

Office of General Counsel

ANNUAL REPORT

2021

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



Introduction

The popular Wayne Gretzky quote “I skate to where the puck is going, not where it has been” came to mind as I put together this report and reflected on our accomplishments in 2021. Although Gretzky’s plan of attack may sound straightforward to some, it takes a tremendous amount of energy, diligence, foresight, and commitment to successfully make this happen. In 2021, the Office of General Counsel, Procurement and the newly added Administrative Services Office met and exceeded the challenge, and we are so excited to present the details in this report. Again, this year, I feel 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.



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 (Manager of Administrative Services and Assistant to General Counsel).

*General Counsel
David J. State (December 31, 2021)*

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.

2021 was a transformative year for the structure of our office. The Office of Administrative Services was added to our oversight responsibilities with Jodie Zolnowski being named the Manager of Administrative Services. Also, Michael Flaherty was hired as Counsel and is handling transactional matters for the Surface group, in addition to other duties.

A. Personnel and Location

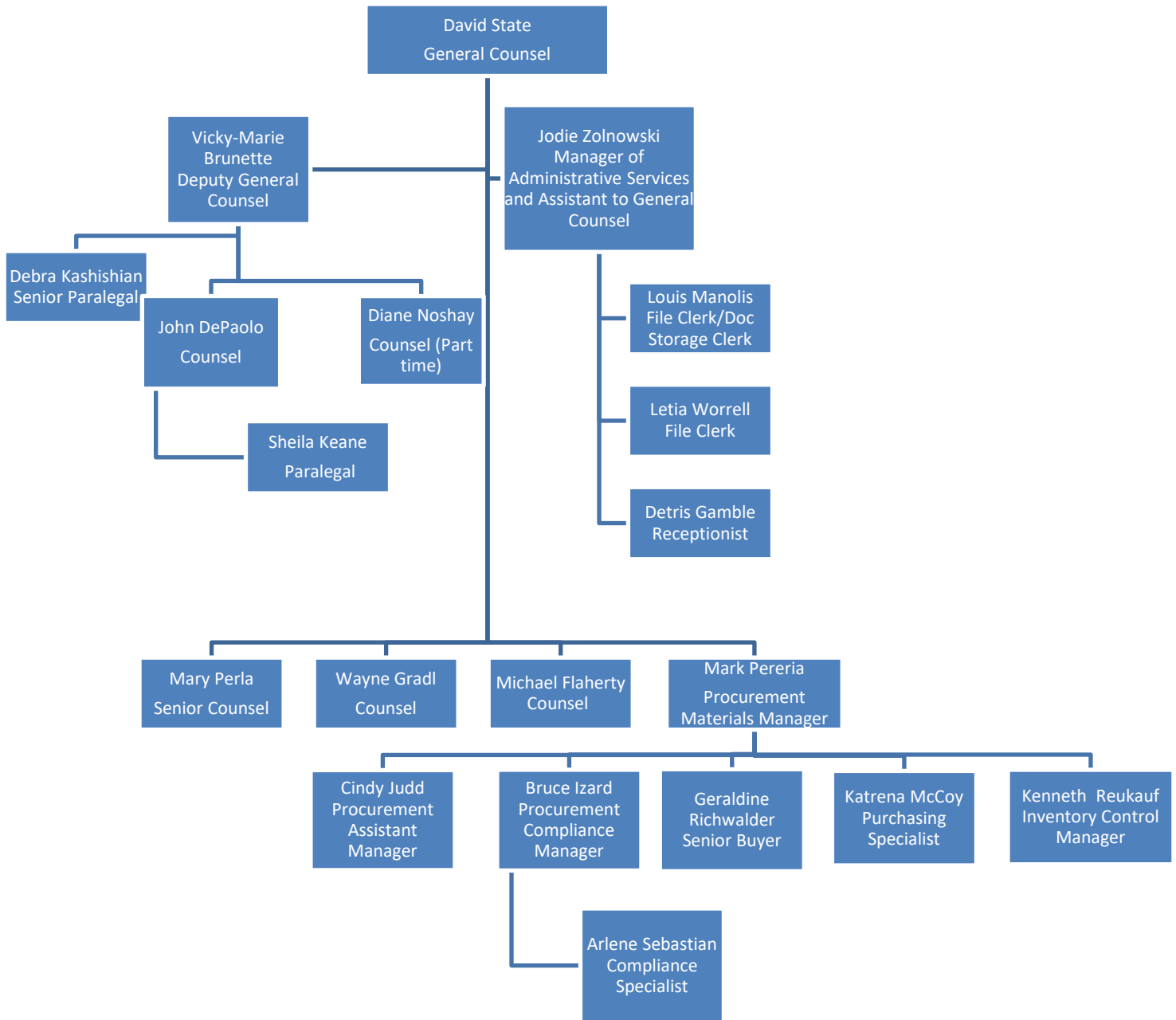
The Office of General Counsel consists of a General Counsel, a Deputy General Counsel, a Senior Counsel, three Counsels, one part-time counsel, one Senior Paralegal, one Paralegal and Assistant to the General Counsel, and one Paralegal. The majority of the Legal Staff is located on the 6th Floor of the 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.

The Office of Administrative Services is led by Jodie Zolnowski as the Manager of Administrative Services.

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

OFFICE OF GENERAL COUNSEL



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 16.5 hours of CLE credits and instruction in a variety of topics offered by the New York State Academy of Trial Lawyers, including: 1) The Trauma of Terror: Exploring Pre-Impact and Pre-Death Damages; 2) New Uniform Rules for Supreme and County Courts: The Basics; 3) How to Get Inside the Mind of the Jury... Virtually; 4) Taking the "Ummm" out of SUM/UM Coverage; 5) Structural Racism and the Law; 6) HiTech, Low Cost: Obtaining Your Client's Medical Record, Audit Trail and More; 7) Ethics Update; 8) Ethics Issues that Keep Lawyers Up at Night; and 9) New York Appellate Practice in the Time of COVID-19. Vicky also earned CLE credits through the American Public Transportation [APTA] Legal Affairs Virtual Mini Seminar.

Mary Perla attended Cybersecurity and Technology for Attorneys, The Six Rights of the First Amendment and Confronting Bias in the Legal Profession.

Wayne Gradl attended the 46th Annual Labor Relations Conference in Saratoga Springs.

In 2021, John earned over 30 credit hours of virtual CLE instruction, through the New York State Academy of Trial Lawyers [NYSATL] and the American Public Transportation Association [APTA]. NYSATL topics included How to Get Inside the Mind of the Jury, Stopping Deposition Obstruction Dead in its Tracks, Culture Changing Conversations for Lawyers, and Ethics, Diversity and Inclusion. During March and June, John attended two APTA Legal Affairs Virtual Mini Seminars. These seminars presented up-to-date Federal Transit Administration details, Multi-agency project lessons, Buy America and Procurement pointers, and Updates on Legislative issues for Public Transportation in 2021.

Michael Flaherty attended the American Public Transportation Association 2021 Legal Affairs Virtual Mini Seminar, New York Appellate Practice in the Time of COVID-19, Discriminating in Death: How New York's Limitation of Wrongful Death Damages to Pecuniary Loss Perpetuates Gender, Racial, Age and Class Discrimination, No Safe Place: Recognizing and Responding to Intimate Partner Violence and Technology- Facilitated Abuse and Microsoft Outlook for Lawyers.

On January 15, 2021, Dave lectured to over 1400 Code Enforcement Officials on ethics

and other topics. This presentation was done virtually through a collaboration with NY State Department of State, and at their request. Dave also passed the United States Patent Trademark Office Bar Examination and is now registered as a Patent Attorney.

In 2021, Debra Kashishian attended the following professional development webinars: 1) Critical Changes in New York's Rules: Hyperlinking and Bookmarking Briefs; 2) New Uniform Rules for Supreme and County Courts: The Basics; 3) New Uniform Rules for Supreme and County Courts: The Implementation; 4) HiTech, Low Cost; Obtaining your Client's Medical Records; 5) Don't Let Zoom be a Four Letter Word: Embracing Virtual Practice and Regaining Power to Move Your Cases; and 6) New York Rules, New Practice Applying Commercial Rules to Trial Parts.

Sheila Keane attended the following professional development webinars: 1) New Rules for Supreme Court; 2) Critical Changes in New York's Rules: Hyperlinking and Bookmarking Briefs; 3) Don't Let Zoom be a Four Letter Word: Embracing Virtual Practice and Regaining Power to Move Your Cases; 4) Anatomy of a Trial, a Trial Skills Series (Part I); 5) Medical Record Audit Trail & More; 6) Accident Reconstruction; and 7) HiTech, Low Cost; Obtaining your Client's Medical Records.

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. He also lectured on ethics and other legal matters to various Code Enforcement Official organizations.

In 2021, Vicky-Marie Brunette was selected again 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 on as Social Co-Chair of the Defense Trial Lawyers Association of WNY. Vicky completed a second term as the Delaware Women's Golf Club's Marketing and Publicity Chair for 2021.

John DePaolo is presently active with the Rotary Club of Buffalo, serving on the grants committee. John continues to coordinate with multiple Rotary clubs all along the Niagara Greenway to make improvements and extensions to the nature trails between Buffalo and Lake Ontario. John continues as the Education Chair of the Defense Trial Lawyers Association of WNY, which presented numerous Legal Seminars for all members. His homebrewed Chancellor's Holiday Ale won first prize in the Santas of Swig fundraiser in December 2021, which helped raise funds for the Matt Urban Hope Center. Over 100 toys and \$3,445 dollars were collected.



Sheila Keane climbed Mt. Jo in the Adirondacks at an elevation of 2,876 feet. She also spent a morning at the Feed More WNY warehouse filling boxes of food to be delivered to one of 3000 food pantries in the WNY region and her participation in this was with her yoga friends at Space on Seneca. Finally, Sheila participated in raising \$1200 for the EM Cotter Fireboat.

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.

Michael Flaherty continued his service on several civic boards and organizations including as a Member of the Board of Directors Buffalo Police Athletic League (PAL); a Member of the Board of Directors Buffalo Therapeutic Riding Center (BTRC); and President, Community Council, Newman Center at Buffalo State College.

III. Commitment to Diversity, Equity and Inclusion

The NFTA has a strong commitment to diversity, equity and inclusion as demonstrated by our adoption of the NFTA's Diversity and Inclusion Strategic Plan. To achieve the objectives of that Plan, the Office of General Counsel developed and implemented two programs to ensure that we are using our resources to enhance professional opportunities and development for underrepresented populations.

Externship Program for UB Law Students. In collaboration with members of the Minority Bar Association of Western New York and UB Law School's Externship and Judicial Clerkship Program, the Office of General Counsel established an externship program. 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. This program is open and available to all UB Law students; however, we place particular emphasis on attracting interested students from underrepresented populations.

Diversity and Inclusion Mentoring Program (Paid Legal Internship). Research indicates that to establish a successful workplace diversity program, creating more opportunities for continued engagement is critical. These engagement opportunities can come in many forms, one of which being mentorship programs. Mentoring is a vital component when trying to recruit diverse talent. Women and minorities were more likely to say that mentoring was an important aspect of their career, one study found. Given the findings that indicate that mentors play such an instrumental role in the career progression of diverse talent, it is imperative that organizations, like the NFTA understand how to effectively establish mentorship programs when trying to recruit diverse talent. It is also important for employees from underrepresented backgrounds to understand how to effectively and strategically seek out mentors. To meet these objectives, the NFTA established a paid legal internship program. A tremendous amount of credit and thanks is given to Vicky-Marie Brunette and Helen Tederous (the NFTA's Director of Public Affairs) for establishing this program. We are proud that the first participant in the program is Allana Benton, a 2021 graduate of UB Law School. Allana has been an outstanding addition to our office and has assisted in legal research, litigation, and marketing/public relations matters.

IV. Outreach and Preventive Law

In keeping with the Wayne Gretsky quote, 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 2021 we expanded our ethics training initiative and provided proactive procurement training to interested employees.

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, 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 2021, 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 are preparing to implement Governor Hochul's Executive Order No. 10 which requires employees who are new to state service to participate in live ethics training within 60 days of the commencement of their employment. We anticipate rolling out a compliance program in 2022.

B. Procurement Training.

On October 6, 2021, members of the Office of General Counsel and the Procurement Group provided procurement training to employees. The presentation was given by Mark Pereira, Cindy Judd, Bruce Izard, Sean Fitzpatrick (Sean is from the EEO office), Michael Flaherty and Dave State and covered such topics as procurements under the Procurement Guidelines, MWBE/SDVOB programs, DBE, preparation of Board resolutions, and Ethics.

V. Administrative Services

In March 2021, Jodie Zolnowski was promoted to Manager of Administrative Services in addition to her role as Assistant to General Counsel/Paralegal. She is responsible for the oversight of the reception area, the mailroom and document storage. Her first goal was to organize our document storage facility on Aero Drive. Jodie and

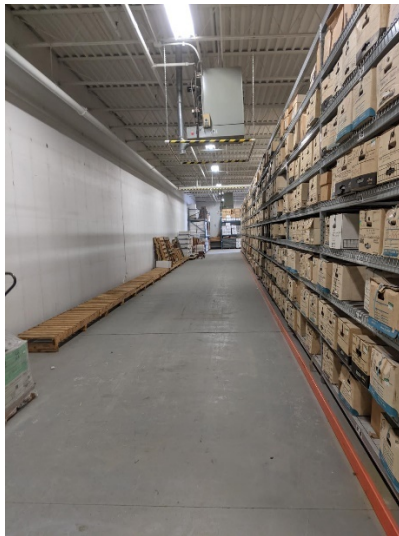
her team have recycled 12,000 pounds of paper up to date.

Below are the before and after photos of the facility:

BEFORE:



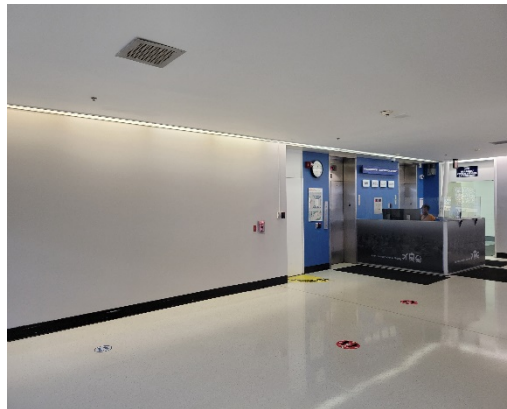
AFTER:



Jodie's next project was the redesign of the reception area. Her goal on this project was to create a space that incorporated all aspects and departments at the NFTA. While the area is still under construction, the difference from before until now is dramatic. The reason for the makeover was to make the glass-enclosed space more representative of our corporate culture and inviting for our employees and visitors. Some of the updates include a new highly functional reception area that also acts as a piece of design on its own. It is complemented by a clapboard wall adorned with our company logo that further adds to the professional yet contemporary tone when you walk through the doors. The space also showcases Metro rail-inspired furniture that was created by our own Metro employees. The bench is made of railroad ties and ballast stones, and the tables were crafted from catenary spools accessorized with conduit lighting. The area is also embellished with comfy new accent chairs available for anyone who would like to take a seat. The most recent addition -- a creative retrospective mural designed by members of our public affairs team, provides an innovative overview of the company and our integrated operations.

Below are some before and after photos:

BEFORE:



AFTER:



VI. 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, policy revisions, preparation of opinions and to ensure compliance with laws, rules, and regulations. 2021 was a busy year for the transactional group. The aviation work was handled by Mary Perla and the surface transactional work was handled by our new counsel Michael Flaherty. Additionally, Diane Noshay assisted with transactional matters for the Police Department. Here are some of the highlights:

A. Resolution of FAA proposed vendor matter: Mary Perla was instrumental in resolving an informal investigation by the FAA into the placement of a vendor at Buffalo Niagara International Airport.

B. Revision of NFTA's Commercial Advertising Policy: Michael Flaherty revised the NFTA's Commercial Advertising Policy to prohibit political messages, among other changes. The changes brought the NFTA's policy in alignment with how these advertising requests are handled at other transit agencies throughout the country.

C. TAC Air lease at 485 Cayuga:



Mary Perla and Michael Flaherty jointly worked on a new lease at 485 Cayuga to Truman Arnold Companies (TAC) Air. This lease is exciting because it brings another aviation tenant into one of the bay areas at 485 Cayuga and provides additional opportunities to TAC Air who currently provides fixed base operation (FBO) services for all areas of aviation and offers a wide range of aviation support services at the Buffalo Niagara International Airport.

On October 1, 2020 TAC Air signed a Consent to Assignment and Assumption of Obligations Amendment which granted Truman Arnold Companies to assume all liabilities, duties, and obligations under the Lease and FBO Agreement held by Prior Aviation effective January 1, 2021. Specifically, the lease includes 26,360 square feet of Hangar space; 2,965 square feet of Class C- Office space; and 84,687 square feet of associated ramp shared space. As part of the lease, TAC Air committed to invest a minimum of \$765,562.50 into the facility improvements (ex. lighting, egress, finishes) no later than December 31, 2022.

Finally, 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.

- Continuation of her work with the Daigle Law Group to develop an updated set of all Polices that will ultimately facilitate the TAPD to become accredited with the State of New York.
- 86 notices/letters were sent to persons concerning lost/recovered property items, including currency with an approximate amount of \$6667.59.
- Notices/letters also included a plethora of personal property items including computers, mobile phones, bikes, clothing, etc.
- Work on currency and personal property items recovered at the Buffalo Niagara International where the owner cannot be identified.

VII. **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, 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. The success of this team was proven again in 2021 with skillful, favorable resolution of numerous cases that resulted in little or no monetary contribution from the Authority. With the Courts finally re-opening in late 2021 for civil trials, both Vicky and John impaneled juries. John's case resolved favorably after jury selection, while Vicky's case ended in a mistrial, as the Plaintiff was quarantined due to exposure to COVID just as proof was to begin.

As of December 1, 2021, the Office of General Counsel retained a litigated caseload of 187 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 \$3,441,290. The breakdown was 168 active litigated personal injury cases against NFTM, with a self-insured reserve retention of approximately \$3,207,770 and 19 active litigated personal injury cases against the NFTA, with a self-insured reserve retention of approximately \$233,520.

Of the 187 files, 179 are handled in-house by the Deputy General Counsel, Vicky-Marie J. Brunette, and Counsel, John P. DePaolo. Three (3) 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

OFFICE OF GENERAL COUNSEL

up to \$5,000,000 for each litigated matter; therefore, the potential exposure on any given case is enormous.

Vicky continued to manage the litigation caseload, which included litigation team meetings with the Claims group. She continued to actively participate on the NFTA's Management Team, including weekly COVID-19 staff calls, the Executive Safety Committee meetings, and government affairs meetings, and is an active member of the Diversity and Inclusion Committee. and Pride Planning Committee. She also assists the General Counsel with the overall operation of the Legal Department and significant time was spent interviewing candidates for positions both within and outside 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 80 pre-trial conferences; drafted and argued approximately 6 pre-trial motions; handled one appeal to the Fourth Department; conducted approximately 30 depositions; conducted 11 mediations; impaneled one Supreme Court jury; and appeared for one Small Claims trial, which resulted in a defense verdict. She favorably negotiated resolution of approximately 11 cases short of trial.

Now in his fifth year with the Authority, John continues handling a growing caseload of litigated matters including motor vehicle negligence, premises liability, and police professional liability. In 2021, it is estimated that John DePaolo appeared virtually or in-person at approximately 100 pre-trial conferences, conducted approximately 40 depositions, pursued dismissals and overdue discovery on various matters by motion practice. John has continued to assert all available and appropriate defenses, and to seek all necessary disclosure for the NFTA and Metro. Procedural Notices and Motions are used to gain admissions, preclude improper evidence, and to acquire medical and expert examination when appropriate. John has appeared in-person or virtually for 40 mediation sessions, one virtual binding arbitration, one in-person mediation and has impaneled one jury. Between medical provider suits and litigated matters, John has favorably negotiated resolution of approximately 30 cases short of trial.

Of the 41 matters Vicky and John resolved, 4 involved no monetary contribution at all from NFTA or NFTA Metro.

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. Debbie also coordinates the resources, technology and staffing necessary to conduct virtual depositions and jury trials. Debbie has participated in more field work in 2021, attending site and vehicle inspections along with counsel and experts.

John works on his files closely with 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 in many ways including under the HITECH Act to eliminate certain litigation expenses and requiring reimbursement from adverse counsel for copies of records we

acquire. Sheila has become very productive in her fifth year and strives to assist across the department.

In 2021, there were 20 new cases filed against the Authority. Vicky, John, Debra, and Sheila had an outstanding year as demonstrated by the following highlights in 2021.

A. Davis/Brown v. NFTA Metro, et al.

Plaintiff, then 16 years old, was a bus passenger inbound on Goodell Street at Michigan Avenue when the co-defendant driver made a right turn in front of the moving bus causing a minor collision. Both vehicles were driven from the scene. No injuries were reported until later that day when Plaintiff was taken into the hospital by her mother complaining of subjective headaches. Plaintiff continued to allege ongoing subjective headaches. The Plaintiff continued to follow up for what was diagnosed as concussion without loss of consciousness and post-concussive syndrome.

Plaintiff's initial settlement demand was \$5 million. We engaged a vocational expert to evaluate plaintiff's earnings ability into the future; a neurologist to conduct an examination with respect to all claims; and a concussion expert to testify with respect to proper concussion diagnosis and concussion recovery issues. Expert disclosures were provided.

Settlement negotiations during the weeks before jury selection resulted in the co-defendant tendering her entire policy of \$250,000. At that time, the Plaintiff's demand to the NFTA was reduced to \$1.3 million. We remained steadfast in our defense and during a private mediation developed an understanding with the mediator regarding the strength of our position. Plaintiff further reduce her demand to \$850,000 and then to \$250,000. Within days of jury selection, the mediator was able to secure an agreement of a favorable settlement between the Plaintiff and the NFTA within the General Counsel's authority. John DePaolo handled this matter.

B. Bonilla v. Curuth, et al.

The Plaintiff alleges personal injuries sustained on January 16, 2016 at 12:00 p.m. when a Metro bus traveling northbound on Main Street, near the intersection of Kensington Avenue in the City of Buffalo, slid on a snowy roadway and struck the rear of his 1996 Honda. The bus operator testified the Plaintiff made multiple unsignaled lane changes and stopped suddenly and without warning in the bus's lane of travel. The bus operator slowed and sounded his horn but was unable to come to a complete stop.

The Plaintiff testified at deposition that he moved into the right curb lane to turn right at the intersection but was unable to do so due to road conditions; however, bus video reveals that the sudden stop occurred south of the referenced intersection, which displayed a green light for northbound traffic. The Plaintiff alleges he was seat belted and the force of the impact caused him to be thrown forward. He began to feel pain in his neck and back after he got home and sought treatment at Buffalo General Hospital later that evening. A course of conservative care ensued. On January 16, 2018, the Plaintiff underwent a cervical microdiscectomy and fusion at C5-6 and C6-7 and alleges he is now totally disabled from work.

The Plaintiff, who is currently serving a five-year sentence at Mid-State Correctional Facility for drugs and weapons convictions, was transferred to Erie County for a bifurcated liability only trial, which was scheduled for jury selection on December 9, 2021. After impaneling the jury, the Court was forced to declare a mistrial due to COVID-19 related issues. A new trial date has been set. Vicky-Marie Brunette handled, and will continue to handle, this matter.

C. 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.

In a decision rendered from the bench the Court granted NFT Metro's Motion for Summary Judgment and dismissed the Complaint. The Plaintiff recently perfected an appeal to the Fourth Department, Appellate Division. We are currently awaiting oral argument. Vicky-Marie Brunette handled the underlying motion and appeal.

D. Robbs v. Williams, et al.

The matter arises out of a fall down of a boarding passenger on a bus that braked hard to avoid a vehicle that abruptly turned left in front of it on October 27, 2016. The Plaintiff alleged a right rotator cuff tear, a right shoulder glenoid labral tear and right shoulder AC joint sprain that ultimately required arthroscopic repair on March 30,

2017. The Plaintiff subsequently passed from unrelated causes. We successfully moved to dismiss of the Complaint for Plaintiff’s failure to substitute the estate as a party to the action. Vicky-Marie Brunette handled the matter.

E. Bailey v. NFTA Metro, et al.

This action arises out of a slip and fall by an employee of Prior Aviation on January 17, 2016 on the fixed base operator’s tarmac. The first notice to the Claims Department was three months after the incident and a detailed investigation was undertaken. It was learned that a plane coming into Prior ran off the runway which required a recovery of the aircraft back onto the ramp. The Plaintiff was operating machinery in this recovery effort and while walking on the pavement between the grassy area and Prior’s ramp fell backward hitting her head on the pavement. The weather that day was heavy snowfall with winds gusting to 27 m.p.h. The Plaintiff pursued Workers’ Compensation benefits immediately.

In 2017, this matter was sued in New York State Supreme Court. Upon receipt of the suit, demand was made upon Prior Aviation Service, Inc., to defend and indemnify the NFTA based upon the strong indemnification provision language in the Lease and Operating Agreement that was in effect at that time. We were successful in this tender and the Prior Aviation insurer assigned counsel on our behalf. We worked closely with that counsel during their efforts which included depositions, and other discovery. A Motion for Summary Judgment was made at the close of discovery on our behalf. On November 15, 2021 the Court granted the motion as against the NFTA and dismissed the Complaint. There has been no Notice of Appeal filed to date.



VIII. 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

OFFICE OF GENERAL COUNSEL

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 2021 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 special mention and appreciation of Wayne's work, and the entire staff, in researching, drafting and implementing a number of policies and procedures to deal with the COVID-19 pandemic. The human resource issues stemming from the pandemic have been voluminous, constant and ever changing and it has taken a tremendous amount of focus and work by the labor and human resources group to stay on top of this effort. The legal staff has supported these efforts largely through the work of Wayne but all staff have contributed to this effort.

Here are some highlights of Wayne's other accomplishments in 2021:

- A. COVID-19:** Of special note in 2021 is Wayne's continued work and focus on drafting and implementing the NFTA's vaccination and mask policies as we continue to deal with the ramifications of COVID-19. This work is continuous and ongoing as we monitor the various policies and Court decisions that are issued.
- B. Dismissal of Federal court race discrimination case:** A former grounds person at the Buffalo Niagara International Airport commenced a Federal lawsuit alleging discrimination after an arbitrator upheld his dismissal. A motion to dismiss due to a defective Equal Employment Opportunity Commission notice of right to sue was made along with a motion for summary judgment based on the arbitrator's award. On September 8, 2021, the U.S. District Court for the Western District of New York opted to dismiss the action on account of the defective notice of right to sue.
- C. Stay of arbitration (traffic fines):** Metro sought to stay a demand to arbitrate whether Metro could deduct an employee's debt to the Company from the employee's paycheck. As a government employer NFTA Metro is exempt from the State Wage Payment Law provisions prohibiting payroll deductions and, in any case, Metro argued that there was no agreement to arbitrate disputes concerning whether the Company was in violation of a statute as opposed to the collective bargaining agreement. The Court agreed with Metro's arguments and a petition to stay arbitration was granted by the New York State Supreme Court on July 15, 2021.
- D. PERB (employee placement petition):** A union petitioned PERB to include

an employee in the Authority's EEO/Diversity Development Department in that union's bargaining unit. After an evidentiary hearing, on January 29, 2021, PERB issued a ruling that dismissed the placement petition on the ground that the employee at issue's assistance in internal discrimination and harassment investigations, access to confidential information as well as the potential for a conflict of interest made placing that employee in the petitioning union inappropriate.

IX. Procurement:

In 2021, Procurement continued to fire on all cylinders. Although the COVID-19 pandemic lessened a bit we still called on Procurement to operate at an extremely high level of efficiency to secure masks, cleaning supplies and other critical PPE that was needed, in addition to procuring all the normal and necessary items it takes to run a multimodal transit authority. 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 in 2021 as detailed below.

- The Procurement Team hosted authority-wide Procurement Training in October 2021. This training focused on the procure to pay process which included such topics as procurement vehicles, process flows, and MWBE/SDVOB topics.
- The Procurement Team identified over \$250,000 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 Procurement Management Team introduced efficiencies in the procurement process to reduce procurement cycle time and improve the flow of critical information. The areas of focus included department policies/procedures, credit card administration, and requisition approval process.
- MWBE Program Performance: The NFTA has continued their streak of receiving scores of "A" or higher on their NYS MWBE Report Card. Through the diligent efforts of the Procurement Compliance Team, the NFTA achieved a 36.5% MWBE participation rate that resulted in a total MWBE spend of \$14,950,000 for the full year. This was a new annual record.
- The Procurement Compliance Team attended the following Major Outreach

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programs: Finger Lakes/Western New York MWBE Opportunity Expo, MWBE Forum, and VETCON.

- The Procurement Compliance Team supported continuous improvement initiatives by automating data collection for the PARIS Report and participating in the review and consolidation of RFP Boilerplates.
- 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 \$138,000 while maintaining a 97% fill rate.
- Through the implementation of a location management process, the Inventory Control Team achieved a 1.5% increase in cycle count accuracy.
- The Central Storeroom Team, in coordination with the NFTA HSEQ Department, successfully managed the distribution of PPE supplies throughout the Authority.

END OF REPORT

