

Office of General Counsel

ANNUAL REPORT

2015

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



Introduction

2015 was an exciting and busy year for the NFTA General Counsel's Office as detailed in this Annual Report covering the period from January 1, 2015 through December 31, 2015. We are proud to have supported significant and transformative initiatives such as returning cars to Main Street, an upgraded fare collection system for our rail and bus operations, the new Niagara Street Transit Hub, a Compressed Natural Gas (CNG) fueling facility at Frontier Station, the Miller Lite Free Ride Program on St. Patrick's Day, public art displays at Cold Spring Bus Garage and Buffalo Niagara International Airport, Railcar Rebuild, the Canalside-Cobblestone study for rail expansion, the Amherst Buffalo Corridor Alternatives Analysis, and free public Wi-Fi in downtown Buffalo. Our incredible string of personal injury and commercial/regulatory litigation victories continued and we provided invaluable assistance to our Human Resources Department in successfully negotiating several collective bargaining agreements and obtaining significant arbitration awards. 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, 2015)

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.

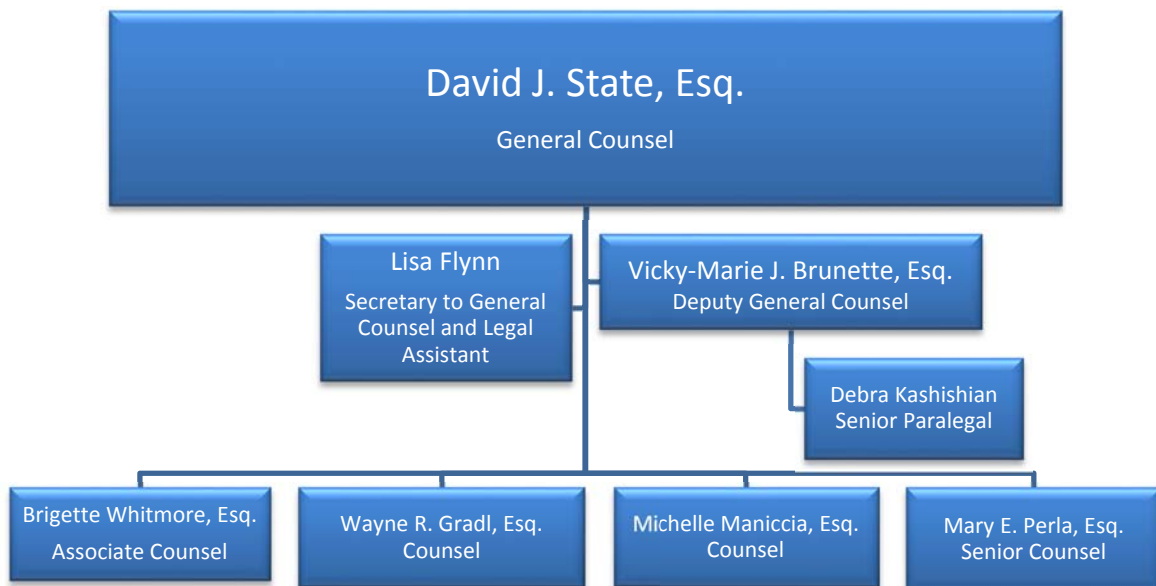
II. People

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. Highlights of 2015 were the promotion of Debra Kashishian to Senior Paralegal, the promotion of Mary Perla to Senior Counsel, and the addition of a new attorney, Michelle Maniccia, to our team.

We take pride in how our team pulled together following the retirement of a senior attorney while we searched for a replacement. Staff was asked to cover matters outside of their normally assigned areas and they did an outstanding job handling these duties. For example, Wayne Gradl (a labor lawyer) handled FOIL issues. Brigitte Whitmore (a litigator) handled transactional matters such as working on college contracts for bus service, a rail promotion agreement, and drafting a grant agreement for the NITTEC revolving loan fund. Mary Perla (a transactional/aviation lawyer) covered the busy surface group. Vicky Brunette (a litigator) took on additional responsibilities as the Director of Adjudication and remains responsible for the oversight of the Adjudication Department and appeals process pertaining to NOV's issued by TAPD and ticket inspectors. Vicky also took on additional responsibilities as the attorney member of a three panel in-house Board that conducts hearings related to appeals from suspension of paratransit service. Debra Kashishian and Lisa Flynn were both asked to work on matters outside their areas of expertise and simply knocked it out of the park. The work was comprehensively covered through the hard work and dedication of existing staff which also provided for a smooth and easy transition to Michelle who hit the ground running. This coverage also provided beneficial cross training to all of our staff that will serve us well in the future.

A. Personnel and Location

The General Counsel's office currently consists of a General Counsel, a Deputy General Counsel, a Senior Counsel, two Counsels, one Associate Counsel, one Senior Paralegal and one Secretary to the General Counsel/Legal Assistant. 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. 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 Wayne Gradl to the Annual Training Conference hosted by the New York State Public Employer Labor Relations Association in Saratoga, New York. Also, Vicky attended the "Women in the Law" seminar in Fort Lauderdale, Florida. This seminar is a premier educational and networking event for women, designed to enhance the legal skills and business acumen of women who work within corporate legal departments or law firms. The connections Vicky made at this seminar ultimately provided access to the fire safety engineer expert she retained in *Traina v. NFT Metro, et al.* to successfully resolve that case as detailed in the litigation section below. Vicky also attended CLE seminars on the use of social media in personal injury actions and the Affordable Care Act.

Michelle obtained CLE credit for Advanced Construction Contracts and attended webinar training provided by the New York State Authorities Budget Office regarding the legal, fiduciary, financial and ethical responsibilities of board members of a public authority. Brigitte obtained CLE credit on numerous topics including the New York CPLR, Effective Writing Skills, Social Media Evidence, and Deposition Skills; Discovery of Social Media Accounts and Admissibility; Electronic Case Management System in Federal Court; the 2015 Civil Practice and Procedure Update; and Debt Collection. Finally, Mary obtained CLE credit for topics such as the 25th Annual Real Estate Conference, the Attorney's Guide to Commercial Lease Negotiations, Advanced Construction Contracts, and Legal Descriptions, Title Insurance and Surveys in Real Estate Transactions.

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 2015, UB law student Colin Casey joined the team. Colin worked on diverse matters as displaying public art at Buffalo Niagara International Airport, contract law principles such as "cardinal change", Federal DOT contracting initiatives regarding local and geographic-based hiring preferences, revisions to the NFTA Commissioners' Code of Ethics, evidentiary issues and environmental law.

For the first time in the history of the program we had a summer intern from UB Law School. In the summer of 2015, Maisha Blakeney worked on several initiatives including breach of contract law and the implied covenant of good faith in labor law, policies and practices regarding appropriate information on intranet sites, naming rights of public assets, and performance bond research.

Finally, in the fall of 2015 we hosted another UB Law Student, Gregory Smith. Greg worked on a variety of matters including arbitrator authority, employee bonuses for referrals, policies and practices regarding property that is lost and found on the transit system, the interplay between the National Environmental Policy Act (NEPA) and the NY State Environmental Quality Review Act (SEQRA), trademarks, veterans issues in public transit, and research on clothing regulations for public transit customers pertaining to safety.

All of our 2015 interns showed outstanding ability and will make excellent attorneys. We look forward to future law students participating in this program.

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 completed a term as the Defense Trial Lawyers Association President for 2015 and will serve an Emeritus Term for 2016. She was also named Chair of the Nomination Committee for 2016. These are prominent positions in the legal community which will facilitate and improve upon the professional image of the NFTA. In addition, Vicky became an active member of the Defense Research Institute (DRI) – the leading international organization of defense attorneys and in-house counsel. Membership in DRI provides access to resources and tools for attorneys who strive to provide high-quality, balanced and excellent service to their clients and corporations. To her credit, Vicky was honored in 2015 by DRI with the Exceptional Performance Citation - “for having supported and improved the standards and education of the defense bar, and for having contributed to the improvement of the administration of justice in the public interest.”

Dave participated in a Buffalo Law Journal Forum titled “Dedicated to Diversity: Progress seen in Buffalo-area legal profession” as reported in the Buffalo Law Journal on January 19, 2015. In July 2015, Dave spoke at the Annual Training Conference hosted by the New York State Public Employer Labor Relations Association in Saratoga, New York on loss of qualifications and other bars to continued employment. In October 2015, Dave spoke at the Organization of Public Employers Negotiators on the Open Meetings Law and Executive Sessions. Dave was also appointed to the NFTA’s seat on the Board of the Erie County Industrial Development Agency and the Board of Bishop Timon-St. Jude High School, his alma mater.

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 2015 we continued our ethics training initiative, and also started proactive training programs designed to meet the needs of particular client groups.

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.

In January of 2015, we completed this training for all of our Financial Disclosure Statement filers as required by law, and others as a best practice. In total we have provided this training to approximately 65 individuals consisting of both NFTA Commissioners and NFTA employees, and other individuals at the Greater Buffalo-Niagara Regional Transportation Council and the Niagara International Transportation Technology Coalition who have benefitted from this ethics training. In April of 2015 we revised the Board of Commissioner's Code of Ethics to ensure our ethics policies are consistent with State laws, rules and regulations.

B. Proactive Training Initiatives

In September 2015, Michelle presented information on privacy and protected health information to the Health, Safety and Environmental Quality Departments. Her presentation covered topics including the Health Insurance Portability and Accountability Act (HIPAA), ADA, FMLA, OSHA and the NY Public Safety and Health Act.

One of our goals in 2016 is to continue these types of proactive training initiatives. In 2016, Michelle and Brigette are scheduled to present information to management team on ADA requirements and debt collection law and practice.

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. The large majority of this work is handled by Mary and Michelle but in 2015 it seemed that all of our staff dealt with transactional matters and compliance in one way or another. The following items represent some of the unique and significant matters that staff worked on in 2015.





A. New Transit Hub (Niagara Street): In December 2015, the NFTA opened its new transit hub on the City's West side. As Thomas R. George, the NFTA's Director of Public Transit noted, the hub concept is important because it provides the transit-dependent community better access to the

region and from this hub you can reach Niagara Falls, downtown, UB's North and South campuses, the Walden Galleria mall, Boulevard Mall and Buffalo State College and you can even get to your new job at SolarCity. The legal support work included acquiring the land necessary to construct the hub, dealing with adjacent landowners, and working on construction contracts with the contractors who were selected to perform the work. Mary stepped up to the plate and handled her aviation duties while at the same time providing critical support to the surface and engineering groups on this significant initiative.



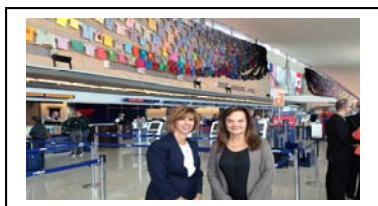
B. Compressed Natural Gas Fueling Facility (Frontier Bus Garage): On August 31, 2015, the NFTA in conjunction with Trillium CNG begun construction on a high capacity fast fill compressed natural gas fueling station at Metro's Frontier Bus Garage. Mary admirably handled the supporting transactional work leading up

to this ground breaking initiative that will provide a state-of-the-art facility to cover our future and current demands as we continue our transition to compressed natural gas as the fuel of the future for our fleet of buses.

C. Departure from Labor Management Healthcare Coalition/Fund: In September 2015, the Board authorized the NFTA/NFTM's departure from the Labor Management Healthcare Coalition/Fund (LMHF). The transition out of our relationship with the LMHF demanded a diverse set of legal skills and abilities since it involved labor, contract, health care, HIPAA and other legal issues and we could not have done it without Wayne and Michelle's assistance. Their hard work and dedication on this transition provided a tremendous amount of support, advice and assistance to our Human Resources department who led this initiative.

D. Rail Car Rebuild (Change Order): Rebuilding the NFTA's rail car fleet continues to be one of the most important and challenging initiatives for the NFTA. In addition to a recent change in the organizational structure of AnsaldoBreda (the primary contractor performing the rebuild work), this year presented a significant challenge dealing with a requested change order from the contractor due to the presence of lead on some of the original light rail vehicles. Mary and Michelle provided critical support to our engineering and surface groups to deal with these

challenges.



E. Public Art Initiatives (BNIA and Cold Springs Bus Garage): The Albright-Knox Art Gallery, through its Public Art Initiative, requested to display Kaarina Kaikkonen’s work titled “We Share a Dream” at the Buffalo Niagara International Airport. The work consists of donated apparel, rope and wire and is currently on display at BNIA. Mary was responsible for drafting the agreement to permit this use which covered insurance and indemnification responsibilities in addition to addressing engineering concerns. Mary did an outstanding job on this high profile display. In addition, the Ferry Street Corridor Project displayed over 20 digital images on the walls surrounding Cold Springs Bus Garage depicting that area of the East Side of Buffalo as it existed between 1920 and 1965. Our office negotiated and drafted the underlying agreements to support this important community initiative.

F. MTC Closure Plan: To address some security concerns, and to provide a cleaner environment to tenants and customers of the Metropolitan Transportation Center (MTC), our office provided support to an initiative to close the MTC to the public for two hours in the early morning. Vicky and Brigitte did an incredible job supporting this project by analyzing existing leases, researching signage requirements, penal obstructing/trespass laws, identifying best policies and practices from other transit centers and agencies, and addressing issues involving property management and the Transit Authority Police Department.

G. Traffic on Main Street (500 Block): As of 1 p.m. January 23, 2015 automobiles are back on the 600 block of Main St. sharing the road with Metro Rail, reversing restrictions that began in 1979. The 700 block was revised in 2009, and as of December 15, 2015 automobile are back on the 500 block. Before traffic could return it was necessary for the NFTA and the City to work out agreements detailing the rights and responsibilities for maintenance, plowing, towing etc. Michelle, although new to the NFTA, jumped into this high profile project and was able to successfully negotiate an agreement. Although this is a City project the NFTA has contributed greatly to this work. As NFTA Executive Director Kimberley A. Minkel explained, “The numerous enhancements to the streetscape will complement the \$6.65 million investment made by the NFTA to install new track and new concrete panels to enhance our riders traveling experience.”



H. Free Public Wi-Fi: M&T, working in conjunction with the University of Buffalo and the City of Buffalo, funded and installed a free public Wi-Fi network from North Street to the waterfront at Canalside. In that Wi-Fi infrastructure is installed on NFTA facilities it was necessary to draft an agreement to address

technical and legal issues. Mary was assigned this high profile project and did an outstanding job bringing it to a conclusion.

I. Free Ride the Rails (St. Patrick's Day): Miller Lite teamed up with the NFTA to provide free rides for all passengers on Metro Rail service throughout the day on Sunday, March 15, 2015. As Kimberley A. Minkel, NFTA Executive Director said, "We are delighted to be partnering with Miller Lite to provide free service for all of our customers on what is traditionally one of the busiest days of the year, as many people use the train to travel downtown to enjoy the parade, the Buffalo Home Show or other events." Our office negotiated and drafted the underlying agreements to support this community program.

J. Legal Opinions: Our office is often called upon to research legal issues and render opinions that will guide our client's decision-making. In 2015, our office issued several significant legal opinions. Notably, Michelle researched and drafted an opinion regarding the Government Accounting Standards Board regarding a pension issue, and Vicky researched and drafted a comprehensive legal opinion relative to the contents of records prepared and maintained in the ordinary course of business and what impact the Public Officers Law and HIPAA may have on disclosure of such records. This opinion was disseminated to the Management Team, as well as other employees who have raised concerns about privacy issues related to such records.

K. Buelle Road acquisition at BNIA and acquisition of property adjacent to NFIA: Working in conjunction with the Federal Aviation Administration, we are always looking to acquire properties adjacent to our airports that will allow us to better serve the aviation community and the public. In 2015 Mary was instrumental in negotiating the acquisition of land adjacent to the NFIA that will increase our runway protection zone and successfully negotiated a no cost public benefit conveyance of the Buell Road property adjacent to BNIA to the NFTA. These acquisitions are critical to the success of the Aviation Group and could not have happened without Mary's hard work and dedication.

L. Upgraded Fare Collection System: The NFTA is undergoing an \$18 million upgrade to replace the existing fare collection system used by bus and rail. As described by NFTA Public Affairs Director C. Douglas Hartmayer, “the new system will decrease passenger boarding time, provide better data for service planners, and financial tracking, and allow systems to interface.” Our office handled the underlying transactional work to get the project going and Michelle has been working diligently on contractual/bond issues to ensure that this project continues to go smoothly until completion.

V. Property Management

In 2015, the Property Management business center was reorganized and moved under the Engineering Department. This reorganization should facilitate and improve Property Management’s fulfillment of its mission 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. Although the Office of General Counsel will no longer perform a direct role in property management functions, our office will continue to provide transactional support to this important business center.

VI. 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. 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, Debra Kashishian and Lisa Flynn continue to make an excellent team resulting in aggressive representation of the NFTA’s interests in court. The success of this team was proven in 2015 with an outstanding no-cause verdict in a wrongful death action, handling two appeals in house from lengthy jury trials, and successful motion practice on a number of matters.

As of December 2015, the Office of General Counsel retained a litigated caseload of 206 personal injury, wrongful death and police professional liability files, with a total self-insured reserve of approximately \$2,869,985. The breakdown was 174 active litigated personal injury cases against NFTM, with a self-insured reserve retention of approximately \$2,536,035, and 32 active litigated personal injury cases against the NFTA, with a self-insured reserve retention of approximately \$333,950. Of the 206 files, 205 are handled in-house, the large majority by the Deputy General Counsel, Vicky-Marie J. Brunette. One litigated case is being handled by outside counsel, as the NFTA had insurance for that matter, with a low self-insured retention. Associate

OFFICE OF GENERAL COUNSEL

Counsel, Brigitte Whitmore, continues to handle the Health Care Provider litigation, as well as general premises and automobile negligence matters, and is now handling approximately 60 of her own active 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 2015 it is estimated that Vicky appeared at approximately 110 pre-trial conferences; drafted and argued approximately 20 pre-trial motions; conducted approximately 75 depositions; conducted 5 mediations; conducted 1 jury trial involving a fatality; drafted appellate briefs in two (2) appeals from full trials; argued one (1) appeal before the Fourth Department and Vicky and Brigitte favorably negotiated resolutions in 37 cases short of trial. Of those matters favorably resolved, 14 involved no monetary contribution from NFTA or NFT Metro. 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 Debra Kashishian who prepares trial notebooks and pleadings in addition to obtaining medical records and other documents required for litigation. In light of her many years of experience, Debra was recently elevated to the position of Senior Paralegal. Brigitte is assisted by Lisa Flynn, who similarly prepares documents and records required for litigation and has taken on increased responsibility in the litigation support area over the past year.

In 2015 alone, there were 62 new cases filed against NFT Metro and NFTA, as compared to 46 in 2014. Vicky, Brigitte, Debra and Lisa had an outstanding year as demonstrated by the following highlights in 2015.



A. Estate of Likos v. NFT Metro, et al:

This action arises out of a fatal motor vehicle accident that occurred on May 27, 2010 at approximately 12:00 p.m. on New Babcock Street in front of the Babcock Bus Station. A #4 line Metro bus was deadheading southbound on New Babcock Street and turning left into the Babcock Station when it was struck broad side, just in front of the right rear wheel well, by a motorcyclist traveling northbound. The motorcycle broke apart on impact and the operator came to rest on the pavement behind the bus in the northbound lane of travel near the centerline. The motorcyclist, 19 year old Tyler Likos, was pronounced dead at the scene.

The bus operator testified at deposition that prior to making his left turn, the roadway was clear of vehicular traffic. As he was three quarters of the way through his turn, he heard and felt an impact toward the right rear side of the bus. New Babcock Street is a straight and level paved roadway in the area where the accident occurred. The posted speed limit is 30 m.p.h. The road conditions were dry and the weather was clear and sunny. The bus was equipped with a digital video surveillance system and the Babcock Station was outfitted with several exterior security cameras. All available video was downloaded and preserved for litigation.

The Transit Authority Police Department's Accident Investigation Unit (TAPD AIU) handled the investigation at the scene. They sought the assistance of an outside police agency to reconstruct the speed of the motorcycle in an effort to avoid any potential argument that they were biased in any way. Numerous witness accounts, video evidence and the accident reconstruction analysis indicate that the motorcycle was traveling a minimum speed of 92 m.p.h. just prior to impact. In an abundance of caution, we retained an independent accident reconstructionist to review the matter. He reported that the reconstructed position of the motorcycle was over 850 feet away just prior to the bus operator engaging his left turn. Based upon the pre-impact path of travel and time of travel, the re-constructed pre-impact speed of the subject motorcycle was in excess of 100 m.p.h. He opined that the actions taken by the motorcyclist in traveling at a speed in excess of three times the legal speed limit and requiring over six times the necessary stopping distance because of the excessive speed traveled, was a substantial factor in the cause of the accident. He further opined that the bus operator, traveling at approximately 26 m.p.h., was reasonable and prudent and his actions were not a substantial factor in the cause of the accident.

At the time of the accident, the 19 year old decedent was operating a 2009 Yamaha R6 motorcycle. He was employed at Metro Pizza and was a student at Erie Community College. He was unmarried, had no children and lived with his parents. His mother, on behalf of the Estate, alleged that the bus operator was negligent in making a left turn and failing to yield to the motorcyclist, thereby causing his death. The Plaintiff further alleged that Tyler Likos suffered pre-impact terror and conscious pain and suffering. None of the witnesses at the scene indicate any consciousness after the impact.

We retained a forensic pathologist to address the allegation of conscious pain and suffering. He opined that the injuries sustained by Mr. Likos were so severe that he was immediately rendered unconscious and that there is no documentation of him ever regaining consciousness at any time thereafter. The totality of his injuries caused extremely rapid death, during which time he was not conscious.

In addition to the above expert witnesses, we also retained a toxicologist who analyzed blood samples taken during the autopsy. The toxicologist opined and reported that Mr. Likos was impaired with THC at the time of the accident. The nearly equal ratio of active THC to carboxy metabolite indicates that he smoked marijuana approximately 15 minutes before the accident. In the toxicologist's opinion, the decedent's reaction time and ability to control his motorcycle were impaired and his perceptual abilities, including time period judgment abilities, were also impaired.

Jury selection was conducted on September 17, 2015, with the case to proceeding to a jury trial on September 21, 2015 in New York Supreme Court. After six days of an emotionally charged trial, the Court directed a verdict against both parties on the issue of negligence. In light of the Court's ruling, the jury was left to determine whether the negligence of either or both parties was the proximate cause of the accident, as well as to determine the nature and extent of any damages.

During summation, Plaintiff's counsel asked the jury to award the following damages: \$3,671 for funeral expenses; \$11,000 for the cost of the motorcycle; \$500,000 for pre-impact terror; \$1,557,241 for future pecuniary loss to the decedent's mother; \$1,557,241 for future pecuniary loss to the decedent's father; and \$250,000 in future household services.

After thirty minutes of deliberation, the jury returned a verdict in favor of NFT Metro and found that the actions of the bus operator were not the cause of the accident and death of Tyler Likos.

Plaintiff's counsel has filed a Notice of Appeal, but has yet to perfect the 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.

Vicky, and her team deserve a tremendous amount of credit for this favorable resolution. This is a significant case for the NFTA on several fronts. First, the case involved a fatality resulting from an accident between a motorcycle and a bus, and presented significant financial exposure to the NFTA. The plaintiff's attorney asked the jury for nearly \$4 million in damages. Second, because the case involved a fatality, it understandably generated a high level of emotion from all parties involved including the decedent's family, our bus driver and his co-workers at the Babcock Station where the accident occurred. Vicky demonstrated an extremely high level of professionalism and sensitivity throughout this case in this emotionally charged environment. Finally, the law firm of Paul William Beltz (an extremely competent law firm that specializes in these cases with a high level of success) tried the case against Vicky. With her successful defense, Vicky joins a very small club of lawyers who can say they obtained a no cause verdict against the Paul William Beltz law firm.

B. Traina v. NFT Metro, et al:

This action arises out of a motor vehicle accident that occurred on January 13, 2010 at 9:47 a.m. Paratransit access line (PAL) van #8106 was traveling south on Military Road in the City of Buffalo when the fire suppression system inadvertently and unexpectedly discharged. The interior of the PAL van filled with a cloud of white smoke/fire suppression material which also began to surround the outside of the van. Shortly after discharge, the PAL van operator stopped in her lane of travel, as her vision became obscured by the fire suppression material. The Plaintiff, then 51 year old Joseph Traina, was operating a 2005 Chevrolet Silverado southbound on Military, following behind the van at approximately 25 m.p.h., and ultimately collided with the rear of the PAL van. An unsecured two-wheel dolly located in the bed of Mr. Traina's pickup truck came through the rear window and struck Mr. Traina in the back of the neck and shoulder. Mr. Traina testified at deposition that he observed a small Metro bus ahead of him. As he continued southbound on Military, he alleges he drove into a large cloud of smoke and did not see that the van was still in front of him and had stopped. He attempted to brake but made contact with the bus. The bus sustained no damage and the Silverado sustained approximately \$2,000 damage to the front bumper.

The PAL van was equipped with a digital video surveillance system that captured portions of the incident in question. The video was downloaded and preserved for litigation. Mr. Traina complained of knee/leg pain at the scene of the accident, but did not require transport for medical attention. Defendants' first notice that Plaintiff intended to pursue a claim for bodily injuries allegedly sustained in this rear end accident was upon receipt of a Notice of Claim on or about April 8, 2010 wherein the Plaintiff alleged neck, shoulder, low back and leg injuries as a result of the accident.

PAL van #8106 was equipped with an Amerex dry chemical fire suppression system. Bus maintenance personnel at the Frontier garage had made a repair to the actuator on the fire suppression bottle approximately 45 minutes before the accident, in light of a reported defect of the system by another operator, as well as an audible alarm indicating that there was a defect. The system checked out "okay" following the repair and a short road test. After the accident, the component parts of the Amerex fire suppression system (with the exception of the wiring) were replaced and discarded in the ordinary course of NFT Metro's business. There was no request or Order to preserve the component parts; therefore they were not preserved for inspection and testing. In light of the foregoing, Plaintiff requested a spoliation of evidence charge/sanctions against the Defendants. We successfully opposed such application during pre-trial motion practice.

The Plaintiff initially sought treatment at Millard Fillmore Suburban Hospital where he was treated for contusions of the leg, neck sprain and shoulder sprain and released. Continued complaints led to further treatment with a variety of doctors.

An MRI performed on March 18, 2010 revealed degenerative changes with no evidence of acute injury, according to our expert. On October 19, 2011, Michael Landi, M.D. performed a right L5-S1 microdiscectomy. Dr. Landi reported that Mr. Traina may need an additional future low back surgery.

Mr. Traina has not returned to work since the accident of January 13, 2010. At the time of the accident, the Plaintiff was employed by Amazon Vending as an Operations Manager and was earning approximately \$41,600 per year. The Plaintiff has been deemed totally disabled from work and has been receiving Workers' Compensation and Social Security Disability benefits.

The Plaintiff underwent an independent medical examination at the behest of the defendants on July 16, 2013. The orthopedic surgeon who examined him reported that Mr. Traina had a long standing history of low back complaints with two surgical recommendations prior to the accident in question. He further reported that the same complaints he had following the accident were also noted prior to the accident. The medical records revealed Mr. Traina also had a long standing history of neck and arm complaints. Both symptom complexes pre-date the accident of record. The orthopedic surgeon opined that the Plaintiff suffered no acute injuries to his musculoskeletal system and did not require surgery as a result of the accident of January 13, 2010.

Plaintiff's counsel disclosed that he intended to call an accident reconstructionist, in addition to Plaintiff's orthopedic surgeon, to testify at trial. We retained an accident reconstructionist, a fire safety engineer and an orthopedic surgeon to testify at trial. Deputy General Counsel, Vicky-Marie J. Brunette, worked diligently to successfully negotiate down from Plaintiff's initial demand of \$750,000 to resolve this case. In an effort to avoid the increased costs of a jury trial, we offered nuisance value for a lumbar fusion. This was finally accepted after protracted litigation and shortly before jury selection, which was scheduled for January 7, 2016 in New York Supreme Court.

C. 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 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. Plaintiff's Counsel filed an appeal before the Fourth Department, Appellate Division. Vicky drafted the Respondents' brief and argued in support of upholding the jury verdict before the appellate court on December 3, 2015. We are currently awaiting the Fourth Department's decision.

D. 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 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, Brigette Whitmore, was second chair and Paralegal, Debra Kashishian, provided litigation support. Plaintiff's Counsel filed an appeal before the Fourth Department, Appellate Division. Vicky drafted the Respondents' brief and oral argument is scheduled for February 23, 2016.

E. Prince v. NFT Metro et al:

We were sued by a bus passenger for soft tissue injuries resulting from a vehicle that ran the red light and struck our bus in the middle of an intersection. The bus video clearly captured that the bus operator had a steady green signal as he entered the intersection of West Delevan and Elmwood Avenue in the City of Buffalo. Our bus operator testified that because it was a busy intersection with some sight obstructions, he slowed as he entered the intersection, which was corroborated by the video.

At the conclusion of discovery, Brigette made a motion for summary judgment. In opposition, Plaintiff's counsel argued that because the bus operator's head or neck do not visibly move when entering the intersection that he did not look as he entered the intersection, which was contrary to his deposition testimony. Brigette advocated for the NFTA and emphasized that there was no evidence to contradict that he looked with his eyes and that if the court denied our summary judgment motion that we might have to change our training manuals to ensure that our bus operators are visibly turning their heads, necks, and perhaps torsos, even when the bus operators have the right of way to proceed through an intersection so that we are not exposed to liability. The trial court granted the summary judgment motion agreeing that there was no negligence on our driver's behalf in his operation of the bus as he entered the intersection, and further, that there was no evasive action

that the bus operator could have undertaken to avoid the accident.

F. Commercial/Regulatory Litigation: We had two major commercial/regulatory cases that we resolved in 2015. Mary Perla was assigned to work on these matters with the NFTA's outside commercial litigation counsel and they had some outstanding results.

1. DiPizio v. NFTA: DiPizio Construction Company, Inc., (DiPizio) and NFTA entered into a contract on July 8, 2004, in the amount of \$25,587,000 for the BNIA Runway 5-23 and Taxiway A Extension and Rehabilitation Project. DiPizio was issued a Notice to Proceed on July 29, 2004. During construction, the parties mutually agreed to numerous change orders. In addition, DiPizio presented claims to the NFTA in the amount of approximately \$3 million consisting of increased costs to accelerate work, and increased asphalt and fuel prices. Some of these claims were resolved but ultimately DiPizio commenced litigation against the NFTA in New York State Supreme Court on February 2, 2009 seeking approximately \$5 million plus interest, costs, disbursements and attorneys' fees.

Following discovery, the NFTA filed a motion for partial summary judgment seeking dismissal of the largest components of DiPizio's claims on grounds that there were no disputed issues of fact requiring a trial of such claims. The Trial Court granted the NFTA's motion and the Fourth Department affirmed following an appeal by DiPizio. The remaining claims were then set down for a jury trial. As the trial approached the NFTA filed a motion to preclude evidence on certain claims and made a second summary judgment motion. At this point, Traveler's Insurance, who was subrogated to DiPizio's claims due to Traveler's completion of an unrelated project, entered the litigation. Settlement talks ensued and Travelers agreed to settle the action for \$50,000 and provided the NFTA with a general release and an indemnification against any further claims by DiPizio.

This longstanding litigation was brought to a conclusion due to the focus and hard work of Mary working with our outside counsel. The resolution was extremely favorable to the NFTA and would not have occurred without Mary's dedication and perseverance.

2. Westover Car Rental LLC v. NFTA: Westover is the operator of an off-airport parking service and off-airport car rental operation at 4301 Genesee Street across from the Buffalo Niagara International Airport. On September 20, 2013, Westover sued the NFTA alleging that the NFTA limits access to their customers, requires excessive and unfair access fees which are not consistent with other agencies, and is interfering with Westover's operations in an attempt to put them out of business. On November 15, 2013, the NFTA filed a motion to dismiss the entire action, rather than undergoing expensive and time consuming discovery. On June 6, 2014, the Trial Court granted, in part, the NFTA's motion and dismissed five of the six causes of action. Both parties appealed to the Fourth Department. On November 20, 2015,

the Fourth Department ruled that the NFTA's motion should have been granted in its entirety and dismissed the complaint. Among other things, the Court concluded that the fees charged for access to the airport are "a reasonable levy and do not constitute an objectionable burden on interstate commerce."

Further appeals may follow, but Mary's experience and comprehensive knowledge of airport operations contributed greatly to this favorable result.

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 and matters Wayne handled in 2015 are as follows:

A. Brunner Arbitration Award: The ATU took the position that the rule against extending vacations by calling off sick before or after a scheduled vacation was essentially an employee benefit that employees could use to extend their vacations so long as they were willing to absorb the disciplinary suspension that would extend their vacations even further. Employees taking advantage of this "option" for extending vacations contributed to staffing shortages in the Maintenance Department. As a result of Wayne's successful advocacy, the arbitrator accepted management's position that the rule against extending vacations by calling off sick before or after a scheduled vacation is not an employee benefit to use whenever an employee desires additional time off around a scheduled vacation, but a work rule that employees are generally expected to obey and, therefore, management could discipline persistent violators of this rule more severely than the punishment prescribed for the single or isolated violation.

B. EEOC (No Probable Cause Finding): A former employee filed a complaint with the EEOC alleging that she had been unlawfully terminated due to her gender. Wayne provided a cogent and thorough response denying the allegations and demonstrating why the employee was lawfully terminated. After an investigation the EEOC determined that there was no probable cause to the complaint.

C. Collective Bargaining Negotiations: In addition to handling numerous arbitrations and grievances, Wayne assists the Human Resources Department in collecting bargaining negotiations and reaching agreements that are fair to both labor and management. This year we were able to successfully settle four labor contracts

due to Wayne's hard work. Among other successful negotiations, agreements were reached with the Police Benevolent Association, and the Teamsters 264 Police Lieutenants & Captains.

D. Return to Service Inspection Arbitration Award: The ATU took the position that newly devised "Return to Service" bus inspections were of a nature that only a mechanic at the Specialist level could perform them. Wayne successfully argued that the ATU's position ignored the reality that both A Mechanics and Specialists have been performing the same type of bus inspections for a quarter of a century and that this joint duty is set forth on both the A Mechanic and Specialist job descriptions. Due to Wayne's advocacy the arbitrator upheld the Company's position and ruled that performing Return to Service Inspections were within the scope of the regular work of both A Mechanics and Specialists.

E. Bell Arbitration Award: An ATU member failed to disclose requested medical history concerning any prior neck or spine injuries and then after several years of employment began a Workers' Compensation leave for alleged neck and spine injuries after a minor accident while driving her bus. During the processing of her Workers' Compensation claim management discovered that prior to becoming employed with the Company the employee had been involved in two prior car accidents for which she had claimed and sued for serious neck and back injuries. The Company attempted to void Ms. Bell's employment without regard to her grievance and arbitration rights under the collective bargaining agreement with the ATU arguing that her employment was void in its inception given that she only obtained employment by withholding pertinent medical history.

In the alternative, the Company arbitrated whether Ms. Bell had the right to challenge the voiding of her employment for withholding pertinent medical information at the time of hiring via the Union contract's grievance and arbitration provisions. Wayne successfully presented the NFTA's case and the arbitrator ruled that although the employee was entitled to challenge the voiding of her employment for withholding material medical information at the time of hiring via the contractual grievance and arbitration provisions, the withholding of material medical information from the Company at the time of hiring and at subsequent medical examinations provided "just cause" for terminating her employment and upheld the termination.

VIII. Audits/Investigations:

Operating in a highly regulated environment, the NFTA is regularly confronted with agency audits and investigations. In 2015, the NY Office of the State Comptroller (OSC) conducted an audit of the NFTA's capital maintenance planning and implementation. 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. Michelle did an outstanding job working the NFTA's Director of Internal Audit to prepare the NFTA's responses to OSC's draft findings. The final audit has yet to be released by OSC but it is not expected to contain any significant negative findings against the NFTA. Our office also assisted with the NFTA's response to the Federal Transit Administration FY 2015 Triennial Review.

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 2015, including a complaint about alleged improper treatment of a customer at the Buffalo Niagara International Airport by security personnel.

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. The brunt of our outside litigation assistance was required for a complex commercial case stemming from paving work done at the Buffalo Niagara International Airport and a constitutional challenge to our airport access fees. Through the efforts of Mary Perla, working with those outside law firms, both those cases have been resolved favorably to the NFTA. We are using an outside firm to assist in the transfer of the Port Terminal Complex to ECHDC due to its environmental complexity. We also utilized an outside labor law firm to assist in the continuing collective bargaining negotiation with the ATU impasse resolution and we hope that those efforts will result in a contract that is fair to both management and the hard working members of the ATU. We continue to strive to use outside counsel only when absolutely necessary.

X. Future Goals

The Office of General Counsel's goals for 2016 include; supporting initiatives of the Executive Director and the Board, finalizing the transfer of the Port Terminal Complex to ECHDC, finalizing the leasehold arrangement at the Metropolitan Transportation Center (MTC), identifying litigation trial opportunities for our Associate Counsel, development of additional proactive training initiatives, 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; continuing focus on cost controls for outside legal counsel; identifying new training and professional development opportunities; and developing a more focused legal outreach program.



End of Report