

# Report of the Attorney General for Fiscal Year 2011



COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF ATTORNEY GENERAL  
MARTHA COAKLEY





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ATTORNEY GENERAL

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In accordance with the provisions of Section 11 of Chapter 12 of the Massachusetts General Laws, I hereby submit the Annual Report for the Office of the Attorney General. This annual Report covers the period from July 1, 2010 to June 30, 2011.

Respectfully submitted,

A handwritten signature in black ink that reads "Martha Coakley".

Martha Coakley  
Attorney General



# The Attorney General's Office

## **The Executive Bureau**

Budget Division  
Communications Division  
Community Information and Education Division  
General Counsel's Office  
Human Resources Division  
Information Technology Division  
Law Library  
Operations and Support Services Division  
Policy & Government Division  
Public Inquiry & Assistance Center  
Victim/Witness Services Division

## **The Business and Labor Bureau**

Business, Technology, and Economic  
Development Division  
Energy and Telecommunications Division  
Fair Labor Division  
Medicaid Fraud Division  
Non-Profit Organizations/Public Charities  
Division

## **The Criminal Bureau**

Appeals Division  
Cyber Crime Division  
Enterprise and Major Crimes Division  
Environmental Crimes Strike Force  
Fraud and Financial Crimes Division  
Financial Investigations Division  
Insurance and Unemployment Fraud Division  
Public Integrity Division  
State Police Detective Unit

## **Government Bureau**

Administrative Law Division  
Municipal Law Unit  
Open Government Division  
Trial Division

## **Public Protection and Advocacy Bureau**

Antitrust Division  
Civil Rights Division  
Consumer Protection Division  
Environmental Protection Division  
Health Care Division  
Investigations Division  
Insurance and Financial Services Division

## **Regional Offices**

Central Massachusetts (Worcester)  
Southeastern Massachusetts (New Bedford)  
Western Massachusetts (Springfield)



The mission of the Attorney General's Office is to represent the citizens of the Commonwealth in the face of unfairness, protect public safety and civil rights, stand up for taxpayers and consumers, and combat corruption and fraud. We also zealously represent the Commonwealth in federal and state courts.

In Fiscal Year 2011, our Office was able to secure more than \$400 million in recoveries and savings based a budget of \$37 million. That is a return on investment by the Commonwealth of approximately 10 to one.

Those are more than just numbers; they represent lower energy rates for families and businesses, assistance to allow people to stay in their homes, recovered wages for thousands of employees, and tens of millions of dollars recovered that were rightfully owed to taxpayers.

I would like to take a moment to highlight a few of our accomplishments based on our budgetary allocations of Fiscal Year 2011.

In the past fiscal year, our Medicaid Fraud Division secured more than \$66 million in recoveries, once again setting a record for our office.


Businesses repeatedly cite high energy costs as one of their greatest challenges to growing here in Massachusetts. Our office has been front and center in working to address those costs, and helped secure more than \$124 million in utility rate savings in Fiscal Year 2011. We also have worked to hold utilities accountable for their storm responses on behalf of ratepayers, and our office secured a \$2.2 million settlement with National Grid after their insufficient response to the December 2010 storm.

We were proud to chair a commission established by the state's new anti-bullying law to evaluate whether additional steps should be taken to protect kids from bullying. We have made recommendations to the legislature and continue to work on issues that we believe can better address bullying in our schools.

We have also been a national leader in our efforts to tackle the foreclosure crisis. Recently, our Office joined with 49 other states in a \$25 billion nationwide settlement over unlawful foreclosures which will bring an estimated \$318 million in assistance to Massachusetts.

We are proud of our work, and proud to represent the Commonwealth and the people of our Commonwealth. We hope you find this report helpful and informative.

Cordially,



Martha Coakley  
Massachusetts Attorney General



## THE EXECUTIVE BUREAU

### Community Information and Education Division

The Community Information and Education Division (CIED) works collaboratively with the bureaus and divisions of the AGO and with constituencies statewide to provide programs, host special events and create initiatives across the Commonwealth in the areas of public health, safety, consumer protection, civic engagement and community service.

In November 2010, the 90th Anniversary of Suffrage was celebrated with a special screening of the film "Iron Jawed Angels" which told the story of the women who put their lives on the line to fight for American women's right to vote.

Over a two week period in March – April, 2011 the Legal Food Frenzy - a benevolent competition within the legal community - raised the equivalent of over 377,000 pounds of food to benefit food banks which provide hunger relief across Massachusetts. The food and funds provided 290,000 meals to people in need.

The Bullying Prevention Commission – chaired by AG Coakley – held public hearings in Boston and Springfield and delivered a report of its findings and recommendations to the Legislature on June 30, 2011.

In addition, CIED is responsible for the management of AGO grants related to consumer protection, financial literacy, public health and safety including grants to support the voluntary mediation services delivered by 19 Local Consumer Programs and 14 Face-to-Face Programs statewide. In FY11, CIED managed grant programs that distributed \$4,008,154 to communities throughout Massachusetts.

The AGO funded \$819,308 in grants aimed at promoting health and wellness in some of Massachusetts' most at-risk communities by creating jobs for 309 low-income teens. Through the office's Project YES (Youth Employment Solutions), the grants were awarded to youth programs for the purpose of battling both high teen unemployment rates and to address the physical inactivity that is a major factor in rising youth obesity and other chronic illnesses. The 309 teens employed provided wellness and fitness services which impacted an additional 15,776 individuals.

The AGO supports an expansive voluntary mediation program designed to help consumers outside of the formal court process. In FY11, the AGO funded 14 Face-to-Face Mediation Programs, operating in many of the District Courts. These programs mediated over 3200 cases and helped consumers recover almost \$3.367 million.

Informal mediation of consumer complaints, usually over the telephone, is handled both by staff at the AGO and through a group of 19 Local Consumer Programs who, like the Face-to-Face Mediation Programs, are funded by the AGO. Staff at the Local Consumer Programs handled over 10,000 consumer complaints, resulting in \$3.237 Million being returned or credited to consumers.

### General Counsel's Office

The General Counsel's Office's primary responsibility is to provide legal assistance and operational support to the Attorney General, First Assistant, Deputy Attorneys General, Executive Bureau,



substantive bureaus, and non-legal divisions, including the Human Resource Division, Information Technology Division, Operations Division, and Budget Office.

While the General Counsel's Office (GCO) is technically not a revenue-producing division, the GCO is instrumental in identifying ways in which the AGO can save money by encouraging sound business practices. For example, the GCO has been instrumental in cost savings relating to document storage, transportation, and training.

Specifically, the GCO provides legal assistance with employment, ethics, conflicts of interest issues; assists in the development and implementation of office policies and procedures; ensures that all staff complies with G.L. c. 268A and fulfills annual distribution of conflicts of interest law summary and bi-annual on-line training requirements; helps to represent the AGO in matters before the division of unemployment assistance or other agencies; manages the process through which Special Assistant Attorneys General (SAAG) are appointed and serve; approves contracts for legal services by state agencies; reviews; circulates Petitions and Notices from the Board of Bar Overseers, Notices of tax settlements, and CAFA notices of class actions settlements; reviews and coordinates responses from Bureau Chiefs and other AAsG regarding whether the office should sign on to multistate amicus briefs and sign-on letters circulated by the National Association of Attorneys General (NAAG); manages the Public Records processes (by reviewing Public Records Law referrals from Supervisor of Public Records; responding to Public Records Requests made by the public and press to AGO; providing advice to the Executive and other Bureaus concerning the proper response to Public Records Requests; and coordinating and training public records officers within the Bureaus); manages the process through which members of state Boards and Commissions are appointed by the Attorney General; assists staff with ethics and conflicts of interest issues; and provides legal support regarding e-discovery, records retention, and other office-wide issues.

The GCO also is responsible for the AG Institute, the in-house training division of the AGO. The AG Institute identifies training needs; creates and conducts in-house training programs on substantive legal issues and professional development; works with in-house and outside presenters and consultants; coordinates out of office training requests; and manages a database which tracks staff participation in CLE programs. The GCO, through the AG Institute, continues to provide high quality training to AGO legal and non-legal staff. AAsG participated in numerous training programs, meeting their 12 hour internal CLE requirement. In FY 2011, the AG Institute conducted thirteen formal and many informal programs for assistant attorneys general, filling approximately 400 seats. In addition, the AG Institute conducted several training programs for nonlegal staff such as investigators and paralegals.

The GCO successfully converted its numerous databases to new electronic formats, closed outstanding matters, consolidated duplicative matters, and migrated information into case tracking software programs. This effort makes a vast amount of information more easily accessible and uniformly formatted. The GCO also provided legal support to the Operations Division to enhance the records retention systems in place in the AGO so that boxes are organized, labeled, and stored consistently and in accordance with records retention schedules.

In FY 2011, the GCO managed 431 Public Records Requests sent to AGO. Additionally, the GCO reviewed and coordinated the Attorney General's responses to requests by NAAG for the Attorney General to join approximately 72 multistate amicus briefs and to sign on to 10 multistate letters.

## Policy & Government Division

The Policy & Government Division works on the state level with the Legislature, Executive Branch, members of the Commonwealth's federal delegation, and with municipal officials and other community stakeholders throughout Massachusetts.

The Division responds to the needs of elected officials and other stakeholders by answering questions regarding general policy matters, pending state and federal legislation, and referrals of constituent matters from elected officials and staff. Policy & Government staff meet regularly with community stakeholders on broad policy issues such as energy and the environment, health care cost containment, criminal law proposals, and other consumer protection matters. Our staff is available to provide legal analysis to legislative and administration staff on a broad range of policy matters. The Division also works internally to help formulate and advance the office's own legislative and policy initiatives.

In FY11, Policy & Government staff worked with the Legislature on the development of several major bills, including health care legislation designed to protect consumers and help control costs, an expanded gaming bill with multiple levels of oversight protections, and a civil rights bill that provides important constitutional protections for transgendered individuals. At the start of the 2011-2012 Legislative Session of the General Court, the Attorney General filed 10 bills designed to help the office better protect public safety, combat fraud and corruption, and protect consumers in a variety of ways especially by addressing the foreclosure crisis in Massachusetts.

Before FY11's end, one of those bills, an update to the law criminalizing the dissemination of harmful material to minors, was signed into law. Policy & Government staff continue to work on the advancement of the Office's other priorities throughout the two-year session. At the federal level, Policy & Government staff continued to work with the Massachusetts Congressional Delegation on policy matters of significance to the Commonwealth, including funding for low-income heating assistance, the impact of federal regulations on the Massachusetts' fishing industry, foreclosure prevention and lending oversight.

## Public Inquiry & Assistance Center

The Attorney General's Public Inquiry and Assistance Center (PIAC) provides central intake for the office's consumer and constituent services. PIAC is staffed with trained professionals who will review your complaint to determine whether it is appropriate for the AGO's free, voluntary mediation service. If your complaint is not appropriate for mediation, you may be referred to another government agency or resource for assistance.

In addition, in order to expedite the processing and resolution of your complaint, PIAC may refer it to a Local Consumer Program (LCP) that serves your area. These programs are funded by and work in cooperation with our office, providing the same free, voluntary mediation services.

PIAC ensured a special handling of mortgage broker complaints this fiscal year, processing 995 complaints. In addition, we assigned a senior mediator to assist consumers with American Home Mortgage Servicing complaints. The senior mediator gave focused attention to over 30 AHMS consumers in addition to performing all his daily responsibilities.

One example of how PIAC can and did assist in these situations:

A consumer who had a mortgage with AHMS filed a complaint with the AGO after trying to resolve an issue without success with AHMS. According to the consumer their AHMS mortgage payment changed from \$2,600 a month to \$3,900 a month in April of 2009. The consumer first tried to resolve the issue with AHMS. The consumer stated that AHMS was slow to respond after the consumer called AHMS numerous times over many months seeking help. The consumer indicated AHMS was ignoring their calls and requests to re-write the loan went unanswered. The consumer turned to the AGO for assistance. When the AG's senior mediator contacted AHMS, it was discovered the consumer's interest rate had been changed from 5% to 9% due to an internal error. AHMS corrected the error and sent the consumer a new loan modification to sign. AGO was able to return \$12,000 to the consumer. AHMS further stated that any incorrect information sent to the credit bureaus will be recalled.

Educating the consumer is another of the critical functions of PIAC. Public awareness is important in prevention of many consumer issues. PIAC presented or performed outreach at over 25 events across the state in FY 11 and 30 events in the calendar year.

PIAC established a separate category for tracking of Veterans complaints to ensure this constituency has a focused monitoring of complaints to ensure if we are unable to assist the consumers that they are referred to the appropriate agency to best resolve their issues. We are working closely with the Mass DVS to better collaborate and coordinate our advocacy efforts.

## Victim Compensation and Assistance Division

In FY11, the Victim Compensation and Assistance Division received 1578 new claims representing individual impacted by violence, which are consistent to the number of claims received in FY10. For FY 11, 211 were homicide claims, including 32 related to domestic violence, a slight increase from FY10. The total number of new domestic violence-related claims was 173. The number of driving under the influence claims totaled 8. Of the claims made eligible during FY11, 275 were related to child victims under the age of 17 which is a significant increase from FY10. 36 victims were over the age of 65. The division responded to 940 claims which totaled \$2,920,322.62 for crime-related expenses out of federal and state monies.

Over the past year, the division implemented the changes to the expense categories as a result of the passing of H.B. 1587 necessitated revisions of 940 CMR 14.00, Compensation of Victims of Violent Crimes. These expense categories include:

- Funeral and burial expenses from \$4000 to \$6500
- Ancillary Funeral expenses
- Replacement Bedding and Clothing
- Security Measures
- Professional Crime Scene Clean Up
- Mental Health Counseling for Non-offending parents

The division conducted various outreach trainings around the Commonwealth to increase knowledge about the new categories to district attorney offices, child advocacy centers, medical providers, mental health providers, and funeral homes.

## THE BUSINESS AND LABOR BUREAU

### Business, Technology, and Economic Development Division

The Business, Technology and Economic Development Division (BTED) is the liaison between the business community and the Attorney General's Office, promoting better communication, providing information and facilitating a better understanding of issues facing business in the Commonwealth.

The primary role of BTED is to further the Attorney General's efforts to promote economic and technological development in Massachusetts. BTED advises the Attorney General from the perspective of the business community as the Office develops policy on matters that may affect business activity and the Commonwealth's economy.

BTED often collaborates with other divisions of the Attorney General's Office on amicus briefs; regulatory initiatives or review; legislative and policy analysis and review; drafting of advisories; statutory construction; small business impact statements; and evaluation of business-related municipal by-laws. BTED designed and implemented the AGO Regulatory Streamlining Initiative, which is an office-wide review of all existing regulations to ensure they are not out of date, duplicative or overly burdensome to businesses in the state and to bring greater transparency to the regulatory process as a whole.

BTED worked with the Consumer Protection Division, the Non-Profit and Charities Division and the Victim Witness Services Division, on the review and promulgation of regulations; drafting and reviewing several small business impact statements. Most significantly, BTED and CPD completed the amendment of the AGO's Debt Collection Regulations, bringing said regulations up to date to take account for modern advancements in technology, including the use of cell phones and email, bringing the regulations in line with similar federal and other state regulation of debt collection and making it clear that the regulations cover passive debt buyers. This was a coordinated effort where we solicited feedback from both consumer groups and the industry itself to ensure we took a balanced and transparent approach.

BTED worked with the Fitchburg based company Simonds International to assist them in taking advantage of energy efficiency savings programs which allowed their recent installation of 3,600-megawatt natural gas generators that helped save \$500,000 a year. Simonds International, a 179 year old company, is a manufacturer of saws and industrial cutting tools used for processing wood, paper, and metal. With their investment in a Turn Key CHP Electric Generation Installation, Simonds was able to cut energy costs by 40%. With the investment Simonds was able to keep 155 employees in place along with hiring an additional 11 employees. Simonds anticipates hiring approximately 35 additional employees in the next 5 years.

BTED is the AGO coordinator for the Consumer Liaison Group. ISO New England (ISO) and regional electricity market stakeholders created the Consumer Liaison Group in 2009 in order to facilitate the consideration of consumer interests in determining the needs and solutions for the region's power system. Consumer understanding of and involvement in the decision-making process that governs power system development is valuable because consumers depend on and benefit from a reliable power system—and ultimately pay its costs. In 2011, BTED doubled CLG attendance during course of the year from a usual 50 or so to over 100. Speakers in 2011 included AG Martha Coakley, FERC Commissioner Cheryl LaFleur and VT Department of Public Service Commissioner Elizabeth Miller.

## Energy and Telecommunications Division

Through the Energy and Telecommunications Division, the Attorney General serves as the statutory Ratepayer Advocate in administrative or judicial proceedings on behalf of consumers in matters involving the rates, charges, or tariffs of electric, gas or telephone companies doing business in the Commonwealth. The Division works to ensure that businesses and residents have access to reliable, safe, and affordable energy. The Division litigates cases before state and federal courts, as well as administrative bodies, such as the Massachusetts Department of Public Utilities, the Massachusetts Department of Telecommunications, the Federal Energy Regulatory Commission, and the Federal Communications Commission. In many of these matters, the Attorney General is the only active participant advocating on behalf of Massachusetts consumers.

Through the Division's work, the DPU reduced WMECo's requested rate increase from \$28.4 million to \$16 million.

Similarly, in response to the Division's litigation of these rate cases, the Department of Public Utilities cut National Grid's requested annual rate increase to gas customers from \$104 million to \$58 million. Further, as a result of accounting errors and inappropriate charges that the Division found in the company's expenses, including charges for the cost of a trans-Atlantic wine shipment for a National Grid executive, veterinary bills, and private school tuition, the DPU ordered a full audit of the company's accounting and cost allocation procedures.

The Division negotiated a settlement that reduced the cost to ratepayers of National Grid's long term contract with Cape Wind. The settlement will save ratepayers up to \$450 million over the life of the 15-year contract from what was originally proposed.

In FY2011, the Division represented ratepayers in 256 dockets pending before state and federal bodies. Matters that were finalized yielded approximately \$124 million in savings, some of which is based on the calculation of the savings over the lifetime of a particular project.

## Fair Labor Division

The Attorney General's Fair Labor Division enforces laws that protect workers, including the prevailing wage, minimum wage, payment of wages, overtime, tip pooling, child labor, Sunday and holiday premium pay. The Division's Bid Unit enforces the public construction bid laws, which protect against favoritism and corruption in the awarding of public construction contracts, and safeguard taxpayer dollars by ensuring that such contracts are awarded to the lowest, responsible and qualified bidders through a fair and competitive process. The Division has broad powers to investigate and enforce violations of the wage and hour laws through criminal and civil enforcement actions. The Division uses this authority to protect employees from exploitation by employers, to prosecute employers who fail to comply with the Commonwealth's wage and hour laws, and to set a level playing field, ensuring that strong economic growth and fairness for workers go hand-in-hand.

In July 2010, the Fair Labor Division entered into a multi-million dollar agreement with Pittsburgh-based FedEx Ground to settle claims that the company misclassified its drivers as independent contractors. Pursuant to the settlement, FedEx Ground agreed to pay more than \$3 million back to the Commonwealth and thousands of dollars to 13 truck drivers for whom the original case was brought.

In August 2010, following a grand jury investigation by the Fair Labor Division, with assistance from the Criminal Bureau, Worcester-based Labor Solutions Inc. and owner Tam Vuong, also of Worcester, plead guilty in Worcester Superior Court on 65 counts of violating Massachusetts wage and hour laws and committing insurance and tax fraud. The court ordered Vuong and his company to pay \$500,000 in restitution and that Vuong serve 5 years probation.

In January 2011, the Supreme Judicial Court (SJC) affirmed a decision by the Division of Administrative Law Appeals (DALA) upholding a citation by the Fair Labor Division against Michael Camara and his company, ABC Disposal, Inc. (ABC), a recycling and waste hauling company located in New Bedford, for illegally deducting from employees' wages, in violation of the Massachusetts Wage Act. The decision supported the Division's position that employer in question impermissibly shifted costs of doing business onto its workers who were forced to choose between giving up their wages or suffering uncertain discipline. The landmark Camara case brought great clarity to an area in the wage and hour law that had been largely untested.

In March 2011, following a joint investigation by the Fair Labor Division and the Criminal Bureau, Gina Clark, the founder of the Cape Cod charity, Touched by Angels, that was organized to provide financial assistance for families who had lost loved ones or were dealing with serious medical situations, was indicted for allegedly stealing tens of thousands of dollars for herself.

The Division also stepped up its enforcement of the employee misclassification law in partnership with the Governor's Task Force on the Underground Economy and Employee Misclassification.

## Medicaid Fraud Division

The Medicaid Fraud Division conducts a statewide program for the investigation and prosecution of health care providers who defraud the Massachusetts Medicaid program, known as MassHealth. In addition, the Medicaid Fraud Division is responsible for reviewing complaints of abuse, neglect, mistreatment and financial exploitation of patients in long-term care facilities.

The Medicaid Fraud Division partners with other local, state and federal law enforcement agencies in its efforts to combat fraud, save taxpayer dollars, and protect the most vulnerable in our society from exploitation and abuse by their caregivers.

In September 2010 the MFD secured \$9.45 Million in a settlement with Long-Term Care Pharmacy Omnicare after an investigation revealed that the company was overcharging the Massachusetts Medicaid Program.

Also in September 2010 a federal jury in U.S. District Court in Boston found Merck & Co., Inc. (formerly Schering-Plough Corporation) liable for \$4.5 million in damages to the Massachusetts Medicaid program for having reported false and fraudulent prices to industry price reporting services between 1995 and 2003 for its former generic drug subsidiary, Warrick Pharmaceuticals Corporation (Warrick).

In the lawsuit, Attorney General Coakley's Office alleged that Schering-Plough Corporation, its wholly-owned subsidiary, Schering Corporation, and Warrick reported false and inflated prices for three albuterol products, a drug used to treat asthma and other respiratory diseases, to industry price reporting services, including First Data Bank. The jury also found under the MFCA that the defendants' caused over 989,000 false claims to be filed by pharmacies with MassHealth. Each false claim is subject to civil penalties of between \$5,000 and \$10,000.

On October 1, 2010 MFD reached a settlement with pharmaceutical manufacturer Novartis Pharmaceuticals Corporation to resolve allegations that the company improperly marketed the epilepsy drug Trileptal and five other products. Under the terms of the settlement, Novartis paid \$7,647,501.76 to the Massachusetts Medicaid Program.

On October 26, 2010 MFD reached an agreement with pharmaceutical manufacturer GlaxoSmithKline ("GSK") to resolve allegations that the company's conduct – pervasive and systemic failure to maintain and operate its Cidra, Puerto Rico facility in accordance with FDA-mandated standards – caused false claims for four drugs (Avandamet, Paxil CR, Kytril and Bactroban) to be submitted to the Massachusetts Medicaid Program and other federally-funded health care programs. Under the terms of the settlement, GSK paid more than \$8 million to the Massachusetts Medicaid Program.

On November 8, 2010 AG Coakley's Office announced that Mylan Inc., a Canonsburg, Pennsylvania pharmaceutical manufacturer, was to pay over \$2.6 million to the Commonwealth to settle a Massachusetts False Claims Act case. The lawsuit alleged that Mylan, through its wholly-owned subsidiary, Mylan Pharmaceuticals Inc., reported false and inflated prices to drug industry price reporting services, which caused the Massachusetts Medicaid Program to pay inflated amounts for ingredient costs on prescriptions for Medicaid recipients.

On December 15, 2010 a Taunton District Court jury convicted a Brockton woman who assaulted a 92-year-old hospice resident while she was working as a Certified Nursing Assistant (CNA) at the Southeast Rehabilitation & Skilled Care Center in Easton. Margally Samy, age 48, was found guilty of Assault and Battery on an Elderly Person

On February 2, 2011, a Salem District Court jury has convicted a Lynn woman in connection with assaulting an elderly nursing home resident while she was working as a Certified Nursing Assistant (CNA) assigned to the Hunt Nursing and Retirement Home in Danvers.

On April 28, 2011, a Springfield District Court jury convicted a Springfield woman in connection with assaulting an elderly nursing home resident while she was working as a Certified Nursing Assistant (CNA) assigned to the East Longmeadow Skilled Nursing Center in East Longmeadow MA.

## Non-Profit Organizations/Public Charities Division

The Division is responsible for overseeing more than 23,000 public charities in Massachusetts, including ensuring appropriate application of charitable assets, investigating allegations and initiating enforcement actions in cases of breach of fiduciary duty, and supporting transparency through publication of filed reports and forms. The Division also oversees paid fundraisers, including enforcement of registration and filing requirements and prosecution of solicitation fraud.

In one significant matter that concluded in FY11 the Attorney General secured an important ruling with respect to the duty owed by one charitable corporation to another charitable corporation under its control. In *Lifespan Corp. v. New England Medical Center, Inc.*, the Court ruled that the parent corporation owed a fiduciary duty of loyalty and care to its controlled subsidiary, that any waiver by the subsidiary of a claim of breach of that duty was NOT effective as to the Attorney General and that there was no statute of limitations within which the AG had to enforce that duty.

Pursuant to the requirements of Massachusetts General Law Chapter 180, Section 8(A)(d), on May 26, 2011, Morton Hospital and Medical Center (“Morton”) filed formal notice of a proposed sale of hospital to Steward Health Care System LLC. (Steward). On July 8, 2011, Quincy Medical Center (“Quincy”) filed its formal notice of a proposed sale to Steward.

The QMC transaction was unique in that it combined a charitable conversion and a proceeding under Chapter 11 of the Bankruptcy Code. It was the first time in Massachusetts and the first completed transaction nationally in which the new provisions of the Bankruptcy Code requiring that state law, in this case the Attorney General’s overview of the propriety of converting a significant charitable asset to for-profit status, be considered within the bankruptcy proceeding.

## THE CRIMINAL BUREAU

### Appeals Division

The Appeals Division is responsible for defending criminal convictions, as well as state criminal laws and criminal justice officials, in federal and state courts. This includes seeking to uphold convictions in state appellate courts, defending convictions in federal courts, representing state criminal justice officials, and defending state criminal statutes, rules and practices.

The Division defends criminal convictions secured by the Attorney General’s Office when they are challenged through post-conviction motions in the Massachusetts Trial Court, or on appeal to the Massachusetts Appeals Court or Supreme Judicial Court. The Appeals Division also defends convictions secured by the Attorney General’s Office or any district attorney’s office against challenges brought in federal court. The Division represents the Commonwealth in all direct criminal appeals to the United States Supreme Court, and has served as counsel of record in cases argued before the Court. The Division also responds to habeas corpus actions in the United States District Court, and on appeal to the United States Court of Appeals for the First Circuit and Supreme Court. These actions, which involve challenges to state convictions on constitutional grounds, impact federal constitutional jurisprudence both in and outside of Massachusetts.

The Appeals Division is responsible for representing state officials in federal and state civil suits arising from actions undertaken within the criminal justice system. In about 100 new cases per year, the Division provides representation to judges, court clerks, probation officers, prosecutors, public defenders, and others. Such officials are represented where they are named as defendants, or subpoenaed to provide documents or testimony. The Division is also frequently called upon to litigate in defense of the constitutionality of statutes, rules, procedures, and practices related to criminal adjudication and punishment. Constitutional challenges may arise in criminal or civil matters in federal or state court.

The Appeals Division successfully defended numerous criminal convictions this past year, including convictions for drug trafficking, child pornography, assault, fraud, theft, embezzlement and illegal gambling. Many of the Division’s decisions will have an enduring and positive impact on the Commonwealth’s ability to protect its citizens and enforce its laws. One such decision is Commonwealth v. Springfield Terminal Railways, where the Appeals Court adopted the Division’s argument in favor of expanding the theory of corporate liability. The decision – in which the court recognized that corporations can be held responsible for what is known and done by all their employees and subsidiaries – will help ensure that corporations are held accountable for their



criminal conduct. The decision is also important because the court recognized for the first time that corporations can be placed on probation.

Furthermore, in *Doe v. Sex Offender Registry Board*, the Supreme Judicial Court held that the government could require sex offenders to pay more toward the costs of their probation services and DNA processing – costs that their unlawful conduct has made necessary – instead of leaving those costs to be assumed by taxpayers.

On the federal level, the Division continued its efforts to develop federal constitutional law in ways that protect state-court criminal convictions. In *Mendes v. Brady*, for instance, the Division obtained a ruling – written by retired Supreme Court Justice David Souter – that significantly limits the federal courts' ability to review the Commonwealth's first-degree murder convictions. Also, in *Butler v. O'Brien*, the First Circuit rejected the prisoner's argument that Massachusetts' aggravated rape statute is void for vagueness. The decision both protects other aggravated rape convictions from constitutional challenges and helps ensure that the Commonwealth can prosecute violent rapes as such.

Other notable habeas decisions include *McDermott v. O'Brien*, in which the federal court refused to overturn Michael McDermott's convictions for killing seven co-workers at Edgewater Technology in Wakefield, Massachusetts; *Robidoux v. O'Brien*, where the First Circuit Court of Appeals upheld cult member Jacques Robidoux's conviction for murdering his infant son; and *Tash v. Roden*, in which the First Circuit refused to overturn Dewitt Tash's conviction for raping a mentally-impaired adult woman in his care at a state facility.

The Appeals Division provides services to victims, family members and witnesses in connection with state criminal appeals and federal habeas proceedings. During this past year, the Division provided outreach to approximately 100 victims, family members and witnesses; accompanied approximately 15 victims and family members to proceedings in state and federal court; and held 7 conference calls where the victims and family members lived out of state or were unable to attend the court proceedings.

Finally, over the past year, the Division contributed to the development of criminal legislation, including laws concerning the dissemination of materials harmful to minors, human trafficking, Internet gambling, and post-conviction access to DNA.

## Cyber Crime Division

The Cyber Crime Division investigates and prosecutes complex criminal cases involving digital evidence, consultation on criminal matters involving technology, and the forensic examination of digital evidence. The Division is focused on building stronger and safer communities, as well as developing shared training resources and collaboration between law enforcement agencies.

The Division also works to advance the comprehensive Cyber Crime Initiative, which includes the Massachusetts Digital Evidence Consortium, a working group of law enforcement digital evidence analysts who convene to standardize digital evidence analysis procedures and improve training and information sharing efforts. The Cyber Crime Initiative is a product of the Massachusetts Strategic Plan for Cyber Crime. In 2007, the Attorney General convened a meeting of police officers and prosecutors from across the Commonwealth to identify challenges in the investigation and

prosecution of cyber crime cases. Shortly thereafter, she published the Strategic Plan, identifying several solutions to these challenges. The Cyber Crime Initiative implements these solutions and has already achieved significant success. For example, the Cyber Crime Division has arranged or conducted training for more than 11,000 police officers and prosecutors in several cyber crime subjects. The Division also coordinates an online training portal for law enforcement.

During fiscal year 2011, the Cyber Crime Division instituted prosecutions against two major "internet cafes" that were located within the Commonwealth. While these businesses purported to sell goods or services, such as Internet access, the Attorney General's investigation found that those sales were a pretext for unlawful and unregulated gambling.

Moreover, during fiscal year 2011, the Cyber Crime Division instituted Operation Predator, a large-scale sweep involving offenders in Massachusetts who possess and distribute hard core child pornography. Over a dozen search warrants were simultaneously executed across the Commonwealth and numerous arrests were made.

In a separate investigation and prosecution, the Cyber Crime Division prosecuted George Shipps. Shipps had one of the largest collections of child pornography in Massachusetts. Shipps was sentenced to 3-5 years in State Prison, followed by an additional five years probation.

The Cyber Crime Division also prosecuted Lyn Toscano and Manoj Patel for charges related to Patel's bribery of Toscano. Toscano was a public official who was employed at the Registry of Motor Vehicles. Both Toscano and Patel pled guilty to all charges.

Finally, the Digital Evidence Laboratory handled over a hundred requests for service, involving many terabytes of data to be analyzed. Forensic examiners testified in numerous proceedings throughout the Commonwealth. Requests for service included requests from local departments, State Police units, and various District Attorney's offices from across the Commonwealth.

## Enterprise and Major Crimes Division

The Enterprise and Major Crimes Division targets criminal enterprises and organizations using sophisticated investigative techniques and strategies in order to develop high-impact prosecutions. The Division includes prosecutors and State Police assigned to the Attorney General's Office who work closely with various federal, state, and local law enforcement authorities and agencies to target, investigate, and prosecute and disrupt criminal organizations in order to promote and ensure public safety in communities throughout the Commonwealth.

The Division successfully investigated, disrupted, and dismantled a major drug trafficking ring operating out of the North End of Boston resulting in charges against 11 defendants. The Division successfully investigated, disrupted, and dismantled a large-scale criminal organization whose specialty was breaking into automated teller machines in over 6 counties, resulting in the prosecution of 14 defendants. The Division also successfully handled complex pre-trial litigation in a major organized crime prosecution involving over 30 defendants, including several made members of La Cosa Nostra. Further, the Division prosecuted numerous defendants over the course of three trials arising out of an investigation of a large-scale inner city gang specializing in drug trafficking and crimes of violence operating out of the greater Boston area. The Division also prosecuted cases involving bank robbers, armed robbers, drug dealers, organized prostitution rings and extortionists.

## Environmental Crimes Strike Force

The Environmental Crimes Strike Force investigates and prosecutes crimes that harm the state's air, land or water, or that pose a significant threat to human health. The Strike Force is an interagency team that includes prosecutors from the Attorney General's Office, officers from the Massachusetts Environmental Police, and investigators, engineers and attorneys from the Massachusetts Department of Environmental Protection (DEP). Strike Force partners meet regularly to evaluate whether enforcement against particular environmental violations should be done administratively, civilly or criminally. The most egregious violations are referred for criminal prosecution. The Strike Force gathers evidence during undercover investigations, carefully builds cases against environmental violators, then takes them to court.

The Strike Force has recently pursued prosecutions for improper disposal of hazardous waste, failure to properly report spills of oil or hazardous waste, failure to properly abate and dispose of asbestos, and exposing workers to unsafe environmental conditions.

The Strike Force resolved its first "environmental false claims" cases in 2011-- cases in which municipal contractors were charged with lying to the municipalities that hired them about their compliance with environmental laws. The larger of these two cases resulted in a \$7.5 million civil settlement with the operator of the three Wheelabrator incinerators in Massachusetts. The case began with allegations by two employee whistleblowers of widespread environmental violations at the incinerators, allegations that were then investigated by an Essex County grand jury.

The other case, *Commonwealth v. Jayco Landscape Supply Co.*, charged a hauling company and two of its corporate principals with lying to municipalities about their disposal of solid waste that was required to be taken to permitted landfills. Instead, the company brought the waste to its own property, mixed it with yard waste, and then dumped it at facilities not permitted to accept it. After a plea of guilty, the company was sentenced to a fine of \$100,000 and barred from entering into municipal contracts for a year; the president of the company received a jail sentence.

The Strike Force is emerging as a national leader in criminal environmental enforcement, having been invited to showcase its work at conferences in Baltimore, Charleston, Portland, and Seattle, and currently participating in the leadership of the Northeast Environmental Enforcement Project, a 14-state organization of environmental enforcement officials.

## Fraud and Financial Crimes Division

Created by the Attorney General in 2011, the Fraud and Financial Crimes Division investigates and prosecutes criminal misconduct involving a broad array of financial crimes including fiduciary embezzlement, complex financial frauds, and tax crimes.

The Division is staffed with prosecutors, civilian investigators, State Police Troopers assigned to the Office, victim witness advocates and support staff. The Fraud and Financial Crimes Division works closely with the business and non-profit community as well as local state and federal investigative and law enforcement agencies to prosecute as well as prevent criminal financial activity. By targeting illegal schemes ranging from complex mortgage fraud to simple larceny, the Division strives to protect Massachusetts consumers and businesses.

Among the cases prosecuted include:

*Commonwealth v. Selewach* - In July 2011, a former financial broker, Shane Selewach, was sentenced in Barnstable Superior Court to 8-12 years in State Prison. He was convicted of stealing \$335,000 from former clients after 12 days of trial. From July 2005 through November 2008, Selewach solicited investors for funds for proposed investments such as commodities, hedge funds and real estate. He deposited these funds in various personal and business accounts, withdrawing the funds for personal uses such as paying his mortgage and international travel.

*Commonwealth v. Hlady* - In June 2011, a professional fundraiser from Rhode Island, Michael Hlady, pleaded guilty and was sentenced to State Prison (two years) for stealing over \$360,000 from Venerini Academy, a Catholic elementary school in Worcester, and orchestrating a sophisticated scheme to mislead the school into believing that a well-known philanthropist was prepared to make a multi-million dollar donation. In August 2008 Venerini hired Hlady and his company, KAM Fundraising, Inc. to assist the school in raising funds for a planned \$3 million expansion. In late 2008 Hlady informed school officials that he had contacted a well-known philanthropist in the Worcester area who contributed regularly to educational and other charitable organizations through his foundation, and that this donor wanted to contribute millions of dollars to the school for its planned expansion. Based on his representations, the school made numerous payments to Hlady for his services. From September 2008 through February 2010 Venerini paid Hlady approximately \$360,000. Ultimately, an investigation revealed that the known philanthropist was not offering a large donation to the school and that Hlady had used the identity of the donor to steal funds from the school in payment for services he never performed.

## Insurance and Unemployment Fraud Division

The Insurance and Unemployment Fraud Division investigates and prosecutes those who commit fraud against insurers and against the Commonwealth's unemployment insurance and workers' compensation system. This includes automobile, health care, and disability fraud.

The Division prosecutes these crimes to protect both Massachusetts consumers and the integrity of the insurance system. These efforts help protect taxpayers from higher premiums and taxes that result from fraud and assuring that those in need receive appropriate services.

Among the cases prosecuted include:

*Commonwealth v. Hyde, Kaplan and Castillo*. The case involved four staged accidents in which Castillo recruited individuals to participate. Attorney Hyde and chiropractor Kaplan conspired in the scheme. On May 16, 2011 in Essex Superior Court, after a six week trial by jury, Hyde, Castillo, and Kaplan received guilty verdicts. Judge Whitehead sentenced Hyde and Kaplan to 2 and ½ years committed in the HOC with 5 years probation from and after. Castillo was sentenced to 2 ½ years in the HOC, 9 months committed, the balance to be suspended for 5 years, 5 years probation to run concurrently.

*Commonwealth v. Joshua Brown*. Throughout 2007, employees of Boston Equity Investments (BEI), including CEO Joshua Brown, recruited home sellers who were having difficulty selling their properties. BEI convinced the sellers to allow them to sell their property for a share of the proceeds. After the sellers signed agreements, BEI had the properties appraised at inflated prices. BEI then got out of state residents to buy the properties. Working with two individuals at Moneywise Solutions, BEI acquired the mortgages for the buyers at the inflated prices. BEI and Moneywise misled the mortgage companies. BEI then collected the difference between what the sellers agreed to receive for BEI's handling of the sale, and the inflated sales prices. BEI made extensive promises to the buyers which

were not followed through and cut off contact with them leaving them to face foreclosure. On October 27, 2011 in Suffolk Superior Court, a jury convicted Brown of Larceny over \$250 (26 counts), Making or Publishing False or Exaggerated Statements (19 counts), and Larceny by False Pretenses Relating to Contracts, Banking Transactions or Credit (11 counts). Brown was sentenced to four years in the House of Correction followed by 35 years of probation. He was also ordered to pay \$5,000,000.00 in restitution.

*Commonwealth v. Wanderson Silva and Virgin Lima.* The IFB received three referrals from Safety Insurance Co. that involved claims for commercial policies that were written by Brighton Insurance Agency. In addition to the policies being written by the same agent, the vehicles were all purchased from the same dealership known as Inman Motors in Somerville, MA. The claim referrals submitted indicated that the companies involved with each loss did not exist. These policies were written with the purpose of saving money as well as being written for undocumented foreign operators who were not able to get a vehicle insured and registered into their names. On September 8, 2011 in Suffolk Superior Court, Wanderson Silva pled to 27 indictments (78 counts) and Judge MacDonald sentenced Wanderson Silva to the following:

On November 30, 2011 in Suffolk Superior Court, after a 2 ½ day trial, a Suffolk county jury returned guilty verdicts against Virgin Lima on 2 counts of Motor Vehicle Insurance Fraud and 2 counts of Larceny Over \$250. Judge Quinlan sentenced the defendant to 2 years in the house of correction, suspended for 2 years and to pay \$300 of restitution to Safety Insurance.

*Commonwealth v. Thomas Leonard.* This is a workers' compensation insurance "premium avoidance" case. Thomas Leonard ("Leonard"), owner of TLC Exteriors ("TLC") in Hadley, MA, used a cash payroll to misrepresent the true number of employees and misclassified his employees work in order to avoid paying his workers' compensation ("WC") premiums with A.I.M. Mutual Insurance Company ("AIM"). On October 11, 2011 in Hampshire Superior Court, Thomas Leonard pled Guilty to charges of Workers' Compensation Fraud (4 counts) and Larceny over \$250 (4 counts) and received two and a half years in the House of Correction sentence suspended for five years with probation, \$10,000 fine, and \$40,000 in restitution to his insurance provider by Judge Bertha Josephson.

*Commonwealth v. George Quinn.* Quinn ran an illegal car rental business out of his home in Dorchester. Several of his vehicles had been stopped for illegal activity. He lied to his insurance company, AMICA, about the intended use of his vehicles when he applied for and obtained policies for these vehicles. Boston Police Department executed a search warrant and pursuant to the insurance fraud investigation and found guns and rifles in the residence. On August 23, 2011 in Suffolk Superior Court, George Quinn was found Guilty by jury on charges of possession of firearms without an FID card and sentenced to two years in the house of correction with one year suspended. He then pled Guilty to motor vehicle insurance fraud charges and was sentenced to four years probation to run concurrent by Judge Donovan.

## Public Integrity Division

The Public Integrity Division investigates and prosecutes serious criminal misconduct involving:

- Crimes committed against or upon public agencies,
- Corrupt public employees and public entities who engage in or conspire to commit larceny, fraud, bribery, gratuities, and other crimes in which there is a hidden personal financial interest, and
- Crimes that have a corrosive or harmful effect on public confidence in our government and other trusted institutions, including such crimes as perjury and obstruction of justice.

The Public Integrity Division is staffed by a group of experienced prosecutors who partner with State Police troopers and civilian financial investigators in the Office, and local, state, and federal investigative and enforcement agencies. Prosecutors, troopers, investigators, victim witness advocates, and support staff work collaboratively to investigate and prosecute matters using the most sophisticated resources available to law enforcement.

In one case prosecuted in FY 2011, an employee of an MBTA subcontractor and an associate were arrested and arraigned in Salem District Court for their roles in the alleged largest fare evasion scheme in MBTA history. After the close of the fiscal year, they were indicted and arraigned in Superior Court. As an employee of the firm that makes MBTA tickets, Andres Townes allegedly used the firm's machinery to produce more than 20,000 fraudulent MBTA passes worth more millions of dollars and, with co-defendant Gloria Escobar, sold them at a discount to passengers, often through Craigslist. The MBTA received no revenue from these sales. The scheme allegedly went back as far as November 2007.

Also during FY 2011, the division handled two phases of cases involving fraudulent Emergency Medical Technician (EMT) recertification schemes. The first phase led to other investigations in the state. Two co-defendants from the first phase (Hamilton Police Department), Henry Michalski, Jr., and David Mastrianni, pled guilty in March 2011 and November 2010, respectively.

In November 2010, the first series of phase 2, five defendants were indicted by a Suffolk County Grand Jury in connection with a four-year scheme in which they falsified and submitted records that showed that dozens of emergency personnel attended refresher courses to be recertified. The personnel never attended those classes. Leo Nault, a paramedic and ringleader of the scheme, pled guilty in May 2011 and two co-defendants, Victor Valdez and Jeffrey Given, and EMT and paramedic, pled guilty in June 2011.

In another case, an EMT instructor and four top executives of a Woburn ambulance company were also indicted for a fraudulent EMT recertification scheme.

Before the close of the fiscal year, a former Department of Corrections employee pled guilty and was sentenced on charges of Conflict of Interest for Financial Interest and Gratuities, Procurement Fraud and Larceny Over \$250. Gary Mendes used his position in the Special Operations Division to develop a relationship with a state vendor for his own financial gain.

Another defendant indicted and arraigned in FY 2011 was the former general manager of the Merrimack Valley Regional Transit Authority who stole large amounts of cash from his agency's money room. The money had been collected from transit authority bus fares.

The Public Integrity Division also began an investigation in the fall of 2010 into three Massachusetts Department of Transportation employees who allegedly conspired to illegally award lucrative snow and ice removal contracts to a family friend to cover up the financial interest of two of the employees

## GOVERNMENT BUREAU

### Administrative Law Division

The Administrative Law Division's objective is to provide the highest quality legal representation

to all of the state agencies and officials it serves. The Division represents state agencies and state officials in a broad range of civil litigation. The Division defends legal challenges to state statutes and regulations, suits that challenge state policies and programs, and suits that challenge the decisions of state administrative agencies.

The Division also initiates litigation on behalf of state agencies in order to support their programs or assist their regulatory activities. The Division's cases frequently involve questions of statutory interpretation, application of constitutional principles, and claims concerning the authority or jurisdiction of state administrative agencies.

The Administrative Law Division protects the public interest by vigorously defending the Commonwealth's agencies that provide essential governmental services, programs and public benefits. These cases involve many areas of law, including the regulation of insurance, banking, public utilities, renewable energy and telecommunications; state taxation; environmental permitting; affordable housing; transportation; education; human services and public assistance programs; public health and health-care finance; professional licensure and discipline; and public-sector labor and employment. The Division also defends challenges to legislative initiatives such as expansion of health insurance access, state pension reform, consolidation of transportation agencies and increased penalties for drunk driving in Melanie's Law. In many cases, the Division seeks to preserve both needed public programs and significant public funds.

#### Saving State Resources and Maximizing State Revenue

*Mass. Executive Office of Health & Human Servs. v. U.S. Dep't of Health & Human Servs., Ctrs. of Medicare & Medicaid Servs. et al.*, First Circuit. The parties settled this appeal, which involved MassHealth's challenge to the federal Medicaid agency's disallowance of \$87 million in federal Medicaid payments for "targeted case management services" performed by the Department of Social Services for Medicaid-eligible children during fiscal years 2002 and 2003. MassHealth agreed to dismiss the appeal and, in exchange, the United States agreed to forgo any future disallowances for MassHealth claims submitted after fiscal year 2003. The amount of these claims exceeded \$200 million.

*Global Companies, LLC v. Commissioner of Revenue*, SJC. The court held that a ferry company did not engage in "foreign and interstate commerce" and so was not exempt from the obligation to pay Massachusetts sales tax on purchases of fuel, when its vessels took passengers between the Cape and the Islands.

*Outdoor Amusement Business Association, Inc. v. Department of Public Safety and the Executive Office for Administration & Finance*, Appeals Court. The court held that DPS and A&F may impose and collect fees for the inspection of amusement devices (such as roller coasters and ferris wheels) every time they are set up at a new location in Massachusetts.

#### Defense of State Agencies / Public or Consumer Protection

*MacLean v. Board of Registration in Nursing*, SJC. The court upheld a decision by the nursing board to suspend a nurse's license for six months based on evidence of unauthorized administration of a controlled substance to a patient.

*Anawan Insurance Agency, Inc. v. Division of Insurance*, SJC. The court affirmed a decision by the Division of Insurance imposing sanctions on an insurance agency for employing an unlicensed broker. In an important ruling, the court held that that the statute of limitations for this type of consumer

protection action does not begin to run until the company's violation became known to the plaintiff.

*Udemba v. Board of Reg. of Hazardous Waste Site Cleanup Professionals*, Appeals Court. The court affirmed a decision of the board to suspend Udemba's license as a licensed site professional (LSP) for six months. The board had concluded that excessive hours billed by Udemba on a particular project demonstrated that he failed to perform his work with reasonable care and diligence and failed to apply the knowledge and skill ordinarily exercised by an LSP in good-standing.

#### Defense of State Agencies / Education Reform

*Griswold v. Driscoll*, First Circuit. The court rejected this First Amendment challenge to the Commissioner of Education's decision to remove certain materials from a Department of Education curriculum guide on human rights and genocide. The removed materials advanced the view that the deaths of Armenians during the latter days of the Ottoman Empire were not the result of a Turkish policy of genocide.

#### Access to Health Care

*McCullen v. Coakley*, U.S.D.C. The court dismissed a variety of constitutional challenge to the statute providing a "buffer zone" around reproductive health care facilities, including claims that the law is overbroad, is an unconstitutional prior restraint on speech, and violates plaintiffs' right to the free exercise of religion. (Ken Salinger, Gabrielle Viator) (12/27/10) [Note: The main "as applied" First Amendment challenge to the law was dismissed the following year.]

#### Integrity of Elections

*Simmons v. Galvin*, Supreme Court. The Court denied certiorari review of the holdings by the First Circuit that section 2 of the federal Voting Rights Act does not apply to the Massachusetts laws that disqualify incarcerated felons from voting, and that the Massachusetts laws do not violate the Ex Post Facto clause.

*Barr v. Galvin*, First Circuit. This case involved a 2008 challenge by the Libertarian candidates for president and vice-president of the United States to the Secretary of State's determination that they would could not "substitute" their names on the ballot for two other Libertarian candidates who had not received the Libertarian convention endorsement but who had obtained the 10,000 signatures necessary for minor-party candidates to obtain placement on the ballot. The court held that the candidates did not have a right under the Equal Protection Clause to "substitution."

#### Government Reform / Consolidation of State Agencies

*Local 589, Amalgamated Transit Union, et al. v. Commonwealth of Massachusetts, et al.*, Suffolk Superior. The court granted summary judgment to the Commonwealth in this action challenging the Transportation Reform Act's transfer of MBTA health benefits from collective bargaining to the GIC.

### Municipal Law Unit

Whenever a town adopts or amends its general by-laws or zoning by-laws, within 30 days of adjournment of town meeting, the Town Clerk is required to submit them to the Attorney General for review and approval. The Attorney General then has 90 days in which to decide whether the proposed amendments are consistent with the constitution and the laws of the Commonwealth. If the Attorney General finds an inconsistency between the proposed amendments and state law, the amendments or portions thereof will be disapproved. The Municipal Law Unit is responsible



for undertaking this review and for issuing a written decision approving or disapproving by-law amendments.

## Open Government Division

State-wide enforcement of the Open Meeting Law, for public bodies at all levels of government, is centralized in the Attorney General's Office. To help public bodies understand and comply with the law, the Attorney General created the Division of Open Government. The Open Meeting Law recognizes that the democratic process depends on the public being aware of how their government works and makes decisions. Therefore, the Open Meeting Law requires that public bodies conduct most of their meetings in public. The Division of Open Government provides training and guidance, responds to inquiries, investigates complaints, and when necessary, makes findings and takes remedial action to address violations of the law.

In August 2011, the Division issued a determination finding that the University of Massachusetts Board of Trustees had committed "wide-ranging and serious" violations of the Open Meeting Law in connection with the appointment of the University's new president. In addition to remedial action ordered to address past violations, in order to prevent future similar violations, we ordered the Board to undergo training on the Law prior to beginning the process of appointing a new University of Massachusetts Amherst Chancellor this Fall, and to submit copies of all meeting notices and minutes created during this search to our office for review.

The Division also issued three determinations that clarify our office's interpretation of the contract negotiation purpose for executive session. In OML 2011-44, we explained that "The law allows a public body to conduct contract negotiations with non-union personnel in executive session, but does not authorize a public body to approve a contract in executive session. Therefore, while a public body may reach an agreement on the terms of a contract in executive session, it must subsequently vote to approve or ratify such agreements in open session before they become effective. See OML 2011-28 (finding that school committee violated the Open Meeting Law by voting to approve superintendent's contract addendum in executive session)."

The Division conducted a series of seven regional trainings on the Open Meeting Law across the state, reaching approximately 400 attendees. In addition, the Division conducted or participated in 15 other training events. These trainings included presentations to the Massachusetts Municipal Association, the Massachusetts Association of School Committees, the Massachusetts City and Town Clerks Association, the Massachusetts Bar Association, and the Massachusetts chapter of the National Association of Housing and Redevelopment Officials, and others.

In June 2011, the Division issued draft regulations governing remote participation in meetings of public bodies. After considering approximately 50 written comments and the testimony of five individuals at a public hearing on September 6, 2011, the Division promulgated final remote participation regulations, 940 CMR 29.10, on November 11, 2011.

In December 2011, the Division issued a draft regulation to clarify the standard for finding an intentional violation under the Open Meeting Law. The Division is presently reviewing comments received during the public comment period, which closed following a January 19, 2012 hearing on the draft regulation.

## Trial Division

The Trial Division defends suits brought against state agencies, officials and employees who are sued in the context of their agency duties. The types of cases generally include employment, torts, civil rights, contracts, erroneous conviction, eminent domain and land use cases. These suits generally seek damages or other relief for alleged wrongful acts of government agencies, officials or employees.

The Trial Division handles cases in both federal and state court, and the cases range from those with simple fact patterns to multi-million dollar cases with complex fact patterns and legal issues.

The Trial Division also initiates affirmative litigation on behalf of state agencies when such litigation is in the public interest and has significant monetary value or raises significant legal or policy issues. As required by statute, the Trial Division reviews and approves all pre-litigation settlements of tort claims against the Commonwealth or its agencies of \$2,500 or more.

The Trial Division develops and maintains close working relationships with agency counsel and provides them with information and advice, particularly where advance consultation may prevent unnecessary litigation. The Division also reviews various conveyance documents submitted by state agencies for approval as to form.

Philip Morris Inc., R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation, B.A.T. Industries P.L.C., Lorillard Tobacco Company, Liggett Group, Inc., New England Wholesale Tobacco Co., Inc. Albert H. Notini & Sons, Inc., The Council for Tobacco Research - USA, Inc., and The Tobacco Institute, Inc.

Tobacco Diligent Enforcement Arbitration case. This was a case that grew out of the 1998 Master Settlement Agreement with certain tobacco manufacturers. Under the Agreement, the tobacco manufacturers can significantly reduce their multi-hundreds of millions of dollars annual payment to the states if the states do not "diligently enforce" a state statute for the collection of excise taxes against tobacco manufacturers that did not participate in the Master Settlement Agreement. The tobacco manufacturers brought a case that challenged the "diligent enforcement" of 51 states and territories for the year 2003. The risk was that if the tobacco manufacturers were successful, the Commonwealth could lose its entire payment for 2003, which was approximately \$250 million. There were three years of extensive discovery and argument of a myriad of issues before a three person arbitration panel. At the conclusion of discovery in early November, the tobacco manufacturers decided not to continue the case against just 17 of the 51 states and territories, including Massachusetts.

Suffolk Construction Co., Inc. and NER Construction Management Inc., d/b/a Suffolk/NER, A Joint Venture v. Division of Capital Asset Management, Suffolk Superior Court

DCAM settled the legal dispute stemming from the renovation of the John Adams Courthouse. The project began in 2001 and was completed in 2005, 15 months later than originally scheduled. The General Contractor on the project, Suffolk Construction and New England Restoration ("Suffolk/NER"), in conjunction with 11 separate subcontractors sued DCAM in August 2005, seeking additional payments in excess of \$62 million over and above the \$117.7 million already paid. The settlement agreement called for the state to pay Suffolk/NER a total of \$19.5 million or 31% of the total amount sought by the contractors. In exchange, Suffolk/NER agreed to indemnify the state against any and all additional claims from the subcontractors with Suffolk/NER taking responsibility for settling those claims with the 11 subcontractors.

A new form was created and added to the AGO website, along with information to help guide the public on how to submit an M.G.L. Ch. 258 presentment claim to the Attorney General's Office.

## PUBLIC PROTECTION AND ADVOCACY BUREAU

### Antitrust Division

The Attorney General's Antitrust Division protects the people, state agencies and businesses of Massachusetts from anti-competitive practices and helps maintain and encourage a competitive and vibrant economy through fair and effective enforcement of antitrust laws.

ATD reviewed a number of significant health care mergers or agreements in order to protect and maintain competition in this vital market. For example, we resolved our review of the merger of Atrius Health and Fallon Clinic with an Assurance of Discontinuance that requires detailed reporting of Fallon Clinic's rates going forward. ATD also reviewed Steward Health Care's acquisitions of three Massachusetts hospitals for compliance with the antitrust laws. In a different industry, we worked with federal authorities and other states in reviewing the acquisition of Healthcare Waste Solutions, Inc. by Stericycle, Inc. in the medical waste disposal market. This led to an agreement in FY 2012 with Stericycle that preserves competition in the medical waste disposal business in Massachusetts.

ATD also protected the taxpayers' money in cases involving public purchasing. In one case ATD obtained an Assurance of Discontinuance and a fine against a fire alarm service firm that solicited an anticompetitive agreement among other bidders for a public construction project. In another series of matters, ATD and IFSD worked jointly, together with other states, to investigate and then settle with major banks following alleged anticompetitive conduct in the sale of municipal bonds. ATD and IFSD reached settlements with Bank of America for more than \$2 million and with UBS AG for more than \$6 million on behalf of harmed Massachusetts governmental and public entities.

ATD advocates for effective competition policy on behalf of the Commonwealth in important antitrust cases. In the past year we joined briefs advocating pro-competition positions in several cases, particularly cases seeking lower price generic drug competition for pharmaceuticals. In addition, ATD consults or provides antitrust expertise to state and federal governmental entities on policy matters.

### Civil Rights Division

The Attorney General's Civil Rights Division enforces and safeguards Constitutional and statutory civil rights and liberties on behalf of Massachusetts residents and visitors. The Division works to end discrimination on the basis of race, national origin, gender, religion, sexual orientation, age and disability, and to ensure equal and meaningful opportunity to each Massachusetts resident to participate in a civic society in areas such as education, housing, employment, financial services, healthcare, transportation, voting and marriage. In addition, the Division works to protect individual rights of free speech and privacy.

The Attorney General's Civil Rights Division reviews and responds to civil rights complaints alleging deprivations of, or interference with, civil rights and civil liberties. The office may bring enforcement action, where appropriate, may mediate disputes, or may refer complainants to other resources.

Among cases involving the Civil Rights Division included:

**Option One Litigation** - In August 2011, the AG obtained a consent judgment in the first of its kind case against national subprime mortgage lender Option One Mortgage Corporation and its successor for unfair and deceptive loan origination and servicing practices and discriminatory lending practices that resulted in higher fees to Black and Latino borrowers. The consent judgment resulted in \$9.8 million in cash relief for the Commonwealth and affected borrowers and communities and approximately \$115 million in the form of loan modifications.

**Mortgage Master** - In May 2011, the AG resolved discriminatory lending practices claims against Massachusetts' largest prime mortgage lender by a \$250,000 settlement that included restitution to affected borrowers and the funding of programs that promote financial literacy and provide community relief.

**Cure Lounge** - In February 2011, the AG obtained a consent judgment against a Boston nightclub and entertainment company following allegations that company personnel engaged in unlawful discrimination by refusing to allow patrons of color into a downtown nightclub. The judgment resulted in the company having to pay \$30,000 to fund educational grants for African-American students, issue a public apology, and implement anti-discrimination training and policies.

**Movie Theater Chain Settlement** - In July 2010, the AG entered into the first of its kind comprehensive settlement agreement with three of the largest national movie chains to ensure that under the Americans with Disabilities Act, those companies make their theaters accessible for patrons who are deaf, hard of hearing, blind or visually-impaired.

**Bullying and Cyber-Bullying** - The Civil Rights Division took the lead developing and executing the AG's efforts to address school bullying by overseeing the AG's Commission to Review Statutes Relative to Implementation of the School Bullying Law - which included coordinating and overseeing two public hearings, providing training and education to school administrators, parents, and law enforcement, coordinating with the Department of Early and Secondary Education, the Department of Public Health and relevant stakeholders on developing best practices and policies to address bullying and cyber-bullying, and preparing a report to the Legislature with recommendations, and resolving bullying cases.

**Leadership on LGBT Issues** - The Division continued the Commonwealth's challenge to the Defense of Marriage Act, which led the United States Department of Justice, to reverse court in February 2011 and agree with the AG in concluding that DOMA is discriminatory and unconstitutional. The AGO also filed an important amicus brief supporting the right of gays and lesbians to marry in *Perry v. Schwarzenegger*, the constitutional challenge to the so-called Prop. 8 marriage ban pending in the United States Court of Appeals for the Ninth Circuit. Finally, the AG testified at a public hearing in support of important legislation which became law in 2011 that provides protection for transgender people in employment, housing, education and hate crimes.

**Veterans** - CRD continued to support and provide leadership on the AG's initiative to protect veterans, servicemembers and their families by drafting a Guide for Veterans and Servicemembers, helping to resolve consumer protection and employment matters for military personnel, and working with the state Department of Veterans Services and Veterans' Service Officers in cities and towns around the Commonwealth.

## Consumer Protection Division

The Consumer Protection Division uses the tools of investigation and enforcement actions to protect consumers from fraud, deception, and other unfair business practices.

For example, the Division has:

- Filed multiple enforcement actions against companies and individuals that solicited Massachusetts homeowners with misleading promises to save their homes from foreclosure, or who solicited and accepted illegal advance fees to seek loan modifications for homeowners;
- Obtained landmark settlements with national banks and mortgage lenders who engaged in unfair and deceptive mortgage loan practices;
- Investigated and settled claims of false and misleading advertising practices in the automobile and retail sales industries;
- Brought enforcement actions against various home improvement contractors who failed to provide services paid for or who were not licensed to perform contracting work in Massachusetts; and
- Protected consumers from a variety of scams, such as individuals making false promises to repair consumers' credit, travel companies who sold worthless travel club memberships, or timeshare developers who failed to provide consumers with timeshares or made false promises that they would obtain timeshare deeds for consumers

CPD continues to expend substantial resources to address all aspects of the mortgage crisis, and has achieved results unique among state Attorneys General. In the past year the Office reached a comprehensive settlement with Option One/H&R Block which brought significant monetary and injunctive relief to Massachusetts homeowners. Through effective trial work and negotiations CPD obtained relief for victims of foreclosure relief scams in cases including the Desire, Greene, Hayes, and Loan Modification Group matters. At the end of 2011 CPD brought an action against Bank of America and four other major banks, seeking redress for various foreclosure, servicing, and land registration improprieties, becoming the first Attorney General in the nation to file such an action.

CPD was also active in litigation to address travel scams, and obtained significant results in the LSC Associates/Reposa, Soundings Seaside Resort, and Caliri matters.

In the realm of data privacy and security, CPD obtained its most significant judgment to date in the Briar Group case.

CPD contributed to an important step in addressing improprieties in mortgage recording and foreclosure practices in Massachusetts by drafting and arguing before the SJC in support of an amicus brief in *U.S. Bank v. Ibanez*. In January 2011, the SJC upheld the Land Court judge's decision invalidating the foreclosure sales, holding that the banks failed to show that they were the holders of the mortgages at the time of foreclosure.

While CPD pursues redress on the various aspects of the mortgage crisis, our team of Loan Modification Assistants has provided direct assistance to homeowners facing foreclosure. To date, they have assisted more than 300 homeowners to obtain loan modifications at affordable rates and to avoid foreclosure.

## Environmental Protection Division

The Attorney General's Office enforces environmental laws that protect our air and water, preserve our wetlands, tidelands, and public open space, require the clean-up of contaminated sites, and govern the use of pesticides and the handling and disposal of solid and hazardous waste. The Office

works closely with various state and federal agencies, especially the Massachusetts Department of Environmental Protection, and works jointly with DEP and Environmental Police to investigate and prosecute environmental crimes through the Environmental Strike Force. Civil enforcement suits are handled by the Attorney General's Environmental Protection Division.

The Environmental Protection Division pursues three main types of work:

- Prosecuting civil enforcement and cost recovery cases, seeking to produce the greatest results in terms of compliance and deterrence, environmental and public health benefits, and financial recovery;
- Handling defensive cases, seeking to provide effective representation to support the policy choices made by state agencies and officials in implementing our environmental protection laws; and
- Undertaking affirmative, non-enforcement work to develop and pursue innovative ways to further environmental protection exercising the Attorney General's role as the Commonwealth's chief law officer. This includes bringing "impact litigation," participating as an amicus to help develop the law in a way that will further the Commonwealth's interests; developing or supporting legislative or other policy proposals; intervening, where appropriate, in siting disputes; and entering into Brownfields liability agreements to further the clean-up and redevelopment of contaminated sites.

Cases Include:

Buzzards Bay Oil Spill Legislation. We prevailed in our appeal of Coast Guard regulations that purported to preempt the Mass. Oil Spill Prevention amendments enacted as a result of the Buzzards Bay spill, the Court of Appeals for the First Circuit agreeing with us that the Coast Guard had not adequately considered the environmental impacts of preempting the more protective state requirements on tankers and barges.

In two major bankruptcy matters (In re Tronox and In re General Motors) we recovered almost \$1 million in costs incurred by MassDEP, approximately \$100,000 for damages to natural resources, and obtained a settlement under which approximately \$3 million was deposited in trust funds for clean up of contaminated sites in Massachusetts.

In Commonwealth v. Wheelabrator, a cross-bureau matter, we obtained a settlement worth \$7.5 million, of which \$3 million was for civil environmental penalties and supplemental environmental projects, from the owner and operator of three municipal solid waste incinerators.

We settled two joint federal-state actions for damages to natural resources which resulted in payments in excess of \$8 million into trusts administered jointly by the state and federal trustees, or solely by the state trustee, for restoration work in Massachusetts.

## Health Care Division

In 2007, Attorney General Martha Coakley formed a new division within the Attorney General's Office to focus specifically on health care. Since then, the Health Care Division has been at the forefront of health care advocacy, enforcement, and consumer protection.

The Division protects consumers from deceptive practices and fraud; investigating and litigating cases involving health insurers, health providers, and pharmaceutical companies. The Health Care Division works to promote public health and reduce disparities. In 2010, the Division released a landmark report that brought Massachusetts to the front of national discussions on the cost of health care. The Division actively assists in health reform efforts, working with the Commonwealth

Connector and the Health Care Quality & Cost Council. The Health Care Division also provides guidance and support for nonprofit hospitals and healthcare providers through the innovative Community Benefits Program.

Employing a team of mediators, the Health Care Division receives more than 5000 helpline calls, mediates more than 1000 written complaints, and recovers hundreds of thousands of dollars for consumers each year. The Division pursues companies who prey on the elderly and the disadvantaged, preventing them from operating inside Massachusetts.

HCD has led national efforts in civil consumer protection actions against pharmaceutical companies. During FY 2011, it resolved cases after multi-state investigations into off-label marketing against AstraZeneca and manufacturing practices against GlaxoSmithKline, and a significant state-specific case against Stryker Bio for deceptive promotion.

The Attorney General's Health Care Hotline continues to assist thousands of Massachusetts consumers. It handles 300 to 600 calls each month and helped consumer recover \$420,279.45 during FY 2011.

The Health Care Division continued to lead efforts at health care reform through a second highly regarded Cost Containment Examination report, and by filing important amicus briefs in several federal circuit courts in support of the Federal Patient Protection and Accountable Care Act.

## Insurance and Financial Services Division

Attorney General Coakley's Insurance & Financial Services Division aggressively represents consumers, cities, towns and the state in civil matters involving the insurance, securities and lending industries. The Division performs key consumer protection functions, including securities enforcement, insurance and lending enforcement, insurance rate cases and advocacy, and consumer mediation and advocacy.

The Division is tasked with investigating unfair or deceptive practices relating to investments and securities. The Attorney General also has specific powers under the Massachusetts False Claims Act to bring actions against securities professionals who mislead or defraud municipalities or state government entities.

The Division brings consumer protection actions relating to unfair and deceptive practices in the insurance and lending industries. Case highlights include an industry-wide investigation into motorcycle insurance rating practices which forced fifteen auto insurance companies to refund nearly \$40 million to tens of thousands of motorcycle owners, as well as actions against payday lenders, student lending and financial aid advisory services, credit unemployment insurance providers, and double-dipping insurance agencies.

Securitization Cases: As part of AG Coakley's ongoing efforts to hold Wall Street accountable, IFSD continued its investigation of the role of investment banks in the Massachusetts subprime collapse. Following last year's investigation of Goldman Sachs, which led to a first-in-the-nation \$60 Million recovery against the investment bank, IFSD completed its review of Morgan Stanley's conduct and obtained a \$102 Million recovery. The Assurance of Discontinuance, filed in Suffolk Superior Court, included over \$50 Million in restitution, a \$20 Million payment to the Commonwealth, and the

repayment of \$23 Million invested by the state pension fund in subprime loan pool notes. Morgan was also required to change its securitization practices and provide additional information to investors.

**Municipal Bond Bid-Rigging cases:** As part of a multistate group, IFSD investigated a bid-rigging scheme by national banks that had robbed towns, cities and other issuers of municipal bonds of significant revenue. IFSD sued a broker (Tradition) for this illegal conduct and is currently litigating that case in Superior Court. IFSD also settled with Bank of America and UBS, recovering \$8 Million for governmental entities.

**Payday Lending:** AG Coakley also brought cases to stop unfair payday loans in the State. Two companies, Paragon Funding and Nationwide Cash, were making loans to consumers and charging interest rates over 700%. The Attorney General forced the companies to return the fees/interest and forgive outstanding loan balances, thus helping hundreds of consumers in Massachusetts.

**Credit Insurance:** In conjunction with her payday lending initiative, the Attorney General also reviewed the practices of credit insurers, which sell insurance to cover debts when consumers lose their jobs. In fact, several of these insurers were charging vastly excessive rates for these products. The Attorney General's Office obtained rate rollbacks and related rate corrections from Balboa, American Bankers, and Wesco Insurance, dropping rates by more than 90% for many consumers.

IFSD helped hundreds of Massachusetts consumers with financial services problems through its mediation program. In the past fiscal year, IFSD fielded over 3,856 hotline calls, opened 775 consumer complaint files, closed 681 complaint files and generated \$541,255 in savings and recoveries for consumers.

Successful mediation results included securing insurance payments on total loss automobile claims, getting life insurance companies to pay death benefits, persuading companies to unwind unsuitable annuity sales, convincing companies to compensate consumers for unsuitable investment advice that resulted in financial losses, obtaining premium refunds for consumers who were deceived into signing up for insurance coverage, securing payment of disability and long term care claims, getting companies to correct miscalculations of annuity benefits, obtaining payments and refunds for consumers under debt waiver contracts, getting denied travel insurance claims paid, and helping consumers to eliminate expensive force placed insurance coverage.

In addition, IFSD continued to provide advice and guidance to legislators, industry groups, and regulators on a variety of important financial issues. IFSD staff testified before the Massachusetts Financial Services Committee on a variety of bills and provided suggestions and comments to the Securities and Exchange Commission on its revision of rules as required by the Dodd-Frank reform legislation (including publicly requesting that the SEC close a controversial loophole that was shielding credit rating agencies from accountability), and requested that the Commissioner of Insurance take steps to protect ratepayers.

**Savings to Ratepayers:** When the insurance industry sought to raise rates for small businesses and other employers by hiking workers compensation insurance rates, IFSD called for a rate hearing in front of the Commissioner of Insurance. After intervening in the case, IFSD was able to secure a \$65 Million savings for ratepayers. This helped to keep costs down for employers and allowed them to create jobs in Massachusetts.





## FISCAL YEAR 2011 ATTORNEYS

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