

Office of General Counsel

ANNUAL REPORT

2020

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



Introduction

I am so proud of the legal team's performance during this COVID pandemic. As my drill instructor once said "it doesn't rain on the Army, it rains in the Army."¹ The meaning of that saying is that no matter what the weather or the conditions, the U.S. military is guaranteed to be training or conducting some sort of exercise, and will complete its mission despite obstacles and challenges. Despite a 100-year pandemic and numerous professional and personal obstacles and challenges, the NFTA accomplished the mission and continued providing critical and essential transportation services to the public. I am so proud and fortunate to work in this industry and to support the heroic transit and aviation workers that make a difference in people's lives each and every day.



The activities described in this report reflect the diligent work of the professionals in the Office of the General Counsel who serve the public by providing high quality legal services 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 Jodie Zolnowski (Paralegal and Assistant to the General Counsel).

*General Counsel
David J. State (December 31, 2020)*

¹ Other versions of this saying are "it doesn't rain in the Army, it rains on the Army" and "if it ain't raining, we ain't training."

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 also oversees the NFTA’s Procurement Department. This combination has strengthened the Procurement Department’s exceptional performance in procurement compliance and ethics and facilitates continued focus on those areas so that Procurement can continue to successfully perform their mission to “procure high-quality materials and services which provide safe and reliable transportation, transportation services and facilities for our customers.”

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 and integrity. Staff members are dedicated and hard-working professionals who provide selfless service to the public.

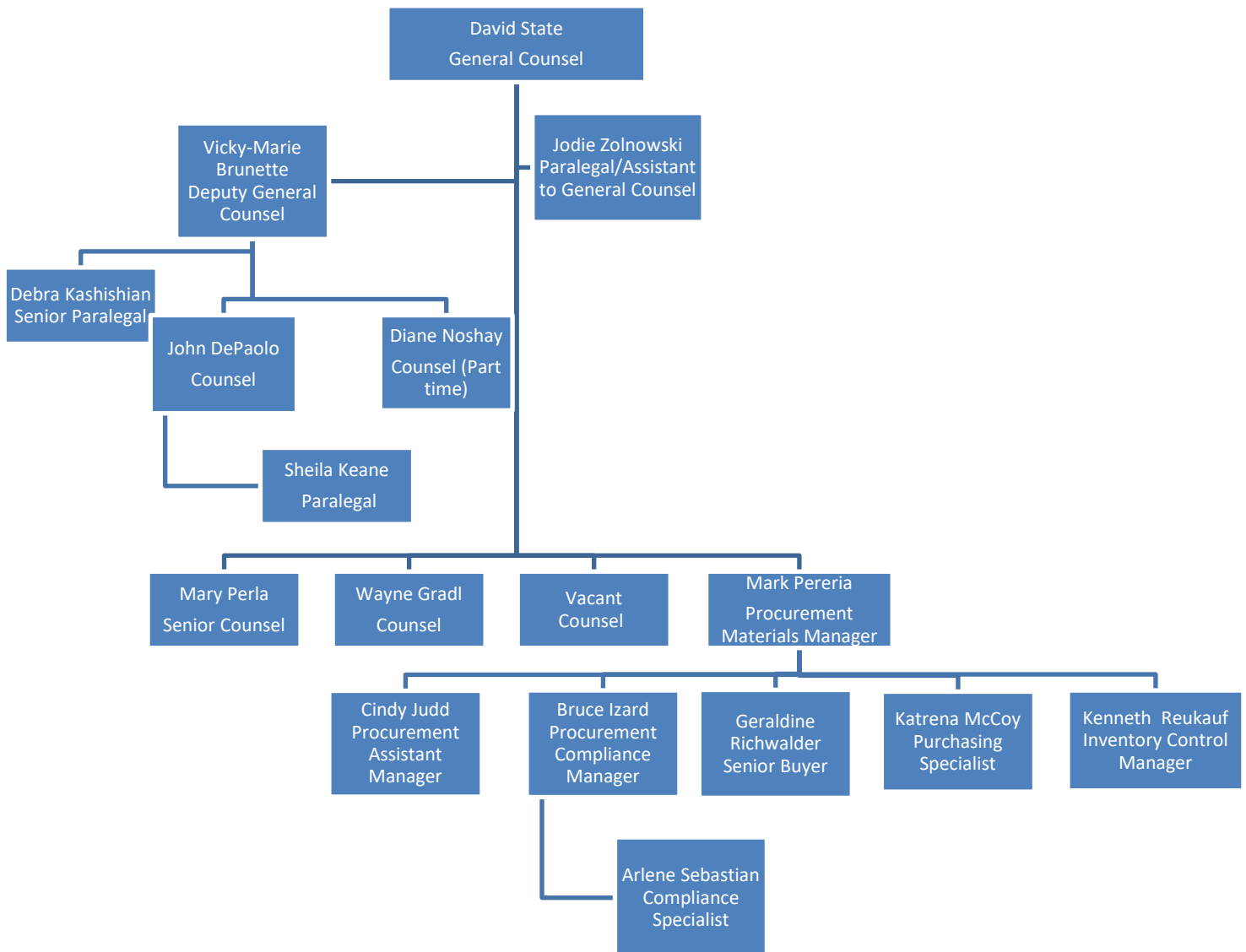
A. Personnel and Location

The Office of General Counsel consists of a General Counsel, a Deputy General Counsel, a Senior Counsel, three Counsels, one part-time counsel, one Senior Paralegal, one Paralegal and Assistant to the General Counsel, and one Paralegal. 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. Our Senior Counsel, Mary Perla, is located at the Buffalo Niagara International Airport to more efficiently serve the Aviation Group.

The Procurement Department is led by Mark Pereira, the Manager of Procurement/Materials and includes a Manager of Procurement Compliance, an Assistant Manager, a Compliance Specialist, Senior Buyer, Purchasing Specialist, Inventory Control Manager and other direct reports.

A graphical description of all current staff members is depicted below:

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B. Professional Training, Development and Outside Activities

1. Professional Training and Development

We attended and hosted several educational conferences to keep our skills sharp and to learn about recent trends in areas such as transportation, procurement, litigation, labor, property and aviation law. Staff attorneys who attended these professional conferences and training sessions then relayed this information to NFTA stakeholders to improve our overall knowledge base. 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, budgets and COVID restrictions permitted.

Vicky-Marie Brunette earned 14 hours of CLE instruction and participated in the Defense Research Institute Civil Rights and Governmental Tort Liability conference in San Diego, California on January 29-February 2, 2020. The conference featured national speakers and educators and covered topics including the following: 1) Supreme Court review; 2) government liability; 3) Rule 68 offers of judgment; 4) qualified immunity; 5) First Amendment speech issues; 6) Monell liability; 7) Title IX school liability; 8) challenges and claims that arise from initial prison intake; and 9) ethical issues that encompass handling defense of a claim.

Additionally, Vicky earned CLE credits in a variety of topics offered by the New York State Academy of Trial Lawyers during the COVID-19 shutdown. She also completed a virtual learning mini-series on Diversity and Inclusion and Racial Healing hosted by the Buffalo Niagara Partnership as part of her participation on the NFTA's Diversity and Inclusion Committee. Vicky is particularly proud of being part of the Pride Planning Committee and instrumental in raising a Pride flag for the first time at NFTA facilities.

Mary Perla attended a variety of different Continuing Legal Education instruction including Spotlight on Ethics: Perceptions of Attorney Ethics in Popular Culture and Current Events, Legal Issues in Airport Development and Bankruptcy and Accommodation of Tenants' Financial Problems.

Wayne Gradl received 9.5 credit hours of CLE instruction in 2020. The range of topics include Effective Communication at a Social Distance – Ethical and Practice Approaches to Virtual Conversations, Avoiding Bias and Managing High-Risk Employees upon Re-opening, Update on Municipal Liability, Ethics Primer- Privilege, Confidentiality and Conflicts of Interest, Maintaining an ethical Law Practice and Understanding Ethical Issues and Obligations, Technology Ethics for Lawyers: What You Don't Know Can Certainly Come Back to Haunt You and Alphabet Soup of Employment.

In 2020, John DePaolo earned over 30 credit hours of virtual CLE instruction, mostly through the New York State Academy of Trial Lawyers. Topics included Traumatic Brain Injuries, Premises Liability, Remote Proceedings, Jury Trials During a

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Pandemic, Preserving Testimony and Evidence, Complex Motor Vehicle Litigation, Ethics, and Diversity and Inclusion. Recently, John also attended the APTA Legal Affairs Virtual Mini Seminar on December 8, 2020.

In February 2020, Dave attended the APTA Legal Affairs Seminar in San Diego, CA. Dave also took virtual training and participated in 2020 General Counsel Conference East, the 36th Annual American Association of Airport Executives (AAAE) Airport Law Workshop, and the APTA Legal Affairs Virtual Mini Seminar on December 8, 2020.

In 2020, Debra Kashishian attended the following professional development webinars: 1) Ethics training; 2) Lyft and Uber Insurance Issues; and 3) Working with Experts to Build Your Case.

In 2020, Sheila Keane attended the following professional development webinars: 1) Accident Reconstruction and BioMechanics; 2) Day in the Life of Paralegal; 3) Electronic Data in the EMR; 4) Investigations in the Age of Geosocial Data; 5) Social Media: Discovery, Ethics, Evidence and Sanctions; 6) Moving Cases Forward with Graphics and Digital Presentations while under COVID-19 Lockdown; and 7) Adobe Solutions in Microsoft Teams.

Jodie Zolnowski attended professional development webinars in 2020 that included 1) Skills for Inclusive Conversations; 2) The Six Morning Habits of High Performers; 3) Rules for Rising Leaders; 4) How to Slow Down and Be More Productive; and 5) Freedom of Information Law. Jodie also received her Lexis Paralegal Mastery Certificate in 2020.

2. Outside Activities

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

Dave State continued his service as a policy committee member of the Erie County Industrial Development Agency, adjunct Business Law faculty at Erie Community College, and board member of the Buffalo Municipal Housing Authority.

In 2020, Vicky-Marie Brunette was selected to serve on the Bar Association of Erie County's Judiciary Committee. She continued her service as a member of the Board of Trustees for St. Mary's School for the Deaf, where she also serves as Nominations Committee Chair and By-Laws Committee Chair and continued as Social Co-Chair of the Defense Trial Lawyers Association of WNY. Vicky completed a one (1) year term as the Delaware Women's Golf Club's Marketing and Publicity Chair for 2020. She will serve an additional term in the same capacity in 2021.

John DePaolo is active with the Rotary Club of the Buffalo Niagara Medical Campus, is a Charter Member and served as a Board member for four years. John is also active

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with the Rotary District (7090) involving service clubs in the Niagara Frontier and Southern Ontario. One of the District 7090 initiatives is the Rotary/Greenway Commission. This effort joins multiple clubs all along the Niagara Greenway making improvements and extensions to the nature trails between Buffalo and Lake Ontario. John is still serving as the Education Chair of the WNY Defense Trial Lawyers Association.

Wayne Gradl continued his impressive climbing actives. This year he attacked the Adirondacks with a team that included the NFTA's own Chris Antholzner (pictured below) and covered impressive summits such as Lower Wolfjaw, and Noonmark Mountain.



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Wayne Gradl also was published in three (3) New-in-Chess Yearbooks, an International publication based in Amsterdam, Holland that examines current Chess opening theory. In yearbook Vol. 134, he published an article he wrote about 10, Qb8 in the Sicilian Dragon Yugoslav Attack. In yearbook Vol. 135 he published an article he wrote about the Chinese Dragon Variation and Yearbook, and in Vol. 136 he published an article he about an aggressive line for Black in the Kmoch Variation of the Nimzo-Indian Defense (the bane of every 1. d4 player, including Wayne himself).

Both articles in Yearbooks Vols. 134 and 136 tell stories as well as provide analysis. The Yearbook 134 article contains a practice game by Wayne against his computer and put a pin in the balloon of a Russian Grandmaster regarded as a Dragon expert by showing how what was previously reported as a great victory in the 10, Qb8 Dragon line that should have actually been a defeat for him.

Yearbook 136 has a pandemic lockdown correspondence game that Wayne played against a local player. Although they both were assisted by computers Wayne won convincingly for strategic reasons explained in the article. They actually played a 12 game match by e-mail that Wayne won with 4 wins, 0 losses and 8 draws.



Sheila Keane continued her volunteer docent work with Explore Buffalo and conducted bike and walking tours of South Buffalo. Sheila also got married in 2020 and in an effort to knock Wayne off the top of the mountain she hiked the rim trail of the gorge in Robert H. Treman State Park.

Jodie Zolnowski continues to work with Suneel's Light Foundation on raising funds to fuel research for treatments and a cure for Duchenne Muscular Dystrophy.

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 2020

we continued our ethics training initiative and developed proactive training programs designed to meet the needs of particular client groups.

A. Ethics Training and Policy Development.



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, and others who wanted to participate. 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.

In 2020, we maintained 100% compliance with JCOPE’s Comprehensive Ethics Training Course (2-hour live course) for all Financial Disclosure Statement filers who are required by law to take this training. In addition, we provided newly developed training from JCOPE designated as a live “Ethics Seminar” which is designed as a refresher course with a focus on key concepts and changes in the law.

Finally, we assisted in the development of several key NFTA Policies and Procedures touching on ethics and compliance including employee participation in Social Media (Policy #01-03-05, issued May 19, 2020), and a Vehicle Use Policy (Policy #03-02-13, issued March 10, 2020).

IV. Contracts/Negotiations/Opinions/Regulatory Compliance

The Office of General Counsel maintains an active transactional 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, provide opinions and to ensure compliance with laws, rules, and regulations. 2020 was a busy year for the transactional group with the brunt of the work being handled by Mary Perla. Here are some of the highlights.

A. Flight Aviation School at NFIA:

Mary Perla negotiated an agreement with OnCore Aviation Flight School who will be operating a flight school out of the Niagara Falls International Airport (NFIA). This will provide a new customer service at NFIA and excellent exposure for the airport.

B. New Fixed Base Operator at BNIA: Mary successfully negotiated an assignment of the FBO agreement at BNIA from Prior Aviation Service, Inc., to TAC Air. TAC Air is a large FBO which operates at several airports throughout the country and will provide upgraded services and equipment at BNIA.



C. COVID-19 Contractual Impacts: The impact of COVID-19 necessitated the renegotiation and amendment of several service agreements with entities operating out of BNIA and NFIA. Mary handled these negotiations and the subsequent arrangement resulted in significant operational savings for the airports and NFTA.

D. Hertz Bankruptcy: Mary worked with Hertz's bankruptcy attorneys to avoid having the NFTA go through complex bankruptcy proceedings. As a result of Mary's negotiations, Hertz agreed to assume the Hertz and Dollar Rent a Car Concession Agreements at BNIA and the Hertz Concession Agreement at NFIA and thereby cure its pre-petition bankruptcy arrears.

Additionally, Diane Noshay has had a busy year assisting the NFTA's Transit Police Department (TAPD) with numerous transactional matters and the development of critical policies and procedures. Here are some of the highlights.

- Successfully resolving approximately 120 "old property" cases with 88 letters mailed to persons who had a legal claim to currency and other property items, pursuant to NYS Personal Property Laws. Some of the currency was world-wide including Canadian, Rupees, and Taiwanese currency.
- Since July 2020, Diane was instrumental in getting approximately \$5,500.00 in U.S. currency (includes other currency converted to U.S. currency) deposited into an NFTA account. Ultimately some funds escheated to the NFTA after following appropriate notices being sent and following required waiting periods.
- As the NYS Legislature changed bail laws and other passed other bills impacting law enforcement, several police department policies were required to be changed including updating the Property and Bail Policies. Diane worked on updating these policies and advised on the impact of recent changes to the discovery rules in criminal proceeding.
- Diane continues her work with the Daigle Law Group to develop an updated set of all Policies that will ultimately facilitate the TAPD to become accredited with the State of New York.

V. Litigation

With approximately 1,500 employees and diverse operations from bus to light rail to aviation to property management, the Office of General Counsel handles a large volume and wide variety of litigated matters ranging from personal injury to commercial cases.

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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, John P. DePaolo, Debra Kashishian, and Sheila Keane continue to make an excellent team resulting in aggressive representation of the NFTA's interests in court. Although COVID-19 certainly impacted the judicial system, the success of this team was proven again in 2020.

As of December 1, 2020, the Office of General Counsel retained a litigated caseload of 203 personal injury files, including automobile negligence, premises liability, wrongful death, civil rights litigation and police professional liability files, with a total self-insured reserve of approximately \$4,849,480. The breakdown was 183 active litigated personal injury cases against NFTM, with a self-insured reserve retention of approximately \$4,646,460 and 20 active litigated personal injury cases against the NFTA, with a self-insured reserve retention of approximately \$203,020.

Of the 203 files, 196 are handled in-house by the Deputy General Counsel, Vicky-Marie J. Brunette, and Counsel, John P. DePaolo. Two (2) litigated cases are being handled by outside counsel, pursuant to indemnity agreements. Five (5) litigated matters are being handled by outside counsel due to a conflict. 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 2020, the New York State Unified Court System announced an unprecedented shutdown during the COVID-19 pandemic and, as a result, all non-essential civil trials were adjourned from mid-March, 2020 until the present, and have been suspended until such time that it is deemed safe to return to civil jury trials in the courtroom. This resulted in far fewer trials in 2020.

Vicky continued to manage the litigation caseload, which included instituting monthly litigation team meetings with the Claims group. She continued to actively participate on the NFTA's Management Team, including weekly COVID-19 staff calls and government affairs meetings, and is an active member of the Diversity and Inclusion Committee. She also assists the General Counsel with the overall operation of the Legal Department. In addition to her Deputy duties, on the litigation side of the house, it is estimated that Vicky appeared at approximately 81 pre-trial conferences; drafted and argued approximately 5 pre-trial motions; conducted approximately 43 depositions; conducted 7 mediations; and appeared for one Small Claims matter. She favorably negotiated resolution of approximately 17 Supreme Court cases short of trial.

John continues to expand his caseload in his fourth year with the Authority including motor vehicle negligence, premises liability, and police professional liability. John also works on No-fault provider suits that are sued in the Buffalo City Court. In 2020, it is estimated that John DePaolo appeared virtually or in-person at approximately 120 pre-trial conferences, conducted approximately 50 depositions, drafted and argued numerous motions to dismiss/compel, some of which resulted in cases or certain causes of action being dismissed, while others resulted in the Plaintiffs complying with long overdue discovery. John has continued to defend the NFTA and Metro by filing notices to admit,

notices to preclude and numerous motions to strike notices for physical examination and notes of issue. John has appeared in-person or virtually for 60 mediation sessions, one virtual binding mediation, one in-person binding arbitration and has conducted one jury trial. Between medical provider suits and litigated matters, John has favorably negotiated resolution of approximately 25 cases short of trial.

Of the 42 matters Vicky and John resolved, 13 involved no monetary contribution at all from NFTA or NFT Metro. The department saw one jury trial in 2020, handled by John.

Vicky is primarily assisted by Senior Paralegal, Debra Kashishian, who prepares trial notebooks and pleadings in addition to obtaining medical records and other discovery documents required for litigation and coordinating the retention of experts. In the virtual world that has become our new normal, Debbie also coordinates the resources, technology and staffing necessary to conduct virtual depositions. With a wealth of institutional knowledge about the organization, Debbie is regarded by others in the organization as a “go to” paralegal in the department.

John is assisted primarily by Paralegal, Sheila Keane. Sheila continues to grow as a valuable member of the Legal Department as well as the Authority as a whole. She has been instrumental in securing enhanced performance in collection of medical records under the HITECH Act to eliminate certain litigation expenses and requiring reimbursement from adverse counsel for copies of records we acquire. Sheila has also independently forged efforts across the department to expand and maximize our current electronic filing system and has created an effective electronic template for litigation files.

In 2020, there were 33 new cases filed against the Authority. Vicky, John, Debra, and Sheila had an outstanding year as demonstrated by the following highlights in 2020.

A. Williams v. NFT Metro, et al.

Plaintiff, then 29 years old, was the driver of a Toyota Camry that was stopped at a stop light at the intersection of Delaware Avenue and West Utica Street on January 6, 2015. The bus operator encountered snowy roads and was unable to stop completely although he was able to sound his horn before a collision occurred with the rear of the Plaintiff’s vehicle. Bus video captured the event. The rear bumper cover of the Plaintiff’s Camry was knocked to the ground on the right side. Plaintiff’s vehicle was able to be driven away with the Plaintiff in the passenger seat and her husband driving. Plaintiff claims that while at work she got a massive headache and felt nauseous. She was taken by ambulance to Erie County Medical Center. The Plaintiff was then treated and released. The hospital advised her to follow up with her family physician.

Plaintiff continued with subjective complaints primarily of headaches and some minor neck and back symptoms. Over time, Plaintiff claimed headaches that became more severe when she went to work. Despite not having a loss of consciousness and not having struck her head, medical practitioners started to surmise that the Plaintiff sustained a concussion without loss of consciousness. Based upon her subjective complaints, Plaintiff did not return to work.

We engaged numerous experts. The testimony at trial from the doctors established that the Plaintiff did not sustain any orthopaedic injury, brain injury or cognitive injury in the motor vehicle accident. A vocational expert established that the Plaintiff's earnings ability, based upon jobs available in the Buffalo market, was the same as it was before the subject accident. Surveillance and social media shown to the jury at trial provided overwhelming evidence that the Plaintiff was not disabled. She is a dynamic performer of stage poetry, and an avid traveler and socializer.

Before we incurred our expert expenses, we made an offer of compromise to the Plaintiff in the amount of \$25,000. Our highest offer was \$45,000 prior to trial.

The matter proceeded to a jury trial in New York State Supreme Court before the Honorable John Michalski, from March 9, 2020 through Saturday, March 21, 2020. Notable, this was the last trial, jury or otherwise, after the New York Pandemic Pause was ordered. Plaintiff's counsel asked the jury to award economic damages and pain and suffering damages of over \$5,000,000. Our position was that the Plaintiff sustained no injury and the jury agreed. After a short deliberation, the jury delivered a defense verdict and awarded Plaintiff nothing. No Appeal was taken. John DePaolo and Florina Altshiler (Russo & Toner) co-tried this case

B. Norris v. Williams, et al.

This action arises out of a motor vehicle accident that occurred on December 12, 2016 when a bus traveling westbound on William Street proceeded through the intersection of Elm Street on a green light and came into contact with a 2014 Subaru traveling southbound on Elm Street. Elm Street is one way headed northbound. The driver of the Subaru unexpectedly and illegally emerged from behind a brick building headed the wrong way on a one-way street. The operator of the bus was forced to brake and attempt to make an emergency stop to avoid the collision but was unable to do so. The driver of the Subaru was ticketed for disregarding the traffic signal and traveling the wrong way on a one-way street.

At the time of the accident, the Plaintiff, then 45 years old, was standing in the aisle of the bus with his back turned away from the front of the bus, preparing to pick up his bags when the accident occurred and he was thrust forward. As a result, Plaintiff alleges he sustained right shoulder and cervical injuries. He underwent a C3-4, C4-5, C5-6 anterior discectomy and interbody fusion on July 21, 2017.

Counsel for the co-defendant driver of the Subaru moved for summary judgment on the issue of serious injury. NFT Metro cross-claimed for summary judgment on the issue of negligence and argued that Plaintiff has not raised any triable issue of material fact during discovery that would support a finding that the bus operator violated the duty of care owed by a common carrier to a public bus passenger and that NFT Metro affirmatively met its duty of care. Additionally, Defendants also met their burden of proving that the bus operator was confronted with an emergency, not of his own making, when a vehicle entered the intersection of Elm Street and William Street,

traveling the wrong way on a one-way street, and his reaction to brake with enough force to attempt to stop the bus, sound his horn and steer to the left to avoid impact was a reasonable response to the emergency, which absolved Defendants of any liability for the collision.

In a decision rendered from the bench on January 15, 2020, the Honorable Paul Wojtaszek denied the co-defendant Subaru driver's motion, but agreed with NFT Metro and granted its motion and dismissed the Complaint. Vicky-Marie Brunette handled this matter.

C. **Duffy and Duffy v. NFTA**

On November 29, 2017 the Plaintiff fell at the Buffalo Niagara International Airport ("BNIA") as she walked in the concourse. She sustained a spontaneous rupture of the hamstring tendon. The alleged reason or cause of her fall was not identified. Transit Authority Police Department officers and BNIA personnel responded to a radio call of a slip and fall near Gate 8. Video evidence and testimony from the Plaintiff, JetBlue staff and Plaintiff's two (2) co-worker travelling companions established that the area where Plaintiff fell was in constant use by many travelers before Plaintiff fell, and even afterward by first responders without incident. Plaintiff did not identify any dangerous, unsafe or hazardous condition. The video showed Plaintiff rushing with elongated strides when her lead foot slid out ahead of her causing her to do a split.

Plaintiffs' demand at the outset was \$11,000,000. During a court conference the demand was reduced unofficially to \$750,000. The NFTA served a summary judgment motion seeking dismissal on liability grounds. In opposition, Plaintiff submitted an affidavit of an engineer who did not inspect the location where Plaintiff lost her footing, nor did he perform any testing of any sort regarding the coefficient of friction on terrazzo flooring that he concludes caused the incident. His affidavit was "bottomed upon nothing more than mere speculation and guesswork" and constituted nothing more than "junk science". The Honorable Timothy Walker granted the NFTA's motion for summary judgment. The Court rejected outright the assertions and conclusions of the expert according him "no weight for the same reasons articulated by fifteen (15) courts" in prior reported decisions. The NFTA filed a bill of costs to recoup some expenses associated with this defense. Plaintiff served a Notice of Appeal but has not taken any steps to perfect this appeal. John DePaolo handled this matter.

D. **Krug-Leach v. NFTA**

Plaintiff filed a motion seeking leave to file a late Notice of Claim against NFTA in connection with an alleged trip and fall that occurred on March 15, 2019. Plaintiff alleged she was walking on the sidewalk in a northwesterly direction on the east side of South Park Avenue in the City of Buffalo and tripped on what appeared to be an old sign post protruding from the concrete sidewalk. Plaintiff argued the remaining portion of the sign post was owned and maintained by the NFTA.

NFTA opposed the motion and provided evidence that neither NFTA nor NFT Metro had ever owned, located, relocated or maintained a bus stop sign, or any sign, or pole in the location of the "protruding sign post" identified by Plaintiff in her moving papers

as the site of her alleged trip and fall. In addition, Defendant further argued Plaintiff: 1) failed to demonstrate a reasonable excuse for failing to serve timely notice of claim; 2) failed to demonstrate that NFTA acquired actual knowledge of the essential facts constituting the claim within ninety days of its accrual or a reasonable time thereafter; 3) provided misleading photographic evidence to the Court in an effort to provide a basis for granting leave to serve a late Notice of Claim; and 4) the sworn affidavits, together with the photographic evidence provided in opposition, revealed any claim against the NFTA for the alleged trip and fall of March 15, 2019 would be frivolous and commenced in bad faith.

In an Order dated September 22, 2020, the Honorable E. Jeannette Ogden denied Plaintiff's motion. Vicky-Marie Brunette handled the matter.

E. **Washington v. NFT Metro**

Plaintiff, then 50 years old, was operating her 2003 Pontiac vehicle northbound within the Galleria Mall property upon the ring road on September 13, 2016. Bus #2629 was southbound on the same road commencing a left turn to enter the parking lot/bus stop area. The Plaintiff slowed, then stopped, as the bus was turning causing contact with the bus rear side and the Pontiac driver side rear. There was minimal cosmetic damage to the bus and the Pontiac. Plaintiff did not claim any injury at the scene and drove away after speaking with the bus operator, the Transit police and mall security. Bus #2629 was equipped with digital video surveillance and the video was downloaded and preserved for litigation.

Plaintiff alleged headaches, and neck and back injuries as a result of the accident in question. She testified at arbitration that the next morning she had pain down her left leg. The day after the accident, she saw her primary doctor and was sent to the Erie County Medical Center (ECMC) emergency room. She was diagnosed with back spasms and given baclofen. The Plaintiff lost some time from work as a surgical tech at ECMC. She began seeing a chiropractor three (3) times per week for continued back and neck complaints. She sought treatment from a spine surgeon in November, who performed an anterior cervical decompression and fusion on January 9, 2017. Plaintiff's treating surgeon reported that the surgery was causally related to the accident in question. Plaintiff returned to work on June 26, 2017.

We engaged a board certified neurosurgeon who conducted an exam on December 14, 2018 and issued a report finding an aggravation of pre-existing cervical conditions that were symptomatic previously, including as a result of a previous severe automobile collision on May 12, 2016 (four months before the bus accident). A cervical CT performed on May 12, 2016 was consistent with post-loss diagnostic studies.

Plaintiff contended she had the right of way and that the bus operator made an improper left turn across her path of travel in violation of the Vehicle and Traffic Law.

Plaintiff's initial settlement demand was \$950,000. Given our defense position, the bus video and the favorable IME report, John DePaolo was able to negotiate favorable

arbitration parameters of \$0 low and \$250,000 high, thereby limiting NFT Metro's exposure. John conducted the binding arbitration on October 23, 2020.

F. Cardona v. NFTA

On September 21, 2020, Claimant filed a Petition seeking leave to file a late Notice of Claim against NFTA in connection with a minor motor vehicle accident that occurred on June 19, 2019. Claimant alleged he was operating a tour bus and stopped at a stop sign at the arrival terminal of the Buffalo Niagara International Airport, at which time his vehicle was impacted by a Metro bus. The Metro bus operator reported that a van drifted into his lane of travel and the mirror of the bus came into contact with the vehicle. The Claimant alleged he sustained serious personal injuries to his neck, back, shoulders and forearms as a result of the accident.

NFTA opposed the motion and provided evidence that, pursuant to General Municipal Law §50-e, the Claimant: 1) failed to demonstrate a reasonable excuse for failing to serve timely notice of claim; 2) failed to demonstrate that NFTA acquired actual knowledge of the essential facts constituting the injuries or damages alleged as part of the claim within ninety days of its accrual or a reasonable time thereafter; and 3) the delay and failure would substantially prejudice the NFTA in maintaining a defense on the merits.

In a Decision and Order dated December 17, 2020, the Honorable Donna M. Siwek dismissed the Petition in its entirety. Vicky-Marie Brunette handled the matter.



VI. Labor and Employment

Providing legal support to NFTA managers who work with the NFTA's 13 unions is no easy task and 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/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 and matters Wayne handled in 2020 are listed below. The success in all these actions

reflects the Authority's commitment to non-discriminatory and fair terms and conditions of employment to all employees.

- A. Discharge of BNIA employee:** On March 1, 2020, an arbitrator sustained the discharge of BNIA employee who was involved in a runway incursion and an act of insubordination. The arbitration took five days of hearings and the award addressed and rejected the employee's claim of discriminatory discipline. Wayne handled the entire arbitration and his counsel was critical in obtaining this successful result.
- B. Dismissal of Federal Court case:** On March 31, 2020, a former NFTA employee executed a voluntary stipulation of dismissal with prejudice in connection with her Federal court discrimination action. This Federal court action was commenced on May 22, 2018 and alleged discriminated against the NFTA. By way of background, when NFTA management obtained information that the employee was endeavoring to support her claims by exporting to her personal e-mail account large amounts of Authority business records, the NFTA police promptly investigated and referred the matter to appropriate authorities. The former employee was subsequently indicted by the NY State Attorney General's Office on several counts of official misconduct in January of 2019 and pled guilty to one count of official misconduct on June 10, 2019. On December 10, 2019, the former employee paid \$10,000.00 in restitution to the Authority to mitigate the damages she caused by committing a data breach in connection with her plea of guilty to official misconduct. She subsequently voluntarily withdrew her Federal court action with prejudice in 2020. Wayne Gradl impressively handled every aspect of this matter including advice and counsel on the disposition of seized evidence and the defense of the criminal court action.
- C. No Probable Cause:** On May 4, 2020, the New York State Division of Human Rights issued a no probable cause dismissal on discrimination complaint brought by a former airfield supervisor at the BNIA. Wayne handled the arbitration and in May of 2019, an arbitrator ruled that employee was properly removed from his airfield supervisor's position for entering a SIDA secured airfield area without the required SIDA badge via and then ordering a subordinate to open a secured gate for him and then attempting to cover up this misconduct.

VII. Procurement:

If anyone thought the Procurement function was not all that important, welcome to the world of COVID-19 which required the Procurement Department to be operating at extremely high degree of efficiency to secure masks, cleaning supplies and other

critical PPE that was needed. The combination of the Office of General Counsel with the Procurement Department has strengthened and provided added focus to this important function and 2020 was a very busy year for the Procurement Department. The Procurement team is led by Mark Pereira and consists of Cindy Judd, Bruce IZard, Arlene Sebastian, Geraldine Richwalder, Katrena McCoy and Kenneth Reukauf. This talented group had an outstanding year and the NFTA greatly benefits from their wisdom and expertise.

A. Accomplishments:

- In response to the COVID-19 pandemic, the Procurement Department played a key role in the acquisition of critical PPE (masks, gloves, sanitizer, etc.). The purchasing team partnered with strategic vendors to communicate supply needs, ensure timely deliveries, and procure supplies at reasonable prices. Sigmund Kucewicz and the Central Storeroom Team took the lead and successfully managed the distribution of PPE supplies throughout the Authority.
- Through hard work and dedication, the Procurement Department quickly initiated best practices to maintain efficiencies in response to COVID related constraints. The RFP/Bid submittal process was converted to an electronic format and all RFP related meetings were conducting via virtual conferencing. In conjunction with the Legal Department, the Procurement Department implemented a paperless requisitioning process to provide greater visibility and ensure the timely approval of critical purchases.
- MWBE Program Performance: The NFTA scored an “A+” on the MWBE Program Performance Report Card from New York State. Through the diligent efforts of the Procurement Compliance Team, consisting of Bruce IZard and Arlene Sebastian, the NFTA achieved a 30% MWBE participation rate that resulted in a total MWBE spend of \$9.8 million for the rolling 4 quarters. A total of 58 MWBE suppliers were utilized in the procurement of goods and services.
- The Purchasing Compliance Team hosted a booth at the MWBE Virtual Forum event in December 2020. Thank you to Arlene Sebastian for coordinating the setup and design of the NFTA’s virtual booth. Also, Bruce IZard served as a panelist for the Small Business Matchmaker webinar to discuss major NFTA projects and MWBE involvement.
- As a result of the retirement of a key procurement leader and mentor, the newly established Procurement Management Team participated in department strategy meetings focused on compliance, efficiencies in

procurement processes (best practices), and collaboration between departments. As a result of these meetings, the Procurement Team is focusing on the following initiatives: automation (increased utilization of ERP system), process refinement (procedures including roles and responsibilities), and cost reduction. The Procurement Team's KPI Dashboard will assist with monitoring the team's success in managing these initiatives. Our goal is to reduce procurement cycle times by 40% while reducing administrative and acquisition costs.

- The Procurement Team identified over \$400,000 in cost saving/avoidance opportunities by leveraging suppliers, utilizing OGS contracts, collaborating with user departments to clarify scope of supply, and initiating smart procurement solutions.
- The Inventory Control Team set an aggressive inventory reduction strategy to increase inventory turns and reduce obsolescence. This strategy will result in an overall inventory reduction of approximately of \$250,000 while maintain a 98% fill rate.

VIII. Audits/Investigations:

Operating in a highly regulated environment, the NFTA is regularly confronted with agency audits and investigations in addition to statutory reporting responsibilities. The Office of General Counsel is frequently called upon to assist in these matters.

In 2020, Vicky-Marie Brunette, the NFTA's Deputy General Counsel, reported to and conferred with law enforcement on several significant matters including one that resulted in a criminal conviction and restitution to the NFTA. In addition, she continues to serve on the NFTA's Systems Integrity Committee, which conducts its own internal investigations at the behest of the Executive Director.

IX. Use of Outside Counsel

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. The philosophy of the office continues to be full maximum use of in-house staff, and to use outside counsel only when necessary and in the best interests of the NFTA.

X. Future Goals

The Office of General Counsel's goals for 2020 include; supporting initiatives of the Executive Director and the Board; continuing to support diversity in our employment

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practices and other activities; preparing and conducting training in areas such as procurement and ethics; facilitating Transit Orientated Development Projects such as development at the DL&W terminal and other Metro light rail stops; identification of revenue enhancement opportunities; continuing focus on cost controls for outside legal counsel; identifying new training and professional development opportunities; continuation of a strong litigation posture to defend any claims asserted against the NFTA, and identifying metrics to measure, manage and improve the performance of the Office of General Counsel.



End of Report