money collected, was actually turned over to the organizations to which the donors thought they were giving. The Department makes this information available to the public so individuals can make informed decisions on contributing to charities.

The Department also represents the interests of the people of the State in matters before the Bureau of Indian Affairs (“BIA”) in the United States Department of the Interior and in litigation involving land claims brought by groups claiming Indian ancestry. The Department has appealed two BIA decisions to recognize the Eastern Pequots and the Paucatuck Eastern Pequots, and the Schaghticoke, as well as defending petitions for tribal acknowledgment filed by the Golden Hill Paugussetts and the Nipmucs. The Department also provides advice and counsel to numerous state agencies regarding issues of Indian law.

The Department also has participated in litigation and various regulatory proceedings to prevent harm to Long Island Sound posed by a number of energy projects, including the Islander East natural gas pipeline, the Cross-Sound Cable, and the Broadwater Gas Terminal. Additionally, the Department has been involved in several court and administrative proceedings related to nuclear safety issues regarding both the Millstone Power Station and the Indian Point Nuclear Facility located in Buchanan, New York, which is within eleven miles of Fairfield County.

The Department has assisted other departments in complex matters, including the Office’s investigation of the Insurance industries brokers’ practices and associated litigation against national brokerage companies, appeals involving the Michael Ross’s execution and matters pertaining to the proposed closure of the New London Submarine Base.

The Department plays a leading role in the preparation of appeals throughout the office. This year, the Department’s attorneys briefed and argued a number of significant cases in the State Appellate Court, and the State Supreme Court, the Second Circuit Court of Appeals, and other appellate courts. The Department also operates a Moot Court program for attorneys in the Office, and plays an important role in the office’s participation as amicus curiae in cases before the United States and Connecticut Supreme Court.

### **Health and Human Services Department**

The Health and Education Department represents a myriad of state agencies which include the State Department of Education, Department of Mental Retardation, University of Connecticut, Central Connecticut State University System, and all other agencies that have an educational function. It represents the Department of Social Services, Department of Mental Health and Addiction Services, Psychiatric Security Review Board, Department of Veterans’ Affairs, Commission on Medical and Legal Investigations overseeing the Office of the Chief Medical Examiner, Department of Public Health, Office of Health Care Access, and the various health licensing boards.

Throughout the last fiscal year, the Department provided legal services to the Department of Public Health in its role as a health regulatory enforcement agency. This resulted in numerous actions being instituted on behalf of the Department to ensure that the quality standards set forth in the statutes and regulations were maintained. These efforts included an enforcement action against Hillcrest Nursing Home in which the death of a patient occurred. The Order obtained against the licensee included a payment of \$200,000, the surrender of the license within 150 days, the imposition of a temporary manager to oversee the facility while the facility was transferred to new ownership, and an independent nurse consultant to review and approve patient care.

As has been the case in the last few years, there has been a continuation of nursing home receiverships and federal bankruptcies. Southport Manor was placed in receivership and transitioned to a private owner. Likewise, Lexington Health Care Group transferred ownership over four nursing homes to a new operator.

There were a number of enforcement actions brought against water companies to correct deficiencies in the water supply provided customers. Likewise, many actions were initiated against day care providers for violating state regulations or not having a license. An example is the order obtained against Patricia Dotson for operating without a day care license enjoining her from operating and requiring her to pay a \$10,000 civil penalty. It was notable that the Department received a consent order from one day care facility for improperly dealing with the removal of asbestos.

A regular and significant amount of the Department's work is to provide legal advice to the departments and various licensing boards during the presentation of cases which seek the imposition of discipline on professional licensees for their failure to maintain the standards of the profession or violations of other provisions of law.

In Salmon v. the Connecticut Medical Examining Board, 273 Conn. 906, the Appellate Court upheld the Board's decision after considering a number of issues raised during the course of the proceeding. In the case of Sica v. Department of Public Health and Connecticut Medical Examining Board, 331 F. Supp. 2d 82 (D. Conn., 2004), a federal judge dismissed an effort brought by a doctor to avoid a hearing before the Connecticut Medical Examining Board.

The Office of Health Care Access was assisted by the Department on a regular basis in its consideration of applications for Certificates of Need, particularly for major cardiac facilities applications. In the case of CASSH v. Office of Health Care Access, 2004 Conn. Super. LEXIS 3086 (October 13, 2004), the plaintiffs appeal was dismissed on the basis of lack of standing and mootness.

We had a number of appeals during the course of the year in which individuals have contested the determination of the Department of Mental Retardation that they were not eligible for services. Of major significance was the settlement of the case of ARC v. O'Meara, et al. This case was brought against the Department of Mental Retardation and the Department of Social Services contesting the provision of community based services. After lengthy negotiations, a settlement was reached which was approved by the District Court providing increased services for those qualified.

Throughout the year, the Department was involved in many proceedings involving Protective Services for the Elderly on behalf of the Department of Social Services representing them in probate courts.

With respect to eligibility issues, there were two significant decisions during the course of the year. The first was Semerzakis v. Commissioner of Social Services, 274 Conn. 1 (2005) that held that the

Department of Social Services had properly denied coverage of orthodontia services under the Medicaid program for an adolescent. The Connecticut Supreme Court upheld the authority of the agency to review for medical necessity, and further upheld the particular definition of medical necessity that had been adopted by the agency.

The second case, which is now on appeal in the Second Circuit Court of Appeals, is Leocata v. Commissioner of Social Services, 343 F. Supp. 2d 144 (D. Conn. 2004). This is a claim based upon Title II of the Americans with Disabilities Act seeking Medicaid coverage for Assisted Living Facility services which are not eligible for reimbursement under the Medicaid program. Nevertheless, plaintiff claimed that Title II of the ADA required the agency to cover the services because they were "less restrictive" than nursing facility services. The District Court entered summary judgment for the defendant, ruling that Title II does not require the Medicaid agency to cover services that are not eligible for federal reimbursement under the Medicaid program, even if the desired services are less restrictive than the alternative institutional services that are eligible for reimbursement.

In the Education area, there were two case of significance. The first is the decision rendered by the Supreme Court in Seymour v. Region One Board of Education, et al., 274 Conn. 92 (2005) in which the Court held that the plaintiff lacked standing to assert a state constitutional challenge to Conn. Gen. Stat. § 1-51(b) under which regional boards of education allocate among their member towns the costs of operating regional school districts.

Another very important case involved the University of Connecticut Health Center, Radolf v. University of Connecticut, et al., which involved two federal court suits brought by a tenured full professor at the UCONN Health Center who had been found guilty of scientific misconduct by the Health Center and the Federal Office of Research Integrity, resulting in sanctions by the Health Center and a Voluntary Exclusion Agreement with ORI. Dr. Radolf raised numerous issues against the university as well as several individual defendants, claiming violations of due process, first amendment and state and local trademark law and other claims regarding his removal as the Director of the Center for Microbial Pathogenesis, Department of Defense research funding, internal compliance investigations, and other sanctions. The United States District Court granted summary judgment in favor of all defendants on all counts. Dr. Radolf appealed to the Second Circuit but a settlement was reached whereby the UCONN Health Center reduced Dr. Radolf's academic probation in exchange for numerous concessions on his part as well as withdrawal of his appeal.

### **Workers' Compensation Department**

The Workers' Compensation and Labor Department represents the 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 Claims Commissioner, the State Employees Retirement Commission, the Teachers' Retirement Board, and others. The department's worker's compensation staff represents the Second Injury Fund in cases involving potential liability of the Fund for workers' compensation benefits and the State of Connecticut contested workers' compensation claims filed by state employees, while the 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 to Connecticut employees. The department's workers' compensation attorneys and paralegals also spend significant time on third party tort-feasor cases that result in the recovery of money for both the state and the Fund, as well as handling a large number of appeals to the Compensation Review Board and on to the Appellate and Supreme Courts.

During the past fiscal year, department attorneys and paralegals appeared for the Fund and the State in over 3000 hearings before workers' compensation commissioners, and in over 150 unemployment compensation cases in the Superior Court.

In addition, department attorneys and paralegals were responsible for recouping \$275,699.99 for the Second Injury Fund and \$943,714.18 for the State of Connecticut through third party interventions. This money represents a reimbursement to the state or Second Injury Fund of money which has been paid out in workers' compensation benefits for injuries caused by a third party. In addition, the department collected \$88,804.43 in unpaid wages for Connecticut employees, and \$11,924.50 on behalf of the Department of Environmental Protection.

### **CHRO/Torts**

The Torts/Civil Rights Department defends state agencies and employees in tort and tort-like civil rights actions, including high exposure personal injury and wrongful death actions. A substantial number of cases arise from alleged injuries at the state educational facilities, such as the vocational high schools and state colleges, and allegations involving children in the care of the Department of Children and Families ("DCF"). The origin of the remainder of cases is spread among many agencies, including the state mental health and mental retardation facilities. Many of these cases seek large sums in damages from state coffers.

Department attorneys have saved the State millions of dollars by obtaining favorable judgments or settlements for the State in the courts and at the Claims Commission. In addition, in the past year we have obtained some important legal decisions. In Manifold v. Ragaglia, the Connecticut Supreme Court supported the application of mandated reporter immunity under CGS §17a-101e to physicians who perform evaluations at the request of DCF. The court held that the immunity was not limited to those who initiated the neglect/abuse investigations but also included those who evaluated the abuse during a DCF investigation. In Betton v. Department of Transportation, the trial court granted our motion to dismiss on the basis that the Special Act authorizing the plaintiff to file a case against the state was an unconstitutional exclusive public emolument resulting from plaintiff's counsel's misrepresentations to the legislature. In Bogle-Assegai v. Bigelow, a federal civil rights case, the Department successfully defended Central Connecticut State University and one of its employees against a claim by a summer program student that she was discriminated against on the basis of race. In 184 Windsor Avenue, the Connecticut Supreme Court upheld the Department's position that a state contractor who had failed to follow state contracting laws could not claim an unconstitutional taking of property.

### **Affirmative Action**

The Office of the Attorney General pursues the development of equal employment opportunities through its affirmative action program. By the end of the fiscal year, 50.7 percent of the full-time attorney workforce consisted of women and minorities. Women and minorities comprised 70 percent of entry level attorneys and 43 percent of middle and high-level attorneys.