

Office of General Counsel

ANNUAL REPORT

2022

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



Introduction

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. Our office is unabashedly Buffalo Bills fans as they make their 2022-2023 march to the playoffs and hopefully the Super Bowl. In that vein, we invoke an inspirational quote from Coach McDermott: "the greatest compliment a coach can get from another coach around the league is 'Hey your [players] played hard. They're tough.'" Not a week goes by that I don't receive some accolade or compliment about the legal and procurement teams we have assembled here at the NFTA. I want to say thank you to all the members of Team NFTA that have worked so hard and are so tough in a tough business. Our fortitude was tested this year by the Christmas blizzard of 2022 but true to form our staff showed how resilient and dedicated they are to our public service mission. As detailed in this report, 2022 has been an outstanding and busy year.



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, 2022)*



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.

In 2022, Wayne Gradl, in recognition of his hard work and value, was promoted to Senior Counsel. We also hired several new people to strengthen our team. John Fenz was hired as Counsel and is handling transactional matters for the Aviation Group. John replaces Mary Perla our GOAT (“Greatest of all time”) Senior Counsel who retired in 2022 and we fully expect John to make a run at the GOAT title. We wish Mary well in her retirement. Allana Benton was hired as the NFTA’s FOIL coordinator as the FOIL duties are shifted from the CFO to the General Counsel’s office. Finally, Doreen Watson was hired as a Paralegal replacing Sheila Keane and is assisting John DePaolo and the rest of the litigation team.



A. Personnel and Location

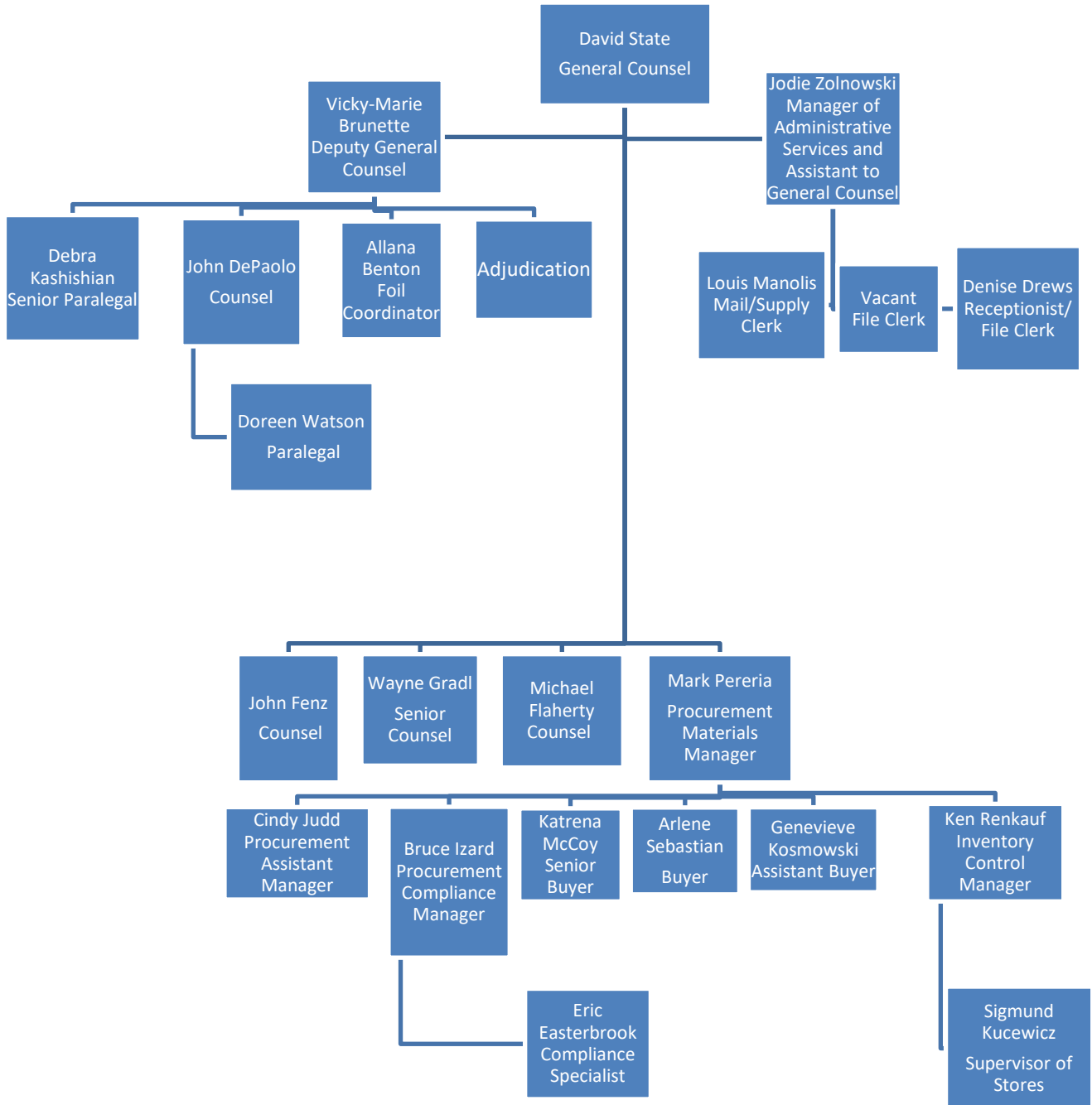
The Office of General Counsel consists of a General Counsel, a Deputy General Counsel, a Senior Counsel, three Counsels, one part-time counsel, one Senior Paralegal, one Paralegal and Assistant to the General Counsel, and one Paralegal. The majority of the Legal Staff is located on the 6th Floor of the Metropolitan Transportation Center (“MTC”) at 181 Ellicott Street in downtown Buffalo, New York. John Fenz 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.

OFFICE OF GENERAL COUNSEL

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



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.

In 2022, Vicky-Marie Brunette earned 16 hours of CLE credits and professional development instruction in a variety of topics, including: 1) Effective Appellate Advocacy; 2) How Change Changes Us; 3) Proving and Improving Wrongful Death Damages; 4) The Severe Impact of Mild TBIs; 5) Climate Leadership and Community Protection Act Q&A; 6) NYS Commission on Ethics and Lobbying in State Government - Comprehensive Ethics Training Course; 7) Legal Operations and the General Counsel – Crafting the Ultimate Partnership; 8) Navigating the New Normal: Increased Cyber Risks Post-Covid; 9) Bad Dog! Vicious Propensity and Dog-Related Injury Cases; and 10) Don't Get FOILED again: Freedom of Information Law for Plaintiffs and Defendants.

From October 2, 2022, through October 4, 2022, John Fenz attended the American Association of Airport Executives Airport Law Workshop in Seattle, WA. This seminar is considered one of the premier educational offerings for airport law in the United States. The three-day seminar offered presentations on: regulation of airport finances; federal grant assurances; minimum standards and qualifications for aeronautical tenants; federal infrastructure funding; negotiation of airline use and lease agreements; airport concession disadvantaged business enterprise initiatives; non-aeronautical land use on airport property; emerging environmental issues; ethics; and diversity, equity and inclusivity obligations.

In 2022, John DePaolo earned 23 credit hours of CLE instruction through the New York State Academy of Trial Lawyers and other legal education providers. Topics included 1) Federal Court Civil Practice; 2) Complex Cases Simplified; 3) Combating the Anchoring Effect; 4) Update on Evidence; 5) Update of Disclosure; 6) Premises Liability; 7) The Severe Impact of Mild Traumatic Brain Injuries; 8) New York Court's Mediation Directive; 9) Catastrophic Automobile Accident Cases; 10) Mediation and Settlement; 11) Expert Depositions; 12) Liability and Damages Experts; 13) Evaluating Economic Damages; 14) New 2022 Pattern Jury Instructions Update. John is expected to attend the 2023 Defense Research Institute's Civil Rights and Governmental Liability Seminar in Las Vegas, Nevada in January.

In 2022, Debra Kashishian mentored and trained Doreen Watson, our new litigation paralegal, as well as our legal intern.

Since starting her position in August 2022, Allana Benton has attended two Committee on Open Government meetings. She also attended a CLE, “Don’t get FOILED again: Freedom of Information Law for Plaintiffs and Defendants.”

Wayne attended NYSPELRA's 47th Annual Training Conference from July 11-13, 2022 in Saratoga Springs. Topics ranged from Trends in Collective Bargaining from a National Perspective, Recent Court Decisions About Which Every Public Employer Should Know, Current Trends and Legal Issues Relating to Diversity, Inclusion and Elimination of Bias and COVID’s Impact on Labor Relations. Wayne also attended CLEs on Organization of Public Employer Negotiators – PERB and EEO law updates, NYS Academy of Trial Lawyers – Diversity, inclusiveness and elimination of bias seminars, Conflicts of Interests for Business Attorneys and Ethical Issues related to Attorney Depression.

From April 3-April 5, 2022, Michael attended the APTA Legal Affairs Seminar in Boston, Massachusetts. The topics discussed during the seminar were new and changes to existing legislation, ADA Accessibility Issues, The Opportunities and Implications of Working with Private Partners and the US DOT to Deliver Transit Capital Projects, Perspectives on Current Developments in Transit and Equity/Environmental Justice Initiatives, Procurement’s Role in Managing Cybersecurity Risk in Transit, Grants 101: FTA (and related) Grants and What Attorneys Should Know About Them, Moving to a Zero-Emission Reality, and Current Issues in Insurance and Indemnification. Michael earned 14 hours of CLE credit for his attendance at the seminar. He also earned 1.5 of Diversity, Inclusion and Elimination of Bias credit (How Change Changes Us: Emotional Intelligence for Lawyers) and 1.5 hours in Areas of Professional Practice (Deconstructing Dobbs: The Meaning and Implications of Overturning Roe v. Wade), for a total of seventeen credit hours.

In 2022, Doreen attended CLEs in Social Media: Discovery, Ethics, Evidence & Sanctions, Let’s Get Technical: Data Security Ethics for Law Firms, Legal Tech Lab, Complex Cases Simplified: Gaining Logistical Control from Calendaring to Court and 2022 Annual Update – No Fault Law

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.

On December 8, 2022, Jodie Zolnowski celebrated her graduation from **Leadership Buffalo**. As a member of Leadership Buffalo, participants explore the challenges, concepts, and complexities around important issues within the community with the goal of making a positive difference today and in the future. It was Jodie's genuine enthusiasm and passion for Buffalo and the Western New York area that sparked an interest in attending the 12-month program.

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



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

In 2022, Vicky-Marie Brunette was selected again to serve on the Bar Association of Erie County's Judiciary Committee. She was also recently selected to serve on a Jury Diversification Panel and Focus Group in the Eighth Judicial District. Vicky rounded out her second three-year term as a member of the Board of Trustees for St. Mary's School for the Deaf, where she served 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 third term as the Delaware Women's Golf Club's Marketing and Publicity Chair in 2022.

John DePaolo is active with the Rotary Club of the Buffalo and serves on the Grants Committee. Grants in 2022 have been awarded to the Buffalo and Erie County Naval and Military Park; Tapestry Charter School; Girls on the Run, Inc.; Literacy Buffalo; and Buffalo Scholastic Rowing Association, Inc. John is also active with the Rotary District (7090) involving service clubs in the Niagara Frontier and Southern Ontario. One of the District 7090 initiatives is the Rotary/Greenway Commission. This effort joins multiple clubs all along the Niagara Greenway making improvements and extensions to the nature trails between Buffalo and Lake Ontario. Funds from the Ralph C. Wilson, Jr. Foundation have greatly bolstered these efforts especially in the area of the present LaSalle Park in Buffalo. John is still serving as the Education Chair of the WNY Defense Trial Lawyers Association which provided multiple legal

seminars in 2022. John has continued to support the Matt Urban Hope Center which organization responds to the needs of the community by hosting family-focused events, informative workshops, free tax preparation, benefits screening, housing and job assistance and assists individuals who are homeless and those at risk for becoming homeless.

In August of 2022, the Legal Department welcomed Allana Benton as the Authority's FOIL Coordinator. Allana is a recent alumnus of University at Buffalo School of Law. While employed full time, she has also been working toward obtaining her law license. In her short tenure as FOIL Coordinator, Allana has closed out over fifty (50) FOIL requests and has streamlined the FOIL process. In her spare time, Allana mentors current and prospective law students. She has attended numerous events in support of UB's Black Law Student Association.

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, and Treasurer of the Notre Dame Club of Buffalo & WNY.



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 was Allana Benton, a 2021 graduate of UB Law School, who has now been hired in 2022 as the NFTA's FOIL Coordinator.

MWBE Efforts. As later detailed in this report, our Procurement Department has had an outstanding year promoting DEI initiative through their procurement work. The NFTA has achieved ongoing "A" grade MWBE Program Performance Report Cards from New York State. In FY 2021/2022, NFTA's MWBE program has benefitted 68 Different MWBE Firms including marketing firms, architecture, engineering, building supplies, background checks, janitorial, paper, consulting, shipping, fuel, welding supplies and office supplies. The MWBE program generated \$13.9 Million dollars of spending for MWBE's this past fiscal year. Finally, the New York State Aspirational Goal of 30% MWBE Participation was first reached by NFTA in FY 2019/20 as an even 30% was achieved. FY2021/2022 came in at 34.7%.

IV. 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 2022

we expanded our ethics training initiative and provided proactive procurement training to interested employees.

A. Ethics Training.



In April 2014, our office was initially certified by the NY Joint Commission on Public Ethics (JCOPE – the predecessor to the newly formed New York State Commission on Ethics and Lobbying in Government) to present the Comprehensive Ethics Training Course. In 2022, we had 5 law department personnel attend a train the trainer program so that they are now certified to provide this training. These instructors will be presenting live training to not only Financial Disclosure

Statement filers but also the entire NFTA workforce who is now required to take this training pursuant to 2022 changes in the NY Executive Law. 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. This will be a major initiative for 2023 as we began to tackle the 1500 + employees who are now required to have this training.

B. Procurement Training.

In July 2022, NFTA Procurement launched “Procurement University”. Procurement University is a knowledgebase platform and centralized depository of content to provide NFTA Employees with the necessary training material, information, resources, and tools to procure high-quality materials and services in compliance with NFTA's Procurement Guidelines, Policies and Procedures. This self-service portal provides NFTA employees with a time-saving and user-friendly solution to obtain the knowledge and information required to stay in compliance and to procure necessary goods and services in support of NFTA’s operations.

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 and 2022 was a very busy year for her. She is responsible for the oversight of the reception area, the mailroom and document storage.

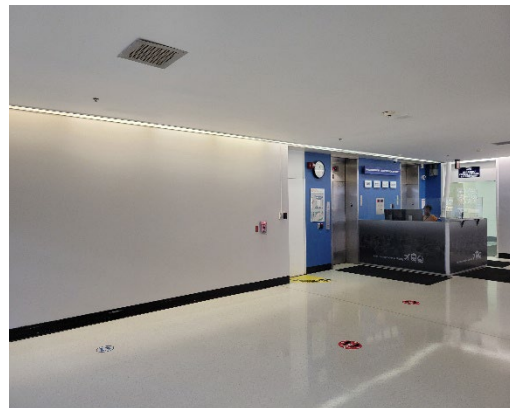
Jodie continued the redesign of the reception area in 2022. Her goal on this project was to create a space that incorporated all aspects and departments at the NFTA. While the area is still under construction, the difference from before until now is dramatic. The reason for the makeover was to make the 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.

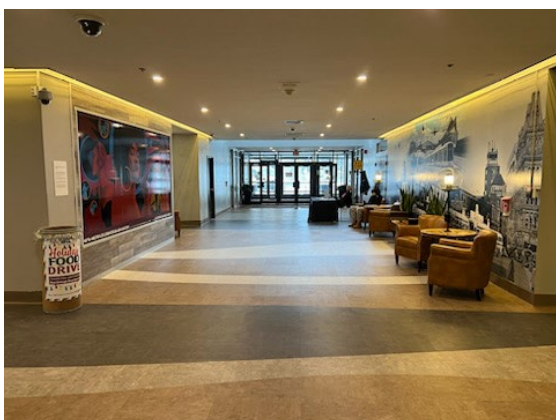
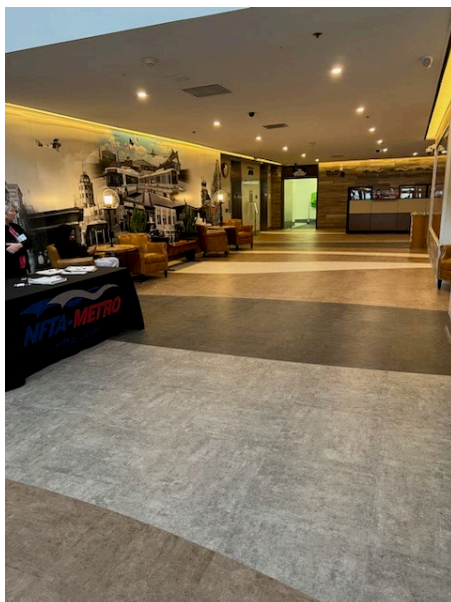


Below are some before and after photos:

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. 2022 was a busy year for the transactional group. This work is primarily handled by John Fenz (who handles the aviation work) and Michael Flaherty (who handles the surface and property work). Additionally, Diane Noshay assisted with transactional matters for the Police Department. Here are some of the highlights:

A. Joint Use Agreement with the United States Airforce:

In June 2022, the NFTA Board of Commissioners authorized the execution of the Airport Joint Use Agreement with the United States Government. The NFTA and the Air Force Reserve each own and operate certain premises and facilities located at Niagara Falls International Airport. The Air Force Reserve, in conjunction with the operation of its base, requires the use of certain runways and taxiways owned and operated by the NFTA at NFIA. John Fenz worked on this agreement which continues the longstanding cooperation of resources between the NFTA and the Air Force Reserve and to allocate responsibilities among the parties.

B. FTA Triennial review:

Michael Flaherty was the assigned legal counsel for the FTA Triennial Review process. The Triennial Review focused on NFTA's compliance in 23 areas including Legal, Financial Management and Capacity, Technical Capacity, Transit Asset Management, Satisfactory Continuing Control, Maintenance, Procurement, Disadvantaged Business Enterprise, Title VI, Americans with Disabilities Act, Equal Employment Opportunity, School Bus, Charter Bus, Drug Free Workplace Act, Drug and Alcohol Program, Section 5307 and Section 5310 Programs, Public Transportation Agency Safety Plan, and Cybersecurity. In the end, we only had three findings, but all have been resolved.

C. Vending machines at BNIA:

The Aviation Business Center has recognized the benefit vending machines provide to airport customers to fill gaps in concession services when airlines experience service impacts. John Fenz worked with the master concessionaire and their vending subcontractor to negotiate an agreement to install vending machines in pre-security and post-security locations. During the November 2022 snow event the vending machines got a workout and provided much needed service to travelers experiencing airline scheduling impacts.

D. Agreements for Airside and Landslide Snow Removal:

In 2022, the Buffalo Niagara International Airport was awarded the Balchen/Post award for its dedicated efforts in maintaining a safe and operational status during the

2021-2022 winter season. NFTA airfield operations snow crews work in conjunction with an independent contractor to ensure that airside and landside operations sustain minimal impact during snow events. John Fenz was involved in the procurement and negotiated the terms and conditions of this agreement to ensure that a high-level of snow removal services remains at the Buffalo Niagara International Airport.

E. Extension for Concessionaires Impacted by COVID-19:

In line with airport industry standards, concessions agreements at the airports were extended for a period of two years to provide relief for COVID-19 business related impacts. John Fenz worked on the agreement with BNIA's master concessionaire, including negotiating terms to aid in the resolution of a regulatory matter. John also helped negotiate terms for the extension of car rental concessions at BNIA and NFIA.

F. Relocation of Easement for Utility Company to Ensure Continued Tenant Improvements by BNIA's Fixed Base Operator:

In May 2022, the NFTA was advised that the tenant improvements by the BNIA's fixed base operator were restricted by the existing location of a utility line. John Fenz worked with the FBO and the utility company to arrange for the relocation of the line to ensure that utility services continued and the FBO could resume their tenant improvements to enhance services provided to their customers.

G. Revisions to Policy Abandoned Vehicles on Airport Property:

Occasionally vehicles are left on airport premises for a lengthy period of time and by New York State Vehicle and Traffic Law §1224 are deemed abandoned. Working with the Aviation Business Center and the Finance and Accounting Department, John Fenz helped revise the Abandoned Vehicles Procedure, which provides legally compliant and practical procedures for NFTA to take title to the vehicle and either sell it at auction or maintain the vehicle for NFTA use.

H. Gender-Based Violence and the Workplace Policy:

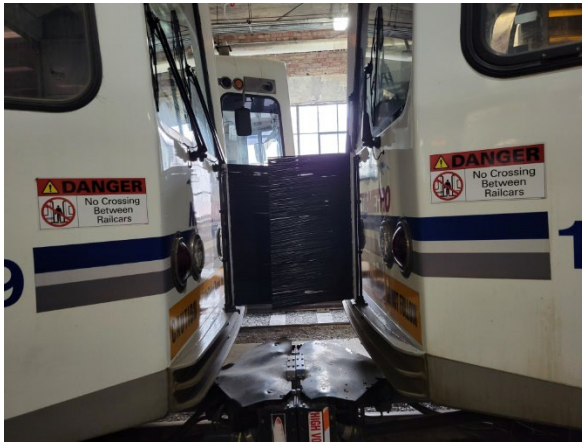
Michael Flaherty prepared an NFTA Gender-Based Violence and Workplace Policy as required by Executive Order No. 17. Michael worked with TAPD, Human Resources and Pat Dalton, the NFTA's Internal Auditor, and a brand-new policy was promulgated in December 2022.

I. TAPD:



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. We wish to thank Diane for all her hard work and accomplishments as she leaves us for greener pastures at the end of 2022. We fully expect that the NFTA Police Department will be applying to become accredited with New York State ("NYS") soon and Diane has been instrumental in this process. The process is arduous, as it involves a complete review of all Department Policies, the implementation of Policies, and a thorough inspection of the actual workings of the Police Department, such as whether seized and found property, especially currency and firearms, is properly maintained and processed according to guidelines set by the New York State Division of Criminal Justice Services ("DCJS") and whether officers are knowledgeable about Department Policies. We will make sure we inform Diane when we cross the accreditation goal-line and thank her for her efforts.

J. Patent Application:



In April 2022, we filed a patent application for a device invented by Metro employees Eric Lahrs and Shawn Sikes pertaining to a safety barrier between coupled cars of a transportation vehicle. Dave, a registered Patent Attorney, assisted in the filing with outside counsel.

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 Doreen Watson 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 2022 with skillful, favorable resolution of numerous cases that resulted in little or no monetary contribution from the Authority.

As of December 1, 2022, the Office of General Counsel retained a litigated caseload of 183 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 \$2,478,270. The breakdown was 165 active litigated personal injury cases against NFTM, with a self-insured reserve retention of approximately \$2,244,760 and 18 active litigated personal injury cases against the NFTA, with a self-insured reserve retention of approximately \$233,510.

Of the 183 files, 179 are handled in-house by the Deputy General Counsel, Vicky-Marie J. Brunette, and Counsel, John P. DePaolo. Four (4) litigated cases are being handled by outside counsel, pursuant to indemnity agreements. One (1) litigated matter is being handled by outside counsel due to a conflict. The proper handling of a caseload

this large requires significant work. The NFTA and NFTM are self-insured up to \$5,000,000 for each litigated matter; therefore, the potential exposure on any given case is enormous.

In 2022, Vicky transitioned to a much more active role with overall operation of the Legal Department and providing counsel to the Board and Executive Director. She onboarded, mentored, and trained a new transactional attorney, as well as a new FOIL Coordinator, and took on direct supervision of the Adjudication Department. She continued to actively participate on NFTA's Management Team, was appointed to the Authority's Senior Leadership Team, and continued her involvement with the Diversity and Inclusion and Pride Committees. With the Authority facing ongoing retirements of senior staff, Vicky spent significant time interviewing candidates for numerous positions throughout the organization. In addition to her Deputy duties, on the litigation side of the house she continued to manage the litigation team and appeared at approximately 35 pre-trial conferences; drafted and argued approximately 11 pre-trial motions; handled one appeal and oral argument before the Fourth

Department; conducted approximately 16 depositions; and conducted 14 mediations. She favorably negotiated resolution of approximately 18 cases short of trial.

John has expanded his caseload throughout his fifth year with the Authority including motor vehicle negligence, premises liability, and police professional liability. John also continues to defend no-fault medical provider suits. In 2022, it is estimated that John DePaolo appeared at over 100 pre-trial conferences, conducted approximately 70 depositions, drafted and argued numerous motions to dismiss/compel, some of which resulted in cases or certain causes of action being dismissed, while others resulted in the Plaintiffs complying with long overdue discovery. John has continued to defend

the NFTA and Metro by filing notices to admit, notices to preclude and numerous motions to strike notices for physical examination and notes of issue. Selection of experts necessary to support the defense positions include medical experts, engineers, and vocational experts. John has appeared for 11 mediations. John has favorably negotiated resolution of approximately 17 cases short of trial.

Whenever appropriate, the defense of the NFTA and Metro is tendered to adverse carriers consistent with contractual language. Presently, tenders of defense and indemnification are pending in litigation matters to the insurer for Independent Taxi Association, Inc. and American Airlines, Inc.

Of the 35 matters Vicky and John resolved, 10 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 continued to participate in more field work in 2022, attending site and vehicle inspections along with counsel and experts.

John works on his files closely with Paralegal, Doreen Watson. We welcomed Doreen to the NFTA team in August of 2022. Doreen brings with her almost 20 years of experience as a litigation paralegal, where she worked at some of the area's top personal injury firms. She has experience handling both Plaintiff's work and insurance defense. Doreen hit the ground running and is a welcome addition and asset to the department.

In 2022, there were 31 new cases filed against the Authority. Vicky, John, Debra, and Doreen had an outstanding year as demonstrated by the following highlights in 2022.

A. 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 Trial Court granted NFT Metro's Motion for Summary Judgment and dismissed the Complaint. The Plaintiff perfected an appeal to the Fourth Department, Appellate Division. Vicky-Marie Brunette handled the underlying motion, appellate brief and oral argument on February 22, 2022. On March 11, 2022, The Fourth Department unanimously affirmed the lower court's Order dismissing the Complaint.

B. Benzel, Murphy, and Umlauf v. NFT Metro and Murphy:

On January 8, 2018, at the intersection of South Division and Oak Street at approximately 12:45 p.m. as a Metro bus was outbound on South Division Street in the center lane approaching the intersection of Oak Street, the light turned yellow and changed to red as the bus entered the intersection. A 2009 Nissan traveling West on Oak Street entered the intersection striking the left side of the bus. The bus operator and numerous passengers in the vehicle and on the bus were transported by ambulance

from the scene for medical treatment. Plaintiff and Co-Defendant, Cherise Murphy, was operating the 2009 Nissan and had minimal insurance coverage through Progressive Insurance. All three Plaintiffs claimed "serious injuries" and had extensive treatment. Two of the Plaintiffs underwent surgical procedures. Given the limited Co-Defendant insurance policy and lack of personal assets, the parties were focused on proving Metro was at least 1% at fault under a joint and several liability theory. We engaged a traffic engineer and three (3) separate medical experts to support our defense positions. Plaintiffs' combined settlement demands at the outset were over \$1,500,000 in the aggregate. With vigorous defense on the part of John DePaolo, and the assistance of a settlement judge, numerous conferences were held and ultimately an agreement was reached to resolve all of the matters for a total of \$195,000. All three cases are now resolved.

C. Borek v. NFTA, City of Buffalo, Buffalo Place and Seneca One Tower

On December 5, 2018 between 8:00 and 10:00 a.m., Plaintiff fell after slipping on a frozen substance on the sidewalk near the rail tracks underneath the Seneca One Tower. The Plaintiff was an attorney who was walking from her law office to Buffalo

City Court at the time of her fall. Although she missed no time from work, the Workers Compensation carrier made payments for medical attention, including spinal injuries and a fractured sacrum.

Plaintiff identified in photographs an area where she claims to have encountered the slippery substance. Discovery proceeded slowly and the Plaintiff acknowledged at her

deposition that if she would have just been looking where she was going she could have avoided the slippery area. Over three years after the incident NFTA counsel observed that liquid was still leaking from an area above where the Plaintiff claims she fell. Correspondence was forwarded to Seneca One Tower offices demanding that the dangerous condition be remedied. Within a short time, it was noted that the area had been repaired. The named Defendants could not agree on the responsible party for the claimed defect. The demand was \$750,000 initially. John DePaolo maintained a steadfast defense that the area in question was not controlled by the Authority and the sole proximate cause was the liquid leaking from Seneca One Tower. The parties engaged in settlement conferences through the Court's ADR program and eventually the matter was settled for a total of \$75,000 with a \$0.00 contribution from the Authority.

D. Almalahi v. NFTA Metro

Plaintiff was a passenger on a #1 William bus on April 19, 2016 and fell when the bus moved slowly away from a service stop. The Plaintiff was utilizing a walker at the time, had recently undergone carpal tunnel surgery and suffered from a host of prior, unrelated medical conditions. The Fourth Department determined that Plaintiff's medical records covering disputed health conditions, which involved her ability to

stand, steady herself and ambulate, may contain relevant information that is material and necessary to the defense of the action with respect to the element of causation or to the related affirmative defense of comparative fault.

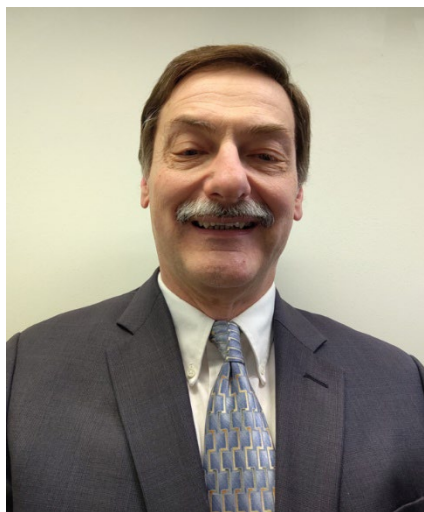
On August 23, 2019, in a unanimous decision, the Fourth Department, Appellate Division, affirmed the Trial Court's Decision and Order granting our motion to compel the production of expansive, unrestricted medical authorizations and held that that the Supreme Court did not abuse its discretion in granting the motion.

Vicky-Marie Brunette filed a Motion to Dismiss the Complaint in light of Plaintiff's failure to resume prosecution following a decision on the appeal. On January 18, 2022, the Trial Court dismissed the case.

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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 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 2022 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. **Outside employment while on leave:** February 2022 we got an arbitration award in a matter with the ATU ruling that a deemed resignation in Sec. 8 – 5.3 of the CBA for engaging in “any employment occupation or employment” while on leave without permission meant “any occupation or employment.” The ATU had argued that the Company should be required to prove significant employment activity which would have gutted the force of 8 - 5.3.
- B. **Stay of Arbitration:** In May 2022, NYS Supreme Court entered a stay of arbitration against a grievance by ILA 1949 which claimed that the CBA's list of positions in the bargaining unit precluded assigning ILA 1949 members to do any work at a work location other than their normal one. Supreme Court found that there was nothing in the ILA 1949 CBA that evidenced an agreement to arbitrate disputes concerning work claimed to be outside the employees' job descriptions
- C. **Health Care Continuation Benefits:** In May 2022, an Arbitrator ruled that ILA 1949-represented employees were only entitled to the same health insurance continuation benefits while off on a Workers' comp or disability leave as ATU-represented employees. The Authority had been extending this health insurance continuation benefit as a practice, but ILA 1949 filed a grievance and demanded arbitration claiming that never agreed to this practice so they should get continued health insurance benefits for as long as a Workers' comp or disability leave lasts. The Arbitrator agreed with the

Authority that there was nothing in the language of the CBA that guaranteed any continued health insurance coverage for ILA 1949-represented employees who had exhausted paid leave and were off the payroll and, therefore, they had no right to any greater continued health insurance coverage than had been offered by the Authority in practice.

- D. Federal Court action dismissed:** In September 2022, Magistrate Judge Foschio issued a Report and Recommendation that would dismiss a racially hostile work environment claim by an ATU-represented employee who opted to quit her job and sue after the Company failed to respond to her complaint by discharging a supervisory employee who had disparaged a third party in her presence. The supervisory employee was cautioned about his comments about the third party and sent to sensitivity training.

IX. Procurement:

Despite the continuation of ongoing supply chain issues in 2022, the NFTA Procurement successfully procured all the normal and necessary goods and services to support NFTA/NFTM operations. The Procurement team is led by Mark Pereira and consists of Cindy Judd, Bruce Izard, Arlene Sebastian, Katrena McCoy, Kenneth Reukauf, Sigmund Kucewicz, Genevieve Kosmowski, and Eric Easterbrook . The NFTA Procurement Team group had an outstanding year in 2022 as detailed below:

- In July 2022, NFTA Procurement launched “Procurement University”. Procurement University is a knowledgebase platform and centralized depository of content to provide NFTA Employees with the necessary training material, information, resources, and tools to procure high-quality materials and services in compliance with NFTA's Procurement Guidelines, Policies and Procedures. This self-service portal provides NFTA employees with a time-saving and user-friendly solution to obtain the knowledge and information required to stay in compliance and to procure necessary goods and services in support of NFTA’s operations.
- NFTA Procurement partnered with Bonfire Interactive to create a new procurement portal that allows vendors to receive notifications of formal competitive procurements (Requests for Proposal & Invitation for Bids) and to also submit their bids and proposals electronically through the Bonfire portal.
- MWBE Performance: The NFTA has achieved ongoing “A” grade MWBE Program Performance Report Cards from New York State. Bruce Izard, NFTA Procurement Compliance Manager, was presented with the MWBE Champion Award.



- In FY 2021/2022, NFTA’s MWBE program has benefitted 68 Different MWBE Firms including marketing firms, architecture, engineering, building supplies, background checks, janitorial, paper, consulting, shipping, fuel, welding supplies and office supplies. The MWBE program generated \$13.9 Million dollars of spending for MWBE’s this past fiscal year.
- The New York State Aspirational Goal of 30% MWBE Participation was first reached by NFTA in FY 2019/20 as an even 30% was achieved. FY2021/2022 came in at 34.7%.
- By leveraging automation, the NFTA Procurement Team has seen a 25% reduction in procurement cycle time and administrative costs.

X. Goals for 2023 and beyond:

Our goals for 2023 included, supporting initiatives of the Executive Director and the Board; continuing to support diversity in our employment practices and other activities; implementing ethics training for the entire NFTA workforce; commencement and finalization of the process from selecting outside law firms to assist us in our duties; continuing focus on safety; an enhanced FOIL process; and continuation of a strong litigation posture to defend any claims asserted against the NFTA

END OF REPORT

