

Office of General Counsel

ANNUAL REPORT

2014

**The Niagara Frontier Transportation Authority
and
Niagara Frontier Transit Metro System, Inc.**



Introduction

2014 was an exciting and busy year for the NFTA General Counsel's Office. As detailed in this Annual Report (covering January 1, 2014 through December 31, 2014), significant litigation victories, refunding of airport revenue bonds, the transfer of the NFTA's Boat Harbor and waterfront properties, arbitration awards reaffirming management rights, and ethics training initiatives led the way. The activities described in this report reflect the hard work, professionalism and dedication of the attorneys and other professionals in the Office of the General Counsel who serve the public by providing high quality legal services in order to support the NFTA's mission of providing safe, efficient and professional transportation services that enhance the quality of life throughout the Buffalo Niagara region. I want to thank Kimberley Minkel, the NFTA's Executive Director, and the NFTA Board of Commissioners for their support and for allowing our office to serve the public. Special appreciation for extra work on this report goes to Lisa Flynn (Secretary to the General Counsel). I hope you find this report informative and welcome any questions you may have.



David J. State (December 31, 2014)

General Counsel

I. Overview of the Office

The Office of General Counsel provides and/or administers all legal services for the Niagara Frontier Transportation Authority (“NFTA”) and Niagara Frontier Transit Metro, Inc. (“NFTM”) on civil and administrative matters. The NFTA is a multi-modal entity (Aviation, Surface and Property) providing efficient and professional transportation services that enhance the quality of life in the Buffalo Niagara region. NFTM is a subsidiary of the NFTA and provides bus and rail transportation services within Erie and Niagara Counties.

These legal services include representation of the NFTA and NFTM in negligence claims, negotiations with state and federal agencies, arbitrations involving collective bargaining agreements or employee grievances, professional negligence, tort and contract claims, condemnation and relocation proceedings, negotiation of collective bargaining agreements, preparation of leases, releases, use and operating agreements, settlements and memoranda of understanding.

The Office of General Counsel provides advice, opinions and counsel to the Board of Commissioners, the Executive Director, business center managers and staff on matters concerning labor and employment relations, environmental compliance and litigation, landlord-tenant and real property transactions, procurement and contracting issues, suretyship, risk management and insurance, municipal bonds and finance, secured transactions, commercial relationships and corporate and legislative concerns.

Under the direction of the General Counsel, staff attorneys appear in state and federal trial and appellate courts and before arbitration panels and administrative agencies such as the New York State Department of Labor, the U.S. Environmental Protection Agency, the New York State Department of Transportation, the Federal Aviation Administration and the Federal Transit Administration. General Counsel attorneys draft proposed agency rules and administrative procedures, and pursue enforcement and collection of judgments for fare evasions and parking violations. Staff personnel manage the board agenda, prepare resolutions for consideration by the Board of Commissioners and assist and provide guidance to user departments and business centers on procurement and various other matters impacting the day-to-day and long range operations of NFTA and NFTM.

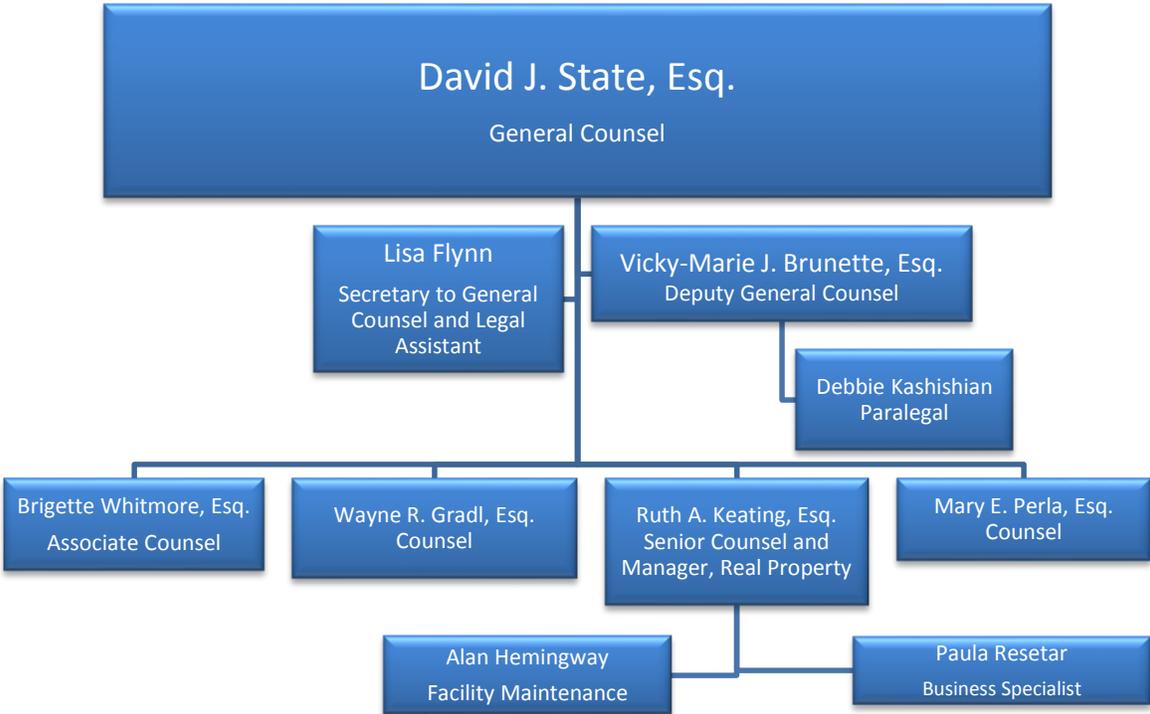
The Office of General Counsel also oversees the functions of the Property Group, one of the NFTA’s three business centers. Thus, in addition to providing legal services, the Office of General manages and develops the NFTA’s real property to optimize the generation of self-supporting discretionary revenue to support our core transportation mission while fostering economic growth. This includes management and oversight of the Boat Harbor and commercial properties.

II. People

The strength of any organization is reflected in its people. The Office of General Counsel has a full complement of high caliber professionals who serve the public with honor, integrity and respect. Staff members are dedicated and hard working professionals who provide selfless service.

A. Personnel and Location

The General Counsel's office currently consists of a General Counsel, a Deputy General Counsel, a Senior Counsel/Property Manager, two Counsels, one Associate Counsel, one Paralegal, one Secretary to the General Counsel/Legal Assistant and one Business Specialist. The majority of the Legal Staff is located on the 6th Floor of the Metropolitan Transportation Center ("MTC") at 181 Ellicott Street in downtown Buffalo, New York. One of the Counsels is located at the Buffalo Niagara International Airport to more efficiently serve the Aviation Group. Due to the transfer of the NFTA Boat Harbor, several positions were eliminated from the Property Group and those individuals were transferred to other business groups in the NFTA. We wish to specifically acknowledge and thank those individuals (Chris Todorov, Regina Hardy, Charlie Berg, Tom Jakubowicz, Wally Skrzynski, James Alves, Alan Hemmingway and Bob Mariea) for their hard work and dedication to the NFTA and the Boat Harbor and we wish them well in their new duties. A graphical description of all current staff members is depicted below:



B. Professional Training, Development and Outside Activities

1. Professional Training and Development

In an effort to stay sharp on current topics and recent trends in areas such as transportation, litigation, labor, property and aviation, staff attorneys attended professional conferences and training sessions relevant to their specific fields of practice. Some of the training opportunities were in the form of webinars or traditional Continuing Legal Education ("CLE") programs while others involved some local or domestic travel as time and budgets permitted. This year we were fortunate enough to be able to send Ruth Keating to a National Conference hosted by the American Public Transportation Association ("APTA") in Palm Springs, California which covered such topics as Ethics, Civil Rights, Constitutional Law, Buy America Requirements and Intellectual Property. Wayne Gradl attended the Annual Training Conference hosted by the New York State Public Employer Labor Relations Association in Saratoga, New York. Brigette Whitmore attended several CLEs focused on medical knowledge and litigation. Finally, Mary Perla attend several CLEs focused on Landlord/Tenant Law and Real Estate.

2. Externship – SUNY Buffalo Law School

In 2012, for the first time in the history of the NFTA, the Office of General Counsel formally established an externship program with SUNY Buffalo Law School. Externships provide law students with unique legal and public service experience as they work in a variety of government and non-profit organizations, and get academic credit for doing so. The NFTA receives the benefit of having a law student available to accomplish research and writing tasks and other duties. In order to qualify, the NFTA had to meet specific curricular, substantive and administrative requirements established by the Law School and the American Bar Association to ensure that the externship would be academically appropriate and in compliance with all other accreditation requirements. The Law School's Externship and Judicial Clerkship Program is directed by Professor Lise Gelernter and administered by Dawn Skopinski and we wish to express our sincere appreciation for their efforts in establishing this program. In addition, we wish to acknowledge Linda Seay (the NFTA's Director of Equal Employment Opportunity/Diversity Development); Karen Novo (the NFTA's Director of Human Resources); Lisa Piecki (the NFTA's Communication and Advertising Specialist); and members of the Minority Bar Association of Western New York (Family Court Support Magistrate Lenora B. Foote-Beavers and Joseph M. Hanna, Esq. from Goldberg Segalla LLP) for their assistance and continued support of this program.

In the spring of 2014, we were fortunate to have the services of UB law student Aaron Rubin. Aaron worked on such matters as First Amendment issues pertaining to changes in the NFTA's advertising guidelines, privacy issues resulting from photographing a famous individual on the Metro Rail, expert disclosure requirements, Family Medical Leave Act, analysis of the NFTA's loitering regulations, verdict research on finger fracture cases, and union representation of retired members. Deputy General Counsel, Vicky-Marie J. Brunette, spent time mentoring Aaron and received Certification for Teaching an Accredited Law School Course (Externship) for those efforts. UB Law Student Colin Casey is scheduled to start in the spring of 2015 and we look forward to working with him.

3. Outside Activities

Our participation in outside activities is important in order to facilitate and improve upon the NFTA's image in the community. Several of our attorney's participated in outside activities that advanced this objective.

Vicky-Marie J. Brunette, the NFTA's Deputy General Counsel, received recognition by Business First as one of Western New York's Outstanding Women of Influence in 2014. This is a prestigious award to recognize outstanding women in business in several categories including women who are the driving force behind the success of their employer. Vicky also served as the 2014 Vice President/President Elect for the Defense Trial Lawyers Association. She was installed as the incoming President for 2015 at the DTLA's annual meeting on December 3, 2014. This is a prominent position in the legal community which will facilitate and improve upon the professional image of the NFTA.

Wayne Gradl, the NFTA's "labor lawyer" spoke at the annual meeting of the Organization of Public Employer Negotiators (OPEN) in Buffalo, New York on the Family Medical Leave Act.

Finally, Dave State spoke at the Annual Training Conference hosted by the New York State Public Employer Labor Relations Association in Saratoga, New York on the interplay between the NY Open Meetings Law and collective bargaining negotiations and personnel matters.

III. Outreach and Preventive Law

The Office of General Counsel has a commitment to reducing the risk of legal problems by proactively providing legal advice before problems occur. The staff is strongly encouraged to be problem solvers and to identify appropriate courses of action to our clients, rather than identifying legal roadblocks without any solutions. In 2014 we continued our focus on a proactive outreach to our clients with a highlighted focus on ethics training.

A. Ethics Training

In April 2014, our office was certified by the NY Joint Commission on Public Ethics (JCOPE) to present JCOPE's Comprehensive Ethics Training Course. Following certification, our office presented a 2 hour live training session to Financial Disclosure Statement filers at the NFTA who are required to take this training. The topics covered by this presentation include a description of the New York entities having jurisdiction over ethics; the NFTA's Code of Conduct; the NFTA's Code of Ethics; financial disclosure; negotiation of future employment; gifts; conflicts of interest; outside employment and activities; nepotism restrictions; honorarium; official activity expense payments; public service announcements; post-employment restrictions, and restrictions on political activities. Beginning in December 2014, this training was extended to senior staff and managers at the NFTA. In total in 2014, we have provided ethics training to approximately 63 Commissioners and employees. Our goal is to continue offering this training into 2015 in order to ensure that our board members and employees understand and comply with all ethical requirements.

IV. Contracts/Negotiations/Regulatory Compliance

The Office of General Counsel maintains an active practice in the negotiation and drafting of contracts to procure goods, services and to acquire and dispose of real property for the NFTA. We are also frequently called upon to assist in negotiation of outstanding debts, contractual matters, and to ensure compliance with laws, rules and regulations. All of our staff deal with these matters in one way or another, but the large majority of this work is handled by Ruth A. Keating, Mary E. Perla and Paula Resetar, and 2014 proved to be a very busy and productive year. The following items represent some of the unique and significant matters that staff worked on in 2014.



A. Refunding of Aviation Revenue Bonds: On June 26, 2014, the Board approved a resolution providing for the refunding of the Airport Revenue Bonds issued in 1998 and 1999. Leading up to that resolution there was a voluminous amount of work that required Mary's full effort and attention. Mary did an outstanding job assembling and analyzing detailed information and documents in

order to facilitate this transaction. Mary was the NFTA's main point of contact with our bond counsel and substantially interacted with the NFTA's financial advisor on this transaction which is expected to result in substantial savings for the NFTA. For example, based on current rates for fixed rate debt, the refunding is expected to generate net present value savings of approximately \$11.18 million.

B. Port Terminal Complex: 2014 proved to be a challenging year for the Port Terminal Complex on the Outer Harbor. In addition to handling the ongoing storage leases at Port Terminals A and B which bring much needed revenue to the NFTA, Ruth and Paula handled due diligence extension requests from a Canadian furniture manufacturer who was interested in purchasing the property. After those negotiations fell through our office prepared and issued a Request for Proposals (RFP), to explore additional private sale options. Subsequent to the issuance of the RFP, Erie Canal Harbor Development Corporation (ECHDC) released its proposed Draft Master Plan for the Outer Harbor, which included the Port Terminal Complex. On December 18, 2014, the NFTA Board of Commissioners revoked the RFP given the extensive public process that was followed and the commitment ECHDC has made to the development of the waterfront and their view that it is in the best interest of the public for ECHDC to control the development of the Port Terminal Complex. Staff continues to cooperatively work with ECHDC to explore a transaction that best serves the public and is acceptable to ECHDC and the NFTA.

C. Airline Use and Lease Agreements: The signatory air carriers operating at Buffalo Niagara International Airport (BNIA) have been operating as holdover tenants since April 1, 2013 under the terms and conditions of the previously authorized Airline Use and Lease Agreement. Mary played a key role in the protracted contract negotiations during this holdover period. On March 27, 2014, after the culmination of these negotiations, the Board authorized an extension of the Airline Use Agreement for an additional five year term. The Agreement provides certainty for the NFTA at BNIA for the next five years in addition to benefitting air carriers such as Southwest Airlines, Delta, JetBlue, United, and American/USAirways.

Mary's involvement in the negotiations resulted in several important provisions that are beneficial to the NFTA, the general public and the aviation community. The rate setting methodology will continue to be based on a cost compensatory arrangement. Under this type of Agreement, the NFTA recovers its actual operating expenses and indirect headquarter allocations in addition to NFTA funded capital costs of the airfield and that portion of the terminal building occupied by the signatory airlines. The signatory airlines have reduced their space requirements as a result of recent airline consolidations. To offset the reduction in the amount of terminal space leased by the air carriers, staff negotiated the inclusion of the entire ticket lobby into the airlines joint use space which previously was excluded. This mitigated the loss of revenue to the NFTA that results from the giveback of space due to the airline consolidations.

Mary also assisted in the negotiations which resulted in the deletion of the transportation surplus clause from the Agreement. This provision has been in place since 1997 and provided for the sharing of BNIA/NFIA/Transit Center/Boat Harbor revenues with the signatory carriers. In return for the deletion of the sharing of revenues and the inclusion of terminal ticket lobby area footage within leased premises, the parties agreed to include a cap on the air carriers' funding of the Niagara Falls International Airport's (NFIA) annual deficit. This annual cap will be phased in over the five year term of the Agreement. A phased in approach will allow the NFTA time to implement the change and develop annual budgets that reflect the cap. Additionally, staff will continue to seek operational improvements and/or new business opportunities to reduce NFIA operating deficits currently funded by BNIA airlines.

V. Property Management

The Property Management business center is responsible for planning and management of the non-transportation property assets of the NFTA. Its mission is to maximize the financial return to the NFTA on its non-public transportation assets while improving and preserving the physical integrity of those buildings and grounds. 2014 was an exciting, demanding and challenging year for our Property Group especially in light of the Governor's announcement in September 2013 that would facilitate the NFTA's exit from its waterfront property holdings in 2014. Following that announcement, the hard and complex work of transferring the land and the Boat Harbor operation to ECHDC and New York State Parks was handled by Ruth Keating and Paula Resetar and they did an outstanding job. The following represents some of the highlights of 2014.

A. Transfer of the Boat Harbor/Outer Harbor: On May 12, 2014, title to the Boat Harbor and the Outer Harbor was formally transferred to ECHDC. This was a historic transaction ending over 40 years of ownership. Prior to that transfer of title, thousands of documents needed to be identified, assembled and transferred to ECHDC and New York State Parks. This work fell to Ruth Keating and Paula Resetar and they did an outstanding job of pulling together over 40 years of title, grant, environmental and miscellaneous documents that were necessary to properly transfer title and facilitate the transaction. The negotiation of the transfer agreement itself was difficult and complex and the property staff stepped up to the plate and performed admirably. For example, the agreement contains comprehensive environmental indemnification provisions running from ECHDC and Empire State Development Corporation (ESDC) to the NFTA designed to protect the NFTA and our ability to perform our public mission in the event environmental issues are uncovered in the future as the property is used and developed. These provisions are without precedent at the NFTA and should allow us to move forward and fully focus on our core transportation mission with this historic transaction behind us.

Even though legal title to the property was transferred, the NFTA continued to run the Boat Harbor until November 15, 2014 in order to provide a smooth transfer of the operation to best serve the public. By all accounts, it was a record year. Our revenues were the highest in Boat Harbor history at approximately \$1.7 million. This record mark continued a trend of increasing revenues at the property over the past several years. These results were due in large part to the hard work and dedication of Chris Todorov (the manager of the Boat Harbor) and his crew, combined with management and oversight by the Office of General Counsel, specifically Ruth and Paula. These outstanding results are especially noteworthy when one considers that the logistical work of transferring Boat Harbor operations to New York State Parks was happening at the same time that NFTA staff was focused on running the operation and serving the marina community for our final season. In sum, we obtained outstanding results in an especially challenging year and our staff should be congratulated.

B. NFTA Rental Property: Revenue from our rental properties continues to be important to support our other business centers. Although our overall leased space is down about 6% compared to the previous year, Property Management is currently administering approximately 75 leases and continues to aggressively look for new tenants. The building at 485 Cayuga is approximately 53% full and 247 Cayuga is approximately 69% full. One of the highlights at 485 Cayuga is a new tenant who operates an indoor baseball operation at the facility including indoor batting cages. Ruth and Chris Brophy (a surface employee who supports our Cayuga properties) did an outstanding job getting this space ready as well as completing a number of cosmetic and functional improvements at 485 Cayuga and the building has never looked better.

C. Rails to Trails: Rails to Trails programs have the capacity to transform currently unused NFTA right-of-way corridors into vibrant public spaces. In 2014, Ruth and Paula worked on two significant Rails to Trails projects implementing our Board's vision to increase public use of NFTA right-of-way properties that are not designated for transit use in the near future. First, the County of Erie is the project sponsor for the design and construction of a bicycle/pedestrian trail along the NFTA's railroad right-of-way property running from Kenmore Avenue, in the Town of Tonawanda, to State Street in the City of Tonawanda. Second, the City of Buffalo is the project sponsor for the design and construction of a bicycle/pedestrian trail along the NFTA's railroad right-of-way property running from Main Street at the NFTA's LaSalle Station to Kenmore Avenue and a connection between Shoshone Park to Kenmore Avenue and Taunton Place. Both of these projects, require a tremendous amount of staff work and Ruth and Paula deserve credit for advancing these important public initiatives.

VI. Litigation

With approximately 1,500 employees and diverse operations from bus to light rail to aviation to the boat harbor, the Office of General Counsel handles a large volume and wide variety of litigated matters ranging from personal injury to commercial cases. Unlike many large corporations who routinely refer litigation to outside counsel, the NFTA's litigators are in court, arguing motions, picking juries, trying cases and getting verdicts. Vicky-Marie J. Brunette, Brigitte Whitmore and Debbie Kashishian continue make an excellent team resulting in aggressive representation of the NFTA's interest in court. The success of this team was proven in 2014 with several outstanding no-cause verdicts that were the talk of the Western New York legal community.

As of December 2014, the Office of General Counsel retained a litigated caseload of 188 personal injury, wrongful death and police professional liability files, with a total self-insured reserve of approximately \$2,663,475. The breakdown was 157 active litigated personal injury cases against NFTM, with a self-insured reserve retention of approximately \$2,352,435, and 31 active litigated personal injury cases against the NFTA, with a self-insured reserve retention of approximately \$497,240. Of the 188 files, 186 are handled in-house, the large majority by the Deputy General Counsel, Vicky-Marie J. Brunette. Two litigated cases are being handled by outside counsel, as the NFTA had insurance for those matters, with a low self-insured retention. Associate Counsel, Brigitte Whitmore, has recently taken over the Health Care Provider litigation and is now handling approximately 25 of her own personal injury cases. The proper handling of a caseload this large requires significant work. The NFTA and NFTM are self-insured up to \$5,000,000 for each litigated matter; therefore, the potential exposure on any given case is enormous. In 2014 it is estimated that Vicky appeared at approximately 100 pre-trial conferences; drafted and argued approximately 17 pre-trial motions; conducted approximately 65 depositions; conducted 9 mediations; conducted 3 jury trials; and favorably negotiated resolutions in 26 cases short of trial. Of those cases resolved, 10 involved absolutely no contribution from NFT Metro or NFTA. In addition to the foregoing, Brigitte Whitmore also appeared at numerous pre-trials, and a number of mediations and motions, as well as conducted a number of depositions. Vicky is assisted by Debbie Kashishian who prepares trial notebooks and pleadings in addition to obtaining medical records and other documents required for litigation. Brigitte is assisted by Lisa Flynn, who similarly prepares documents and records required for litigation.

In 2014 alone, there were 38 new cases filed against NFT Metro and 8 new cases filed against NFTA. Vicky, Brigitte, Debbie and Lisa had an outstanding year as demonstrated by the following highlights in 2014.



A. Dunn v. NFT Metro, et al:

This action arises out of a motor vehicle accident that occurred on February 7, 2010 at approximately 1:30 p.m. on Genesee Street, near the Buffalo Niagara International Airport, in the Town of Cheektowaga. Terry Dunn, then 43 years old, was the restrained front seat driver of a 2004 Nissan pick-up truck. The Nissan was stopped at a red light when a #24 Metro bus approached and struck the rear bumper of the pick-up and pushed the vehicle forward a car length. The bus was equipped with a digital video surveillance system and the accident was captured, downloaded and preserved for litigation. Both the video and still photographs taken at the scene reveal little visible damage to the bumper. The owner of the vehicle submitted a damage estimate of \$518.96, which we paid. The Transit Authority Police issued the bus operator a traffic citation for following too closely.

The bus operator testified at deposition that he was traveling outbound on Genesee at approximately 20 mph when he observed a vehicle stopped at a red light. He braked and slowed to approximately 5 mph, but struck the rear of the vehicle. He offered no excuse for the accident and admitted that he had something on his mind and simply was not paying attention at the time. Based on the foregoing, we admitted liability.

The Plaintiff alleged serious neck and back injuries as a result of the accident. Increased complaints of neck pain led to the Plaintiff undergoing a rhizotomy procedure in February of 2013 and a C6-C7 discectomy and fusion in March of 2013. In a report dated March 27, 2014, one of the Plaintiff's orthopedic surgeons opined that MRIs of the spine revealed both chronic changes and traumatically induced disc herniations at multiple levels. He recommended that the Plaintiff undergo removal of the plate and screws at C6-C7 and undergo fusion of C4-C5, C5-C6, C6-C7, C7-T1 with instrumentation, both anterior and posterior, as well as intradiscal stem cell injection and/or surgical stabilization and lumbar fusion at L4-L5 and L5-S1.

An attempt at private mediation on April 1, 2014, proved unsuccessful. The Plaintiff's original demand was \$2,000,000 dollars. By the end of the mediation sessions, Plaintiff's counsel had reduced the demand to 1.475 million dollars and we had extended a fair offer. Deputy General Counsel, Vicky-Marie J. Brunette, made another attempt to discuss settlement during a final pre-trial conference, at which time we again reached impasse. After jury selection on May 8, 2014, Plaintiff's counsel lowered the demand, but maintained the position that his client would not accept the figure we had offered.

The matter proceeded to a 7 day damages only trial in New York Supreme Court, during which the Plaintiff called an orthopedic surgeon and a chiropractor to testify as experts on her behalf. In addition, voluminous medical records from other treating physicians were admitted into evidence. We called a neurosurgeon, a neuroradiologist, a biomechanical/accident reconstruction expert, a private investigator who performed surveillance, personnel from the collision repair shop and our bus operator to testify at trial. During his summation the Plaintiff's attorney demanded \$2.8 million from the jury. After 3.5 hours of deliberation, the jury returned a defense verdict in our favor. Agreeing with Vicky's argument, the jury answered "no" to both threshold questions regarding whether the Plaintiff had sustained a serious injury as a result of the February 7, 2010 accident.

The jury was then asked to answer one additional question, as to whether the Plaintiff sustained any "economic loss" at all as a result of the accident in question. Again, agreeing with Vicky's argument that the Plaintiff sustained a mild, temporary strain/sprain which lasted approximately 9 months, the jury returned a figure of \$75,000, which was reflective of the medical bills incurred during that time frame. NFT Metro had already paid the No-fault maximum of \$50,000 for said bills so, with the collateral offset, the figure was reduced to \$25,000.

Plaintiff's post trial Motion to Set Aside the Verdict was denied and Plaintiff's counsel has yet to perfect an appeal. Vicky-Marie J. Brunette was lead trial counsel, Associate Counsel, Brigitte Whitmore, was second chair and Paralegal, Debbie Kashishian, provided litigation support.

B. Dennis v. NFT Metro, et al:

This action arises out of a motor vehicle accident that occurred on July 14, 2010 at 6:39 a.m. on East Ferry Street, near Humboldt Parkway, in the City of Buffalo. A #13 Metro bus traveling westbound on East Ferry, approaching the traffic signal at Humboldt Parkway, failed to stop at a red light and rear ended a 2003 Chevrolet Trailblazer that, in turn, was pushed into the rear of a 2001 Hyundai Accent, which struck the vehicle in front of it. The 2001 Hyundai Accent was operated by then 52 year old Jerome Dennis, a mechanic out of the Cold Spring Garage. We admitted liability for the accident.

The Plaintiff alleged serious neck and back injuries as a result of the accident. On September 13, 2011, he underwent an anterior and posterior C3-4, C4-5, C5-6, C6-7 discectomy and fusion. The Plaintiff's neurosurgeon opined that the Plaintiff's injuries and resultant surgery are causally related to the accident in question and that he is 100% disabled from work as a result. The Plaintiff has not returned to work since the accident of July 14, 2010 and ultimately took a disability retirement from NFT Metro, effective September 1, 2011.

An attempt at private mediation on January 23, 2014, proved unsuccessful. The Plaintiff's original demand was 4.3 million dollars. By the end of the mediation session, Plaintiff's counsel had reduced the demand to 3.1 million dollars and we had extended a fair offer. Deputy General Counsel, Vicky-Marie J. Brunette, made another attempt to discuss settlement during jury selection on February 14, 2014. Plaintiff's counsel refused to lower the demand and maintained the position that his client would accept nothing less than seven figures to resolve the case.

The matter proceeded to a 7 day damages only trial in New York Supreme Court, during which the Plaintiff called a neurosurgeon, a neuroradiologist, a chiropractor, a pain management specialist, an economist and a vocational rehabilitation expert to testify on his behalf. During his summation the Plaintiff's attorney demanded \$4.5 million from the jury. After 2.5 hours of deliberation, the jury returned a defense verdict in our favor. Agreeing with Vicky's argument, the jury answered "no" to all three threshold questions regarding whether the Plaintiff had sustained a serious injury as a result of the July 14, 2010 accident.

Plaintiff's post trial Motion to Set Aside the Verdict was denied. Plaintiff's counsel has yet to perfect an appeal. Contributing to the success of the trial was Deputy General Counsel, Vicky-Marie J. Brunette, as trial counsel, and Paralegal, Debra Kashishian, as litigation support.

C. Hawkins v. NFT Metro, et al:

The above-entitled action was brought under a negligence theory wherein the Plaintiff, 57 year old Bonnie Hawkins, alleged she sustained a serious right distal femur fracture, which required closed reduction and internal fixation, as a result of a slip and fall after boarding a Metro rail car at Erie Canal Harbor Station on February 20, 2008. The Plaintiff and her husband contended that the floor of the train was wet with puddles and that the Rail Operator started the train and stopped abruptly, which caused Mrs. Hawkins to fall before she was able to take a seat.

The matter proceeded to a bifurcated jury trial on the issue of liability only in New York Supreme Court on February 3, 2014. After twenty minutes of deliberation, the jury returned a defense verdict of no cause of action. Contributing to the success of the trial was Deputy General Counsel, Vicky-Marie J. Brunette, as lead trial counsel, Associate Counsel, Brigitte Whitmore, as second chair, and Paralegal, Debra Kashishian, as litigation support.

D. Affirmative litigation: Although we often find ourselves defending claims brought against the NFTA and NFTA Metro, we continue to work with the NFTA's claims department to increase our efforts to litigate claims against entities who cause us damage and refuse to pay. These matters are handled by Vicky and Brigitte and the following are the highlights for 2014.

1. NFTA v. Costantino: Litigation was commenced to recoup \$7,852 in property damage sustained to an NFTA police vehicle that was involved in a motor vehicle accident at the intersection of Tupper Street and Washington Street in the City of Buffalo, when it proceeded through a red light with lights and siren activated. Police dispatch calls further confirmed that at the time of the accident, NFTA's TAP Officer was responding to a valid emergency, which was a call for assistance at 181 Ellicott Street, as another officer was struggling with a wanted fugitive inside the parking lot near one of Greyhound buses. Witnesses at the scene confirmed that the police vehicle proceeded cautiously through intersection and that all traffic yielded to the emergency vehicle, with the exception of the operator of the Defendant vehicle, who came into collision with the NFTA police vehicle. After conclusion of depositions and exchange of discovery documents, the Defendant's insurance carrier, Nationwide, finally agreed to settle the litigation and pay the full amount of NFTA's property damage. The matter was prosecuted by Deputy General Counsel, Vicky-Marie J. Brunette.

2. NFTA v. Steuernagel: We recently settled a property damage case that NFTA brought against Carol Steuernagel and David Steuernagel. Our Transit Police Officer alleged that he was traveling west on North French Road in the Town of Amherst when a vehicle being operated by Carol Steuernagel collided with our Transit Police vehicle. We were able to recover \$3,000 in the property damage sustained to the Transit Police vehicle. This matter was prosecuted by Brigitte Whitmore.

3. NFTA Metro v. Anastasi Trucking: We also recently settled a property damage suit NFTA Metro brought against Anastasi Trucking, Inc. d/b/a Anastasi Trucking & Paving Co. Anastasi Trucking was operating a road paver near the Theater Station when part of the paver encroached onto the rail right of way damaging part of our rail car that was passing through. Anastasi Trucking is a subcontractor of Mark Cerrone, Inc. who is the general contractor in the City's Cars on Main Street Project. Accordingly, Anastasi Trucking, Mark Cerrone, Inc., and the City of Buffalo were all named

defendants. After litigation was commenced and paper discovery was completed, we recovered \$12,218.16 from Anastasi Trucking. This matter was prosecuted by Brigette Whitmore.

4. NFTA v. Food Art Concessions: We sued Food Art Concessions, LLC d/b/a Bijou Cafe in a breach of contract action relating to vending services and past due rent owed. We received a judgment in our favor for \$49,258.58. We continue to search for assets on which to execute the NFTA's judgment and recently issued two information subpoenas in order to secure information to help us collect this debt. This matter was prosecuted by Brigette Whitmore.

VII. Labor and Employment

Providing legal support to NFTA managers who work with the NFTA's 13 unions presents a significant challenge. Wayne Gradl, the NFTA's "labor lawyer", handles grievances, arbitrations and assists in contract negotiations with these unions. In addition, Wayne provides the NFTA and NFTM with advice regarding employee dismissals and discipline and discrimination and other Equal Employment Opportunity matters, including claims by passengers as well as representation in Federal and New York State courts and before administrative agencies such as the EEOC and New York State Division of Human Rights. Some of the significant cases Wayne handled in 2014 are as follows:

A. Transitional Return to Work (TRTW) PROGRAM: The purpose of the TRTW Program is to offer members of the ATU bargaining unit who are capable of some job function, but not yet capable to return to their regular jobs, "temporary assignment to appropriate and meaningful tasks." In September of 2013, management sought a TRTW Program eligible employee to assist in the Customer Care Department on account of sick leave absences taken by several employees in the ATU bargaining unit per the TRTW Program Agreement. The ATU did not agree to allow the placement of the requested TRTW Program eligible employee to help cover the absences in the Customer Care Department. After being denied use of a TRTW Program eligible employee, management opted to cover the absences in the Customer Care Department via engaging a temporary employee as contemplated and authorized by the CBA. The ATU filed a grievance alleging the use of a temporary employee constituted a violation of the TRTW Program. Management denied the grievance on the ground that there was no violation of the TRTW Program Agreement or any other agreement between the Parties. On August 27, 2014, Arbitrator Lise Gelernter ruled in favor of the Company, finding that the Company did not violate the TRTW Program Agreements or the collective bargaining agreement by engaging a temporary employee to cover for ATU absenteeism and that the ATU could not retaliate against the Company for engaging the services of temporary employees by pulling out the one TRTW Program employee working in the Department, just to keep the Department staffed with fewer employees than desired by Management.

B. ILA 1949 Taxi Stand: ILA 1949 pursued a grievance and arbitration claiming that vehicle mechanics could not be asked to assist in moving a taxi stand by operating a forklift and an air chisel which the mechanics ordinarily used in the performance of their work because their job descriptions supposedly only contemplated that those tools would be used by them in the context of vehicle repairs. The Union claimed that asking the mechanics to perform work that they did not consider as part of their job descriptions violated the CBA. In September 2014 Arbitrator Samuel Butto issued an award in favor of the Authority which held that neither the Section in the CBA listing the positions in the ILA 1949 bargaining unit, nor any other section of the CBA precluded Authority management from asking vehicle mechanics to assist in moving a taxi stand by using equipment and tools that these employees were qualified to operate and in fact used in the performance of their other work. This award is significant in that it reaffirms management's ability to assign work to promote organizational efficiency in management's discretion.

VIII. Audits/Investigations:

Operating in a highly regulated environment, the NFTA is regularly confronted with agency audits and investigations. In 2014, the NY Office of the State Comptroller issued a final audit of the NFTA's Real Estate Portfolio and a final audit of Selected Aspects of Discretionary Spending at the NFTA. Prior to the release of these audits, office staff devoted a substantial amount of time and effort interacting with State auditors, conducting research, responding to inquiries, and developing various positions relating to issues raised during these audits. The final audits did not contain any significant negative findings against the NFTA but rather contained constructive recommendations which are under consideration.

Kimberley A. Minkel, the NFTA's Executive Director, established the NFTA's Systems Integrity Committee to review complaints about lack of compliance with the NFTA's policies and practices which were not being investigated by other standing NFTA committees. The General Counsel and Deputy General Counsel serve on the Systems Integrity Committee and investigated several significant matters in 2014, including a complaint about alleged improper activities by an employee.

IX. Use of Outside Counsel

In order to assist the Office of General Counsel in providing legal services to the NFTA, it is sometimes necessary to retain the service of outside counsel to assist with specialized areas or work overload. For example, the NFTA's exit from our waterfront property holdings necessitated outside expertise in State Environmental Quality Review Act (SEQRA) compliance, environmental indemnification, and transactional real property work. In addition, outside litigation assistance continues to be required for a complex commercial case stemming from paving work done at the Buffalo

Niagara International Airport in 2006 and a constitutional challenge to our parking and car rental regulations. Finally, we utilized an outside labor firm to assist in the ATU impasse resolution matter currently pending with PERB. We continue to minimize our use of outside counsel to the fullest extent possible.

X. Future Goals

The Office of General Counsel's goals for 2015 include; continuing focus on ethics and identifying opportunities for conducting additional ethics training to our employees; continuing to support diversity in our employment practices and other activities; finalizing the transfer of the Port Terminal Complex; continuing focus on cost controls such as implementation of billing guidelines for outside counsel; identifying new training and professional development opportunities; and developing a more focused legal outreach program.

