



NEW YORK CITY LAW DEPARTMENT
2008 ANNUAL REPORT



Mission

To provide legal representation to the City of New York in the tradition of excellence and dedication, in furtherance of the operation of its government.

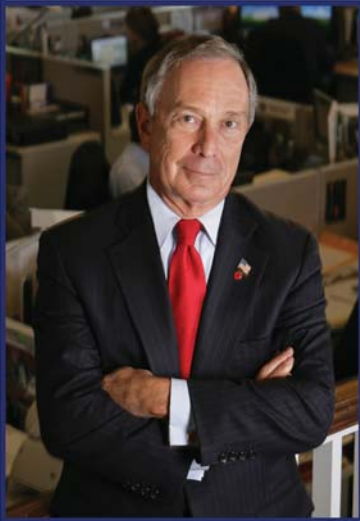
Vision

To be the finest public law office providing the highest quality representation.

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MESSAGE FROM MICHAEL R. BLOOMBERG



Since the establishment of the Corporation Counsel in 1849, New York City's Law Department has been an instrumental part of City government. The Law Department not only provides our City with top-quality legal representation, it also advises us on a broad array of issues and policy initiatives that keep our City moving forward. Over the past few years, the Law Department has worked to curb the effects of global warming, aid economic development, and protect our City against terrorism. Its work on these and countless other cases has improved New Yorkers' quality of life and ensured a brighter future for us all.

The 2008 Annual Report reviews the Law Department's accomplishments over the past year – and shows just how vital this Department is to our City. On behalf of all New Yorkers, I thank the Law Department's 690 attorneys and 850 support staff, as well as Corporation Counsel Michael A. Cardozo, for their invaluable service to our City. My best wishes for continued success.

A handwritten signature in black ink that reads "Michael R. Bloomberg". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

Michael R. Bloomberg
Mayor

INTRODUCTION FROM MICHAEL A. CARDOZO



I am pleased to present the New York City Law Department's 2008 Annual Report. We serve as legal counsel for the City and work with every City agency on projects and cases in all five boroughs. Our attorneys handle matters that touch on virtually every area of the law, and our office works diligently to provide the City and its officials with the highest caliber of legal advice and representation.

This report provides an overview of the Law Department's significant cases and achievements from the previous year. These accomplishments include continued efforts in aiding redevelopment, preserving important landmarks, protecting our pension funds by fighting securities fraud, restructuring municipal bonds in response to the financial crisis, improving our air quality, and protecting the public fisc by recouping hundreds of millions of dollars in damages from corporations that have wronged the city.

I hope this report provides a fuller sense of the range of legal issues the City addresses daily. I am proud of our accomplishments and am honored to work with such a dedicated team.

A handwritten signature in black ink that reads "Michael A. Cardozo".

Michael A. Cardozo
Corporation Counsel



OVERVIEW

The New York City Law Department is responsible for all of New York City's legal affairs. The Corporation Counsel heads the Law Department and acts as legal counsel for the Mayor, elected officials, the City and all its agencies. Attorneys represent New York City on affirmative and defensive civil litigation, legislative and legal issues, the criminal prosecution of juveniles in Family Court, and Administrative Code enforcement proceedings brought in Criminal Court.

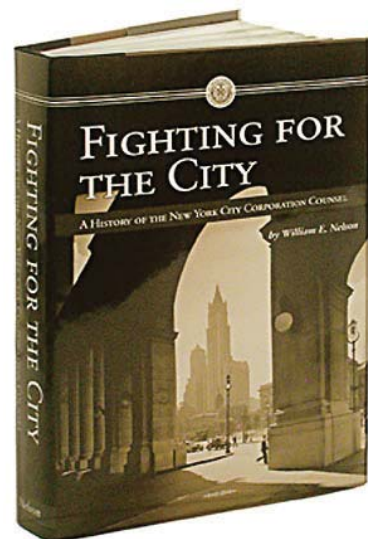
With offices in all five boroughs and Kingston, N.Y., the Law Department handles an active caseload of over 90,000 lawsuits and legal matters each year. In addition to handling litigation, attorneys draft and review local and state legislation; approve leases, contracts and financial instruments for the sale of municipal bonds; and negotiate and structure business transactions. Law Department attorneys also provide legal counsel to City officials on a wide range of issues such as immigration, education, judicial selection reform and environmental policy.

EXECUTIVE COUNSEL



Standing from left to right: G. Foster Mills, Lawrence Kahn, Paul Rephen and Leonard Koerner
Seated from left to right: Muriel Goode-Trufant, Jeffrey Friedlander, Michael Cardozo and Celeste Koeleveld

This past year, the NYC Law Department published a book about its history in collaboration with the New York Law Journal and NYU Law School Professor William E. Nelson. *Fighting for the City: A History of the New York City Corporation Counsel*, traces the history of the Department – and its predecessor office, the Recorder – from 1686 to 2001.



IN THE NEWS

The Law Department is frequently highlighted by major news outlets such as *The New York Times*, *The Associated Press*, and local and national television stations. In addition, it publishes a bi-monthly column, "Municipal Affairs," that is featured in the *New York Law Journal*. Work with the press is coordinated by the Law Department's Media & Communications Office. Below are some cases that made headlines in 2008:

City Sues Bush Administration Over Heating Standards

The New York Times 1/17/08

Taxi Drivers Settle Suit Over GPS Devices

New York Law Journal 3/14/08

New York Gets \$57.8 Million in UN Missions Tax Case

Bloomberg 3/19/08

City Sues to Get Landmarked Building Repaired

WNYC wnyc.org
93.9 fm
am 820 3/21/08

Appeals Court Upholds NYC School Cell Phone Ban

AP Associated Press 4/22/08

States Sue EPA Over Ozone Pollution Standards

REUTERS 5/28/08

Georgia Gun Dealer Backs Out of NYC Trial Over Gun Sales

AP Associated Press 6/2/08

Late Deal Pulls OTB From Brink of Shutdown

The New York Times 6/16/08

Judge Rejects 9/11 Burial Claims

BBC 7/8/08

No More Court Oversight For NYC Homeless Services

AP Associated Press 9/17/08

IRS Clears Way for Tax Dollars to Help New Stadiums, Arenas

DAILY NEWS 10/22/08

Transit Union Leader Vows No More Strikes

The New York Times 11/8/08

Securities-Fraud Suit Against Countrywide Ok'd

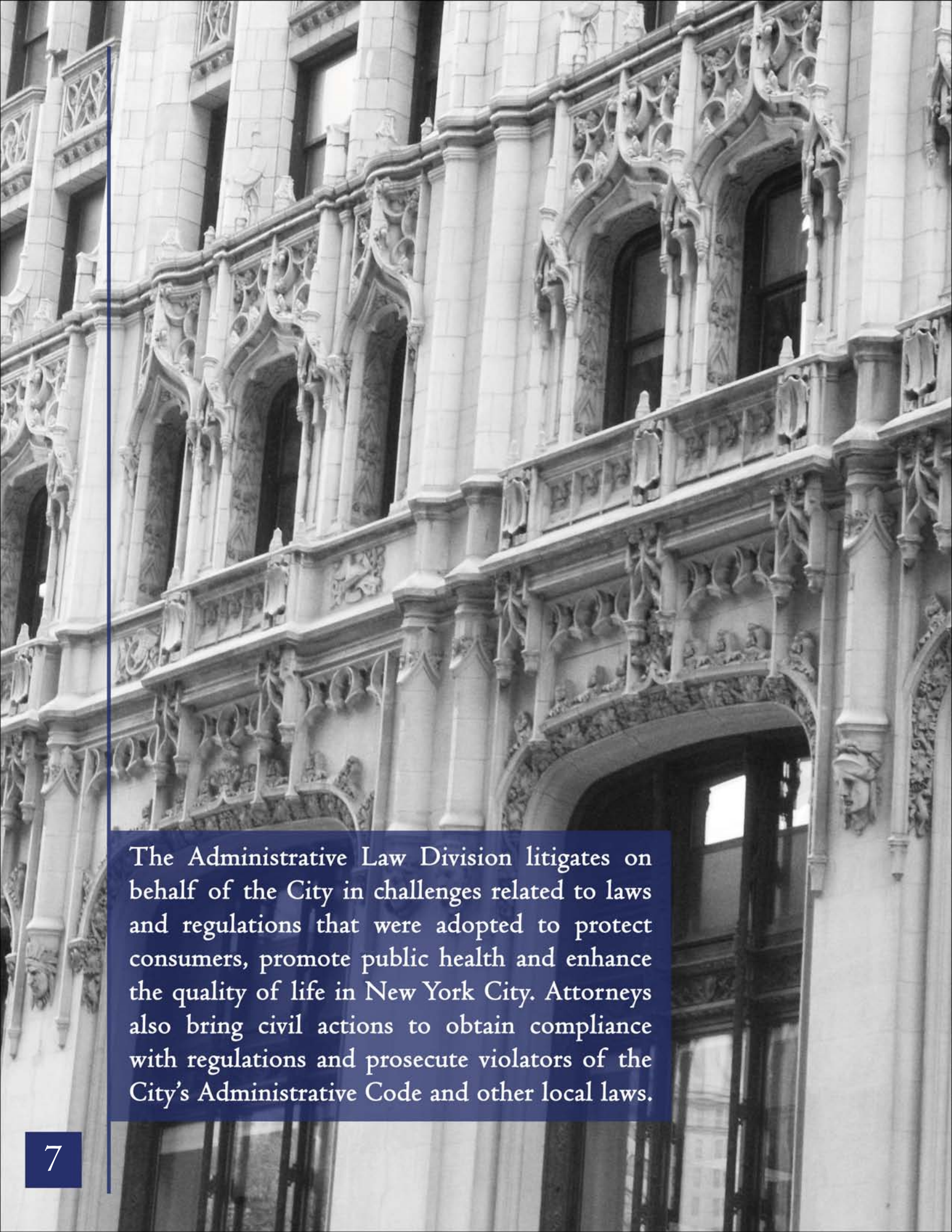
Los Angeles Times 12/3/08

Maps Too Imprecise to Give City Notice of Defects, Ruling Finds

New York Law Journal 12/19/08



LEGAL DIVISIONS



The Administrative Law Division litigates on behalf of the City in challenges related to laws and regulations that were adopted to protect consumers, promote public health and enhance the quality of life in New York City. Attorneys also bring civil actions to obtain compliance with regulations and prosecute violators of the City's Administrative Code and other local laws.

ADMINISTRATIVE LAW

GABRIEL TAUSSIG - CHIEF | ROBIN BINDER - DEPUTY

Improving Technology in Taxis – *Alexandre v. Taxi and Limousine Commission*

In a complete victory for the City, a union representing New York City taxi drivers withdrew its lawsuit challenging the Taxi and Limousine Commission's decision to install Global Positioning System (GPS) and other new features in taxi cabs. In addition to GPS systems, the new equipment allows for text messaging in emergencies, automated trip recording, passenger monitors for trip tracking, and a credit/debit card payment option.

Helping New Yorkers Be Healthy – *NYS Restaurant Assoc. v. NYC Board of Health*

In cooperation with the NYC Health Department, Division attorneys, with their colleagues in the Appeals Division, defended continued attacks against the City's new rule requiring restaurants with 15 or more stores as part of its chain to display calorie information. The new rule, adopted to address rising obesity rates, took effect on March 31, 2008, and applies to 10% of all NYC restaurants.



		S	M	L	
Brewed Coffee	Price	1.29	1.55	1.89	Espresso
	Calories	5	5	10	
Decaf & Flavored Coffee	Price	1.39	1.69	1.95	Café
	Calories	5	5	10	
Tea	Price	1.29	1.55	1.89	Iced C
	Calories	5	5	10	
Herbal Tea	Price	1.35	1.69	1.92	Iced
	Calories	5	5	10	
Swiss Hot Chocolate*	Price	2.89	3.19	3.79	Iced
	Calories	290	370	460	
Cappuccino*	Price	3.25	3.75	4.45	Iced
	Calories	110	140	180	

Saving New York City's Landmarks

The Division prevailed in a series of lawsuits aimed at preserving several landmarked buildings. These wins send a clear signal to developers that the City will not tolerate intentional efforts to prevent a building's designation as a landmark by stripping architectural detail from building façades or not keeping landmarked buildings in good repair and allowing "demolition by neglect." In one case, attorneys obtained a court order requiring owners to make substantial repairs to the 127-year-old Windermere, one of the oldest remaining large apartment houses in the City. The landmark status of two historic "light court" tenement buildings and the former P.S. 64 were also upheld despite the owners' stripping of the decorative, architectural elements.

Preventing Visual Clutter – *Clear Channel v. City of New York*

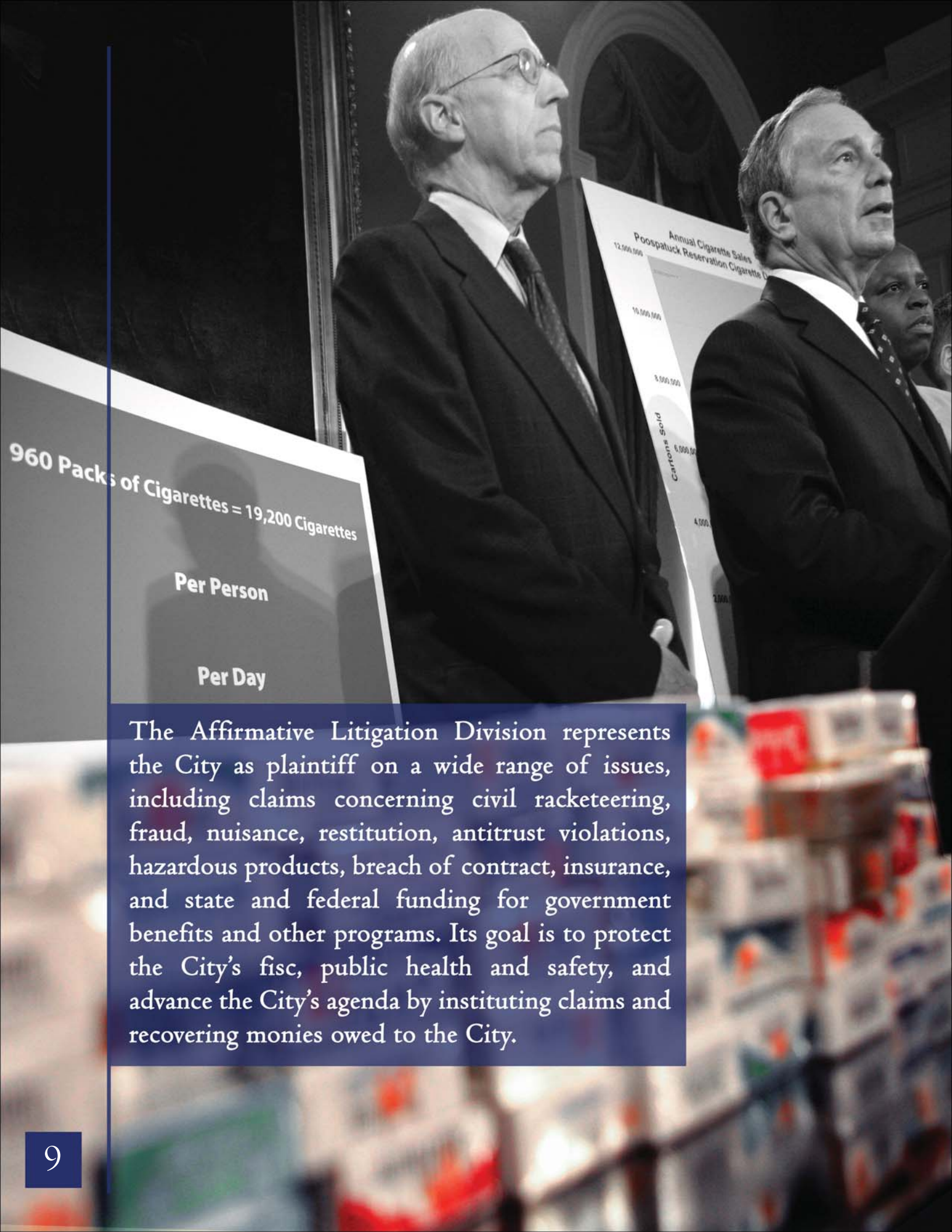
Division Attorneys are defending several cases brought by outdoor billboard companies challenging some of the City's zoning restrictions on where outdoor advertising signs may be located. The companies argue that the City's restrictions, which were adopted to both restrict visual clutter and provide for traffic safety, violate the companies' rights of free expression under the First Amendment.

Protecting Tenants – *Prometheus Realty v. City of New York*

The City adopted a law making it easier for residential tenants to seek the protection of the City's Housing Court when their landlords harass them. The Division is defending a lawsuit brought by landlords who are seeking to have the law struck down because they claim that it is unconstitutional and violates the State law that created the City's Housing Court.

Issuing Press Credentials – *Martinez-Alequin v. City of New York*

Plaintiffs in this case, who write for online publications, are challenging the denial of their applications for press credentials issued by the New York Police Department. Division attorneys are responding to their claims that they were denied press passes because they do not write for traditional print or electronic media and that such denials were unconstitutional.



960 Packs of Cigarettes = 19,200 Cigarettes
Per Person
Per Day



The Affirmative Litigation Division represents the City as plaintiff on a wide range of issues, including claims concerning civil racketeering, fraud, nuisance, restitution, antitrust violations, hazardous products, breach of contract, insurance, and state and federal funding for government benefits and other programs. Its goal is to protect the City's fisc, public health and safety, and advance the City's agenda by instituting claims and recovering monies owed to the City.

AFFIRMATIVE LITIGATION

GAIL RUBIN - CHIEF | ERIC PROSHANSKY - DEPUTY

Battle Against Illegal Guns

Attorneys finalized settlement agreements and default judgments to end two years of litigation brought against 27 out-of-state gun dealers. The City's groundbreaking litigation followed an undercover operation targeting dealers whose guns were most frequently recovered at crime scenes in New York City. Most of the dealers entered into monitoring agreements that assign a court-appointed Special Master to provide training and education, recommend stringent sales practices, and monitor the dealers to assure compliance. These efforts were undertaken in collaboration with the Mayor's Criminal Justice Coordinator, the NYPD, and *pro bono* counsel at Pillsbury Winthrop Shaw Pittman. Initial analysis has revealed a significant decrease in the number of guns recovered in the City that are traceable to dealers who have been sued or are party to monitoring agreements.

Curbing Illegal Cigarette Sales

In an effort to end the bootlegging of cigarettes into the City, recoup millions of dollars in lost tax revenue annually, and limit the adverse impacts of smoking, attorneys filed lawsuits against Internet cigarette sellers, New York cigarette wholesalers and Native American retailers who facilitate the flow of untaxed cigarettes into the City. In the case against Internet cigarette sellers, the Second Circuit reversed the trial court's case dismissal, finding that the City had standing to sue under the Racketeer Influenced and Corrupt Organizations (RICO) Act, where it has alleged a direct injury of lost taxes inflicted by means of Internet retailers' alleged commission of mail and wire fraud. In the wholesaler and Native American retailer cases, the City claims violations of the Contraband Cigarette Trafficking Act (CCTA), which penalizes the possession of untaxed cigarettes in jurisdictions that have an "applicable" cigarette tax. After ruling that the City's claims are viable despite New York State's failure to enforce the "applicable" tax, the Court is now considering the City's motions for summary judgment and for a preliminary injunction.

Obtaining Unpaid Property Taxes from UN Missions

Affirmative Litigation attorneys saw continued success in litigation against the governments of India, Mongolia and the Philippines over unpaid property taxes on portions of buildings that also house those nations' consulates and missions to the United Nations. Following the U.S. Supreme Court's 2007 ruling that U.S. courts have jurisdiction to hear property tax lien cases against foreign governments under an exception in the Foreign Sovereign Immunities Act, the City was awarded summary judgment validating the tax liens and assessing taxes against India and Mongolia for portions of the property used as residences for mission and consular staff below the level of Head of Mission. As to the Philippines, the court assessed taxes on those portions of the premises used as a bank and an airline office, but not the portion used as a restaurant. The total judgment in favor of the City exceeded \$57 million, including interest.

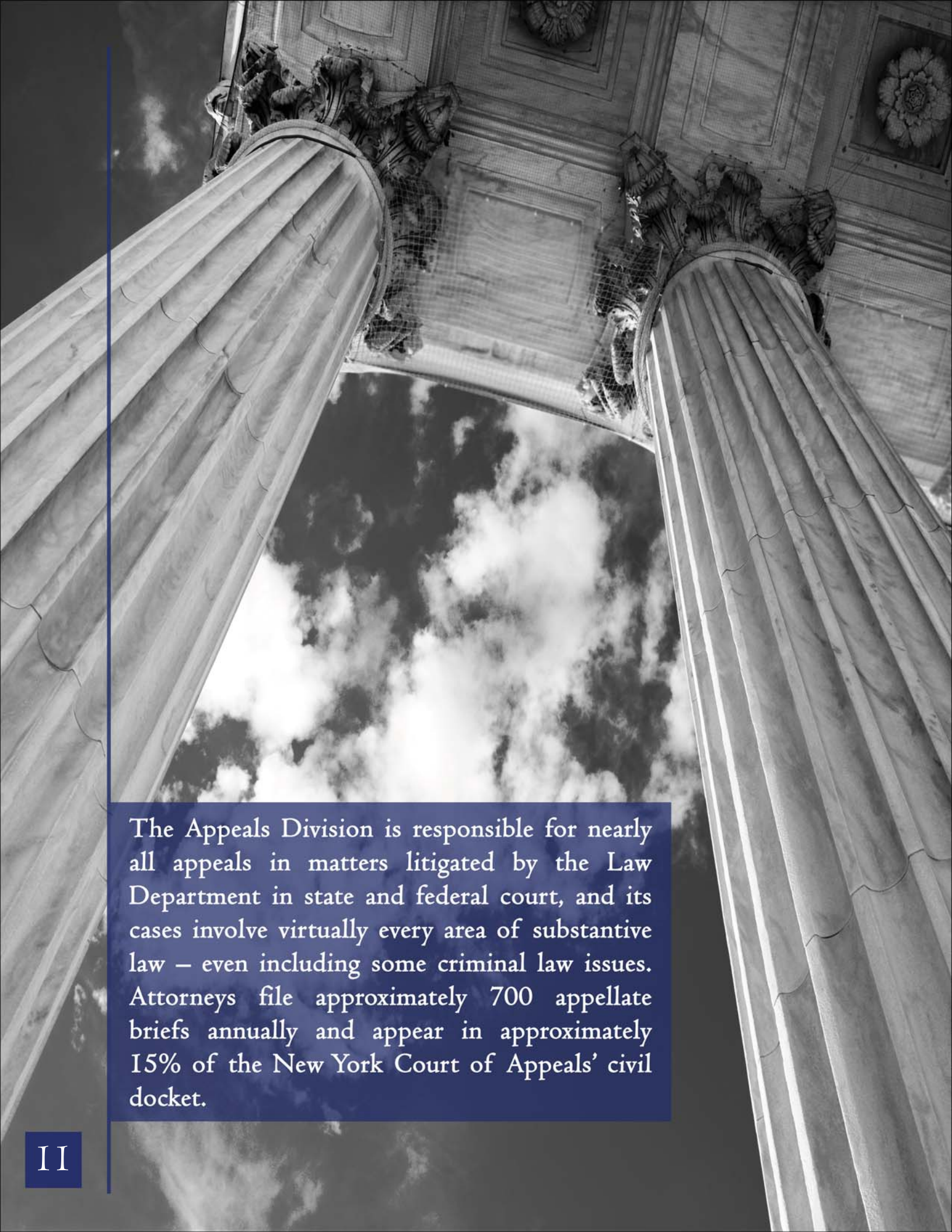
Getting the City's Fair Share from Insurers

Efforts continue to require insurers to provide the City with the insurance coverage mandated by City contracts and permits. Requiring insurers to live up to their policy obligations forces insurers to pay for covered claims and defense costs that would otherwise have to be paid out of the City fisc. In addition, the Division works with agencies to design insurance requirements for regulations, licenses and permits, and provides insurance advice, counsel and training to agency lawyers and personnel. In 2008, Division attorneys obtained a recovery for the City's District Attorneys of over \$1.8 million on defaulted bail bonds from the New York Liquidation Bureau as receiver for an insolvent bond company, Amwest Surety.

Other Revenue Suits

The City was granted summary judgment against Amtrak for reimbursement of almost \$6 million for the costs of relocating Amtrak's electrical facilities at the Sunnyside Yard in Queens during rehabilitation of bridges over the Yards. Litigation over pre-judgment interest, which could add more than \$3 million to the final judgment, continues.

Bristol-Myers Squibb, one of the world's largest pharmaceutical companies, agreed to pay New York City \$7.8 million in response to claims that the company engaged in a fraudulent scheme to inflate the costs of drugs in the Medicaid program. The agreement was part of a nationwide settlement of similar claims negotiated by the City along with the NYS Attorney General's Office and other New York counties. The City continues to litigate this and similar suits against other pharmaceutical companies.

A black and white photograph showing a low-angle view of two large, fluted classical columns. The columns are supported by ornate, acanthus-leaf capitals. Above the columns, a portion of a dome ceiling is visible, featuring decorative panels and a central medallion. The sky between the columns is filled with scattered, white clouds. The overall composition is symmetrical and emphasizes the grandeur and architectural detail of the structure.

The Appeals Division is responsible for nearly all appeals in matters litigated by the Law Department in state and federal court, and its cases involve virtually every area of substantive law – even including some criminal law issues. Attorneys file approximately 700 appellate briefs annually and appear in approximately 15% of the New York Court of Appeals’ civil docket.

APPEALS

LEONARD KOERNER - CHIEF | FRANCIS CAPUTO - DEPUTY | STEPHEN MCGRATH - DEPUTY

A Healthier New York – *NYS Restaurant Association v. City of New York*

In collaboration with colleagues in the Administrative Law Division, attorneys in Appeals secured a dismissal to the challenge by the NYS Restaurant Association, the industry's trade group, to a provision of the City's Health Code that requires certain restaurants to post calorie values on menus and menu boards. The Second Circuit rejected the Restaurant Association's arguments that the provision was pre-empted by federal Food and Drug Administration regulations or that it violates the First Amendment rights of its member restaurants by requiring them to post the information when they would rather not "speak."

Significant Strides in Reducing Trip and Fall Claims

In a blow to the New York State Trial Lawyers Association, the state's highest court ruled in two cases that the Association's famous Big Apple pothole map was not sufficiently clear and therefore did not give two injured people the right to win tort judgments against New York City under the City's Pothole Law. Under that law, a plaintiff who claims to have sustained injuries due to a street or sidewalk defect, and seeks to hold the City liable for his or her injuries, must prove that the City received written notice of that defect at least 15 days prior to the accident. The City had been arguing for years that the maps were confusing, imprecise and essentially useless.

Protecting Pension Funds – *Nager v. Teachers' Retirement System*

Division attorneys successfully defended a claim that the Teachers Retirement System (TRS) had an unlawful and flawed investment strategy for the Variable B pension fund, causing teachers to receive markedly inferior returns on their pension contributions for a long period of time. An appellate court, found that the TRS had not breached its fiduciary duty when it chose not to invest in equity securities because of their volatility.

Campaign Finance Enforcement – *Espada v. NYC Campaign Finance Board*

In a case that vindicated the City's pioneering Campaign Finance Program, a unanimous appellate decision reinstated one of the largest penalty amounts ever assessed by the NYC Campaign Finance Board. The Court recognized that the candidate and the treasurer of a campaign are jointly and severally personally liable for campaign finance violations and penalties. Over \$61,000 in penalties were sought against a candidate for Bronx Borough President for substantial violations of the City Campaign Finance Act.

Protecting School Policy to Ban Cell Phones – *Price v. Department of Education*

Attorneys prevailed in defending the Department of Education's policy prohibiting cell phones in the City's schools as a reasonable and prudent means of preserving order and maintaining a safe learning environment. In its unanimous ruling, the appellate court also sided with the City's argument that the cell phone ban does not violate any constitutional rights of students or their parents.

Highlighting the Need for Tort Reform – *Barnes v. City of New York*


The Division obtained a complete victory when the Court of Appeals declined to hear an appeal brought against the City involving a high-profile police shooting. The case began 20 years ago when Darryl Barnes was seen running through the streets of the Bronx wielding a Tec-9 semi-automatic gun. An off-duty police officer immediately identified himself as an officer and asked Barnes to stop. After a chase, Barnes fired at the officer who then returned fire. Barnes was seriously injured during the shooting and was initially awarded over \$76 million. City attorneys ultimately won the right to a new trial on the grounds that the trial court improperly excluded evidence of the plaintiff's membership in an anti-police group. When Barnes again won at the new trial, his victory was again, and finally, thrown out by the appellate court.

Defending Eminent Domain to Develop Brooklyn's Atlantic Yards

In collaboration with attorneys in the Environmental Law and Tax & Bankruptcy divisions, attorneys successfully argued for the dismissal of a lawsuit challenging the Atlantic Yards Arena and Redevelopment Project before the Second Circuit. The lawsuit, brought by property owners in the Atlantic Yards Project area, contended that the proposed use of eminent domain violated their rights under the Fifth Amendment.

Significant *Amicus* Briefs

The Division also weighs in as an *amicus* on matters important to the City. Last year, the Division wrote 13 *amicus* briefs, including four to the U.S. Supreme Court. Topics ranged from whether there is a constitutional right to post-conviction DNA testing; whether out-of-state marriage between same-sex couples should be recognized; and whether monuments or public art accepted by a government should be considered government or private speech.



The Commercial & Real Estate Litigation Division represents the interests of the City and related entities in diverse contract and real estate issues. Litigation involves a broad array of matters ranging from contracts with private companies to build the City's infrastructure to leases of important public properties. Many of the disputes handled are highly visible, with millions of dollars at stake.

COMMERCIAL & REAL ESTATE LITIGATION

ERIC RUNDBAKEN - CHIEF | JONATHAN BECKER - DEPUTY | NANCY BRODIE - DEPUTY

East River Park Construction

The Division successfully negotiated a settlement allowing for the stalled reconstruction of the bulkheads and relieving platforms in East River Park, from Jackson Street to 14th Street between the FDR Drive and the East River, to resume and proceed towards completion. The settlement required a resolution of multiple disputes, including with the contractor on the project and its surety, as well as the NYS Department of Environmental Conservation, which had threatened to suspend construction permits based upon project debris in the river arising from the construction work.

Dismissal of Contractor's Claim

The Division obtained a very favorable decision from New York County Supreme Court dismissing the mechanical contractor's \$1.3 million claim for delays in construction of the Queens District 7 sanitation garage. Division attorneys established that the City had not been principally responsible for the delays and that, in any event, the contractor had failed to abide by a number of contractual notice and documentation requirements that were conditions precedent to assertion of claims against the City.

Reclaiming the Corn Exchange

Division attorneys won an important victory in a unique affirmative case, allowing the Economic Development Corporation (EDC) to reclaim the long-abandoned, dilapidated, landmarked Corn Exchange building. Built in 1883 and located in Harlem, the Corn Exchange had been deeded in 2003 by EDC to a local community group, on condition that the group rehabilitate the property for use as a culinary institute and other related uses within three years. The deed further provided that if the property was not rehabilitated within the specified time, EDC could re-enter and take title to the premises. After the group failed to meet its obligations, the Division commenced legal action to recover title and possession of the property. Following an earlier victory, when the court denied the defendant's motion to dismiss, the Court granted summary judgment to EDC, declaring that EDC is entitled to be vested with title and providing that the defendant should be ejected from the premises.

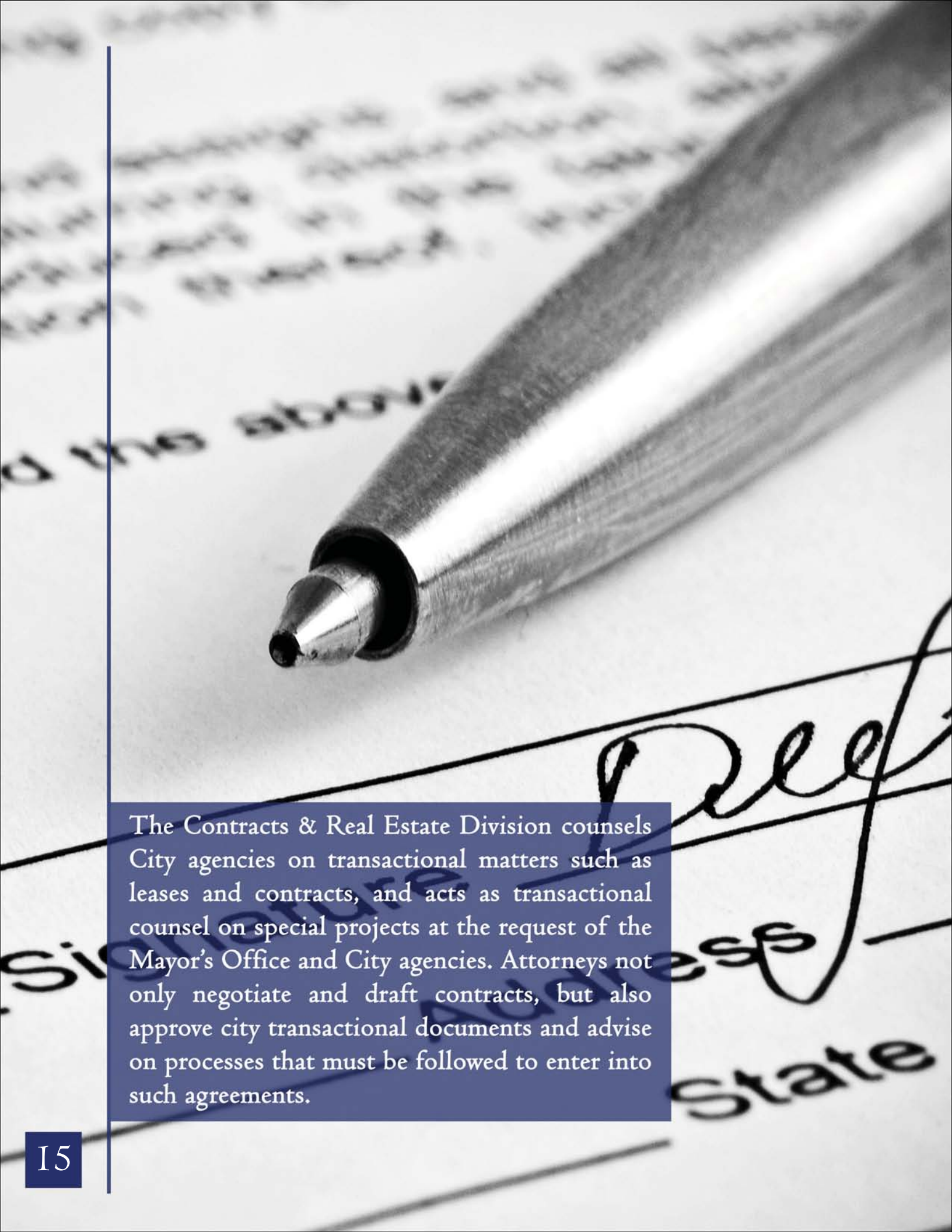
Allowing Summer School Buses To Run on Time

Another notable victory was the Division's defeat in June 2008 of an application for a temporary restraining order that would have interfered with the smooth and timely commencement of system-wide summer season school bus service for Special Education students. Some of the Special Education bus contractors challenged the Department of Education's assignment of summer school bus routes, contending that they had priority to pick routes. By defeating the restraining order (which led to a withdrawal of the entire proceeding), the Division enabled summer school bus service to proceed on time, without disruption to Special Education students and their families, and at a cost savings to the Department of Education.

Protecting Traffic Flow

The Division won dismissal of an effort by the Cypress Hills Cemetery to obtain a court order that would have required the City to reconfigure the Jackie Robinson Parkway – a heavily trafficked, major arterial roadway – so as to permit the cemetery to halt traffic completely and conduct its funeral processions across the Parkway. We successfully persuaded the Court that there was no legal or equitable basis on which the cemetery was entitled to relief that would have inconvenienced more than one hundred thousand New York City motorists every week.





The Contracts & Real Estate Division counsels City agencies on transactional matters such as leases and contracts, and acts as transactional counsel on special projects at the request of the Mayor's Office and City agencies. Attorneys not only negotiate and draft contracts, but also approve city transactional documents and advise on processes that must be followed to enter into such agreements.

CONTRACTS & REAL ESTATE

STEVEN STEIN CUSHMAN - CHIEF | HOWARD FRIEDMAN - DEPUTY

Selling Shea Stadium Memorabilia

In collaboration with the Economic Development Division, the Mayor's Office, the Department of Parks and Recreation, and the Department of Citywide Administrative Services, the Division negotiated an agreement between the City and the NY Mets involving the sale of Shea Stadium seats and other memorabilia. The City owned much of Shea Stadium and, through the agreement, the City will receive a majority of the sales proceeds. Shea Stadium is being demolished to make way for the Mets' new stadium, Citi Field.

Examining Discretionary Funding

Together with the Deputy Mayor for Operations, the Mayor's Office of Contract Services, the Office of Management and Budget, and the City Council, the Division examined the procurement and budgetary practices concerning City Council discretionary funding and implemented changes to improve the process. Changes included increased transparency at budget adoption, an enhanced vetting procedure for entities receiving discretionary fund awards, and controls on the use of fiscal agents to process discretionary fund payments.

Tavern on the Green

Working with the Department of Parks and Recreation and the Offices of the First Deputy Mayor and the Deputy Mayor for Economic Development, as well as the Mayor's Office of Contract Services, the Division helped draft a Request for Proposal for an operator to run the restaurant that is currently known as Tavern on the Green. The restaurant is located in a building originally known as the Sheepfold, which was constructed in the latter half of the 19th century and is one of the City's finest examples of Victorian Gothic architecture. This treasured landmark, located in Central Park, first became a restaurant in 1934.

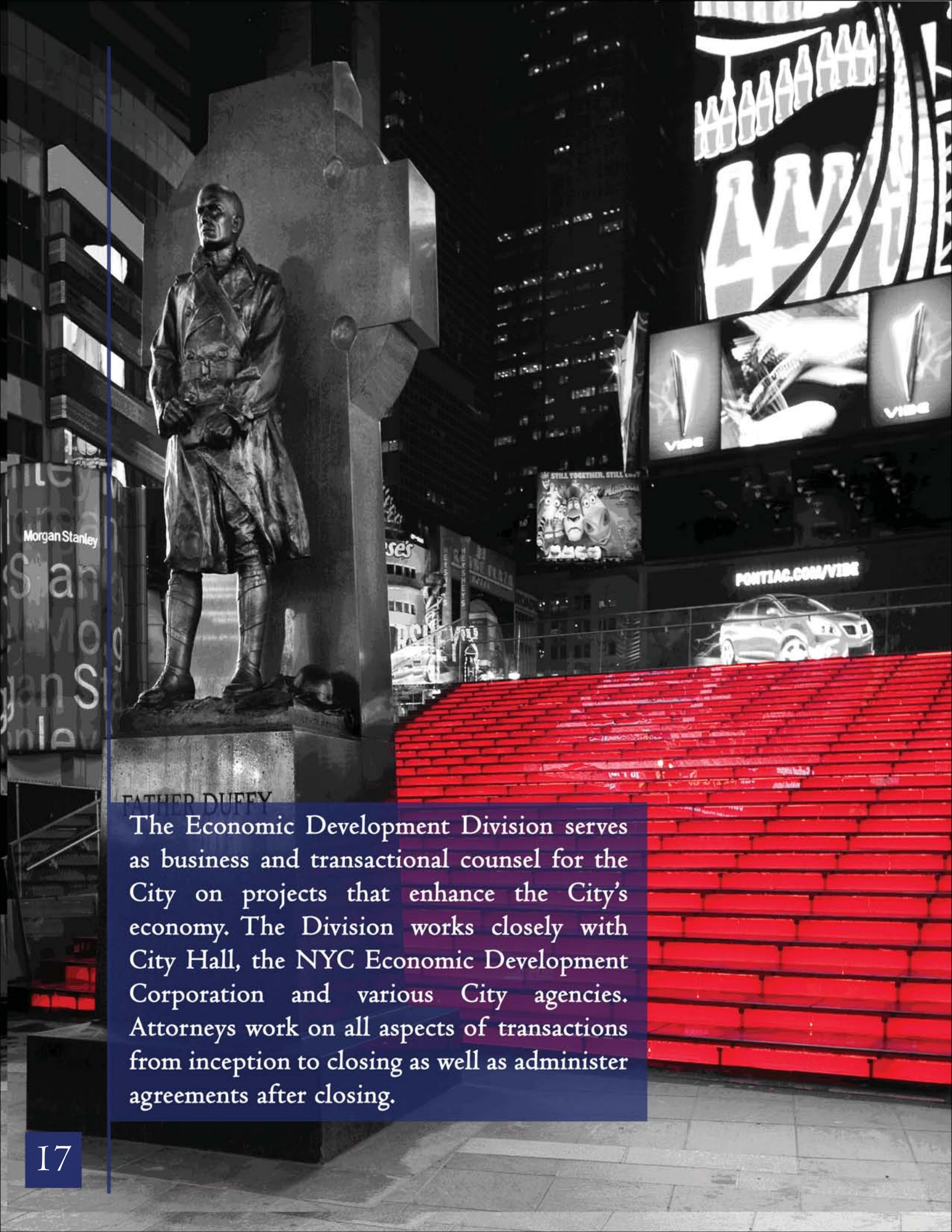
Construction Reform

Division attorneys worked with the offices of the Deputy Mayor for Operations, the Deputy Mayor for Economic Development and the City's construction agencies to implement reforms designed to drive down the cost of City construction. The reforms include piloting a revised contract that allows contractors to collect damages on certain construction projects for delays caused by the City, cutting in half the time it takes the City to process certain change orders, and dedicating resources to develop accurate project scopes and cost estimates before capital dollars are committed. These reforms are designed to entice more construction contractors to bid on the City's core infrastructure projects – streets, sewers, water mains and bridges – as well as other projects such as parks, police precincts, firehouses and courthouses. The increased competition to build the City's infrastructure should ultimately lead to reduced City construction costs.

Universal Pre-K Services

Working with the Offices of the First Deputy Mayor and the Deputy Mayor for Education as well as the Department of Education and the Administration for Children's Services (ACS), Division attorneys worked to incorporate the provision of universal Pre-K services into ACS contracts and obtain state funding for these services and to ensure a proper allocation of funding from federal Head Start, New York State Pre-K and local child care programs.





FATHER DUFFY

The Economic Development Division serves as business and transactional counsel for the City on projects that enhance the City's economy. The Division works closely with City Hall, the NYC Economic Development Corporation and various City agencies. Attorneys work on all aspects of transactions from inception to closing as well as administer agreements after closing.

ECONOMIC DEVELOPMENT

LEONARD WASSERMAN - CHIEF | ELLEN DOSKOW - DEPUTY

Expanding Cable TV Provider Options

Division attorneys secured approval for a 12-year citywide franchise agreement with Verizon to provide competitive cable television service in New York City. As most households nationwide have access to only one cable provider, New York City would be among the first to end the cable TV monopoly if the deal is approved by the State. The Division worked with colleagues in the Contracts & Real Estate Division, the Department of Information Technology and Telecommunications, and City Hall. As a result of the agreement, Verizon will pay the City a franchise fee equal to 5% of its annual gross revenue, estimated to be at least \$300 million over the next 10 years.

Kaufman Astoria Studios

The Division represented the City and New York City Economic Development Corporation in connection with the transaction that resulted in the ground breaking of a \$22 million expansion of Kaufman Astoria Studios, one of the City's largest film and television studios. The approximately 40,000-square-foot studio will be designed similar to studio compounds with "backlots" found in major West Coast motion picture studios. It is estimated that the new studio, which is scheduled to be completed in 2009, will create 400 new jobs.

A New View of Times Square

Attorneys negotiated the \$10 million funding agreement for the re-design of Father Duffy Square located in the heart of Times Square. The enlarged and enhanced Father Duffy Square features a re-designed TKTS discount ticket booth which is topped with a glowing cascade of 27 red glass steps. The new public space will allow hundreds of people to congregate and enjoy a dynamic view of the "crossroads of the world."

New Stadiums for the Yankees and Mets

Attorneys continue to provide counsel in negotiating and drafting agreements relating to the construction of new Yankees and Mets stadiums – including agreements over parking facilities, demolition of the old Yankee Stadium, and sale of stadium memorabilia. The Division also negotiated and drafted documentation for the issuance of additional bonds by the NYC Industrial Development Agency for the completion of both stadium projects. The stadiums are scheduled to open for the 2009 baseball season.

Long-Term Recycling for the City

The Division, with assistance from the Contracts and Real Estate Division, negotiated a \$160 million long-term (20 to 40 years) recycling contract on behalf of the Department of Sanitation. Effective January 1, 2009, the contract will provide stability to the City's recycling program. The overall transaction, fulfilling a major commitment under the City's Solid Waste Management Plan, includes the development and operation by the recycling contractor of a major state-of-the-art recycling plant at an 11-acre site on the south Brooklyn waterfront, for which the Division negotiated a long-term lease and an approximately \$50 million funding agreement.

Williamsburg Waterfront Esplanade Transfer

Division attorneys represented the Departments of City Planning and Parks in the acquisition, from the developer of a new high rise residential project on the Williamsburg-Brooklyn waterfront, of a newly constructed public pier developed under the recently amended zoning for the area. This is the first of several such acquisitions which together will provide a substantial public amenity on the redeveloped Greenpoint-Williamsburg waterfront.

Renovating the USS Intrepid

Division attorneys negotiated the funding agreement between the City and the Hudson River Park Trust for the reconstruction of Pier 86 where the USS Intrepid aircraft carrier is berthed. The USS Intrepid is a significant piece of the mosaic of revenue generating tourist attractions in the City. The \$23 million project involved dredging the Hudson River around the USS Intrepid to permit its removal for hull and other vessel repairs in addition to improvements to the pier.

Axis Group

After several years of work, the Division finalized a lease agreement with Axis Group, Inc. for the development of a \$30 million automobile processing center and general cargo operation on 74 acres at the South Brooklyn Marine Terminal. The cargo operation of the public berth at the Terminal will play a significant role in the City's goal to provide jobs and keep the Brooklyn waterfront a working port.

A close-up photograph of a silver car door. On the left side of the door, there is a chrome 'HYBRID' badge with a green 'H'. On the right side, there is a large black 'NYC TAXI' decal. The 'NYC' is in a bold, blocky font, and the 'TAXI' is in a similar font. The 'C' is replaced by a large, stylized 'T' inside a circle. The car door has a silver handle on the right side.

HYBRID

NYC TAXI

The Environmental Law Division represents and advises the City in environmental and land-use matters involving the drinking water supply, climate change, wastewater treatment, solid waste management, energy sources, natural resource and environmental review of City initiatives and private development projects. The Division is leading a nationwide suit against gasoline refiners for contaminating groundwater wells in the City, and plays a key role in assisting the Mayor's Office with PlaNYC, a comprehensive set of initiatives aimed at creating a greener and more sustainable City.

ENVIRONMENTAL LAW

SUSAN KATH - CHIEF | SUSAN AMRON - DEPUTY

Addressing Climate Change

The Division is involved in several initiatives, including litigation, aimed at addressing the risks posed by climate change in the City. In *Massachusetts et al. v. EPA*, the Division, along with co-plaintiffs (including 17 states, two cities and 12 environmental groups), continued their efforts to compel the Environmental Protection Agency (EPA) to comply with the U.S. Supreme Court's 2007 determination that the EPA has the authority to regulate greenhouse gases (GHGs) under the federal Clean Air Act. In the Ninth Circuit, the Division joined a petition challenging the U.S. Department of Energy's standards for electric distribution transformers on the grounds that requiring more efficient transformers will reduce carbon dioxide emissions. The Division also filed an *amicus* brief in the Second Circuit in *Green Mountain Chrysler v. Crombie*, a case concerning the adoption of California's GHG emission standards for motor vehicles to further the City's goal of reducing GHG emissions citywide. The Division also serves on the City's Climate Change Adaptation Task Force, which is working to identify the risks and opportunities posed by climate change.

Protecting Water Quality


The Division works with the City Department of Environmental Protection on a wide variety of issues relating to the City's drinking water supply, including efforts to ensure continued adequate supplies of water to City residents and to protect the very high quality of those supplies. Division attorneys are preparing to go to trial in federal court in Manhattan against petroleum refiners who supply gas stations in the New York City area for contaminating the groundwater in southeast Queens with methyl tertiary butyl ether, or MTBE, a gasoline additive that has contaminated groundwater systems throughout the county. MTBE, which has been banned in New York State, imparts a noticeably bad taste and odor to water, is a possible carcinogen and is extremely expensive to remove. The City is rehabilitating its Queens groundwater well system to provide added dependability to its water supply system and to enable the City to repair major components of its upstate water supply without reducing the amount of water it can provide to City residents. Division lawyers have worked for the past five years with lawyers for other municipalities and water suppliers who have filed similar suits, and will be among the first to take their case to trial. Division lawyers also work to protect the City's pristine upstate supply from threats to water quality. Among other matters, the Division is actively participating in efforts to assess the possible impacts of proposed natural gas drilling in the upstate watershed.

Improving Air Quality and Saving Energy

In support of the Mayor's goal of improving the City's air quality, the Division joined other states and cities in filing a petition in the D.C. Circuit to challenge a final rule issued by the EPA for primary and secondary emissions standards for ground level ozone, a precursor for smog. The petition alleges that the revised standards for ozone are not adequately protective of the public health and welfare as required by the federal Clean Air Act. In federal court, the Division defended the Mayor's initiative to green New York City's taxi fleet by requiring taxicab replacement vehicles to meet certain fuel efficiency standards consistent with hybrid models already available for sale in the New York City market. Though the federal court found that the new rules violated the federal pre-emption provisions of the Energy Policy and Conservation Act, the Division continues to work with the Mayor's staff to design a program that both saves energy costs and improves air quality.

Aiding Redevelopment

The Division represented the City in several mayoral initiatives designed to revitalize neighborhoods, improve and expand parkland, and clean up contaminated land in New York City. In *Tuck-It-Away Associates v. City of New York*, the Division successfully defended a challenge to the environmental review and approval by the City Planning Commission and the City Council of a plan that will allow Columbia University to expand its campus. A significant renovation of Union Square Park continued after the Division prevailed in a challenge to halt the entire project, which will improve conditions for the local greenmarket and triple the playground's size. The Division is also defending the City's plan to redevelop Willets Point into a vibrant mixed-use residential and commercial area with new public open spaces. In *City of New York v. Darren Miller*, Division attorneys obtained an injunction against persistent illegal dumping at a site slated for affordable housing development adjacent to Gateway Plaza Mall in Brooklyn. Based on information provided by the Division, the Kings County District Attorney's Office brought criminal environmental charges against the illegal dumper.



The Family Court Division is divided into two subunits – the Juvenile Crime Prosecution Unit and the Interstate Child Support Unit. The Interstate Child Support Unit represents out-of-state petitioners seeking child support from New York City residents. The Juvenile Crime Prosecution Unit, which houses the Major Case Unit and the Sex Crimes Prosecution Unit, prosecutes juveniles accused of committing crimes. In cases where the Family Court finds guilt, attorneys then seek case dispositions that balance juveniles’ needs and best interests with public safety concerns. Attorneys handle a wide variety of cases, including assaults, robberies, weapons possession, drug offenses, sex offenses and homicides.

FAMILY COURT

LAURENCE BUSCHING - CHIEF | ANGELA ALBERTUS - DEPUTY

New Weekend Court for Detained Youth

In collaboration with other City agencies, the Division helped develop a new initiative to process juvenile delinquency arrests on weekends and holidays, as is currently the case for adults. A first for New York State, this program will reduce detention time for youth who can be safely released to their families, but who might otherwise be detained for up to 48 hours or longer before court opens on the next business day. High-risk offenders, though, can still be detained. Division attorneys also helped create a new risk-assessment instrument that gives judges critical data needed to make well-informed detention decisions.

Columbia University Graduate Student Killed in Random Attack

The Major Case Unit prosecuted Sheldon J., a 14-year-old who caused the death of a Columbia University graduate student. The student, a native of China, was hit by a vehicle while trying to escape Sheldon J.'s unprovoked assault. As part of the Division's 24-hour on-call system, our attorneys responded to the police precinct shortly after officers made the arrest. Sheldon J. ultimately pleaded guilty to Manslaughter in the second degree. The Division assisted the victim's distraught family, friends and the Chinese Consulate throughout the case.

Priest Attacked by Youths

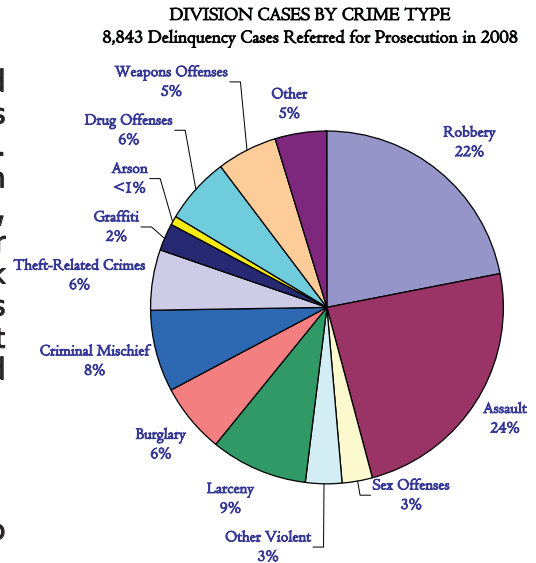
Attorneys prosecuted a juvenile who, along with three other youths, attacked a 52-year-old Episcopal priest who runs a shelter that houses adolescents and young adults who are openly gay and transgendered. Caprice C., who is 6 feet tall and weighs over 200 lbs., assaulted the priest, who had come to the aid of one of the shelter residents, while others yelled anti-gay epithets. The priest sustained significant injuries and was treated at Mt. Sinai Hospital. Caprice C. was arraigned on charges of Assault in the second degree, a class D felony, charged as a hate crime. He pleaded guilty to Assault in the third degree and was paroled to his mother. Temporary orders of protection were issued directing Caprice C. to stay away from the shelter, the priest and two specified shelter residents.

Alternative to Sentencing Initiative Success

When delinquent youth are not a significant risk to public safety, the Family Court Division strives to help them receive rehabilitative services from community-based organizations rather than in residential facilities. Such was the case with Tyrone J., who committed multiple acts of criminal mischief and graffiti. Once it became clear that Tyrone J.'s home situation was contributing to his delinquent behavior – his mother was an alcoholic and he had been sexually abused by an uncle – Division attorneys worked with Tyrone J.'s lawyer to find a solution that would help address his needs and permit him to remain in the community. Our attorneys recommended to the Family Court judge that Tyrone J. be placed on probation and enrolled in a community-based alternative to placement program while living with his godmother. Since that disposition, Tyrone J.'s grandmother has also started providing assistance.

Interstate Child Support Unit

Attorneys in the Interstate Child Support Unit work in tandem with the City's Human Resources Administration (HRA) and have obtained orders for child support obligations and arrears from City residents for thousands of children living in the U.S. and abroad. In 2008, the Unit received over 6,000 new cases, secured over 1,400 orders of support and established paternity on nearly 700 cases. Unit attorneys also increased filing of enforcement petitions by 56% during the second half of 2008. These efforts were reflected in the City's \$50 million increase in child support collections reported by HRA's Office of Child Support Enforcement at the end of 2008.



The General Litigation Division defends the City and its agencies in lawsuits challenging policies and practices concerning important programs in such varied fields as education, health care, public assistance benefits, prison conditions, foster care and election law. Many of these cases are brought as class actions in federal court, and present significant and often novel issues of statutory and constitutional interpretation.

insure domestic Tranquility, provide for the common
and our Posterity, do ordain and establish this Constitution

Article I

Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, who shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature. No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and seven Years shall be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, the actual Enumeration shall be made within three Years after the first Meeting of the Legislature, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative, and until such Enumeration, the Number of Representatives shall be increased or decreased by the Legislature of each State until such Enumeration, in proportion to the Variation in the Number of Persons.

Each State shall have at least one Representative, and until such Enumeration, the Number of Representatives shall be increased or decreased by the Legislature of each State until such Enumeration, in proportion to the Variation in the Number of Persons.

GENERAL LITIGATION

THOMAS CRANE - CHIEF | JONATHAN PINES - DEPUTY | MARILYN RICHTER - DEPUTY

Ending 25 Years of Litigation Over the City's Homeless System – *McCain v. Bloomberg*

Law Department attorneys, along with officials of the Department of Homeless Services, reached a settlement with plaintiffs putting to an end this 25-year-old litigation concerning shelter for homeless families. In the wake of extensive reforms made by the City in recent years to improve services for homeless families, this historic agreement ended unwarranted court oversight over the program. The settlement recognized that homeless families are entitled to shelter which is safe, sanitary and decent. In ending this litigation and lifting the myriad court orders, the Law Department attained an important, long-standing goal.

Lifting Court Oversight of Prisons – *Benjamin v. Department of Corrections*

Division attorneys continued to pare down a decades-old consent decree governing the housing conditions for pre-trial detainees. A Southern District judge agreed to end significant parts of the decree, concerning environmental and sanitary conditions for pre-trial detainees, subject to reconsideration in six months. The plaintiffs had commenced this class action in 1975, challenging the confinement conditions in the City correctional system. In recent years, the City has asked the Court to terminate many consent decree provisions, primarily on the ground that the conditions formerly found to be unconstitutional had been remedied. The Court's recent order effectively terminated the most recent set of monitoring provisions from 2001.

Fighting for Term Limit Extensions – *Molinari v. Bloomberg*

When a local law extending term limits for elected officials in the City was challenged, Division attorneys successfully defended it. Local Law 51, passed by a majority of the City Council and signed into law by Mayor Bloomberg in November 2008, extended term limits for the Mayor, the Council and certain other elective offices within the City from two to three terms. Granting the defendants' motion to dismiss the complaint in its entirety, the Federal District Judge rejected the plaintiffs' federal and State claims, holding that their constitutional rights were not violated when the Council amended the term limits law. The Court accepted the City's argument that the Council was not required to conduct a referendum before adopting the term limits amendment. The Court also rejected the plaintiffs' contention that the term limits amendment constituted self-dealing in contravention of the City's conflict of interest law.

Property Tax Rebate Negotiations – *Molinaro v. Bloomberg*

Division attorneys defended a legal challenge to the potential revocation of a \$400 property tax rebate, eventually working with the City Council to maintain the rebate for this year. That action occurred in the context of a number of other fiscal measures addressing the City's budget deficit. This controversial issue was highly publicized and debated among local lawmakers and property owners.

Settlement of Special Education Class Action – *L.V. v. Department of Education*

The Division settled a class action brought by parents alleging that the Department of Education (DOE) did not timely implement administrative impartial hearing orders obtained on behalf of children receiving special education services. Such orders direct DOE either to reimburse parents for the cost of special education services, or for DOE to directly provide the child with some special education service. Under the settlement terms, class members are entitled to receive either cash or vouchers of up to \$15,000 to obtain special education service or assistive technology. DOE's future implementation of these administrative orders will be monitored, and DOE will be required to meet certain escalating performance benchmarks during the settlement's duration.

Campaign Finance Reforms – *Ognibene v. Parkes*

This federal action was brought pursuant to Section 1983 and the Voting Rights Act by present and former Hispanic and African-American City Council members and candidates, along with minority and non-minority business owners and lobbyists, challenging on First and Fourteenth Amendment grounds "pay-to-play" regulations that were recently enacted by the City Council. Those regulations both prohibited campaign contributions from certain categories of business entities and limited contributions from lobbyists and others doing business with the City, and at the same time excluding these contributions from public matching funds. The parties cross-moved for partial summary judgment on the merits as to the facial constitutionality of those provisions, and the district court granted summary judgment to the defendants. In so ruling, the Southern District held that, even in the absence of evidence of actual "pay-to-play" corruption, the City's concerns about the appearance of such corruption were well founded and sufficiently important to warrant a legislative response; the dangers of public cynicism and voter apathy resulting from a perception of a pay-to-play political culture are self-evident; and the legislation enacted by the City Council was narrowly drawn to address those concerns.



The Labor & Employment Law Division represents the City as employer of over a quarter-million workers. The Division handles a variety of matters including First Amendment retaliation; gender, race, age and disability discrimination; and civil service law issues. Attorneys have successfully litigated cases brought against large City agencies, such as the Department of Education and the NYPD, as well as lawsuits brought against high-ranking City officials.

LABOR & EMPLOYMENT LAW

GEORGIA PESTANA - CHIEF | PAUL MARKS - DEPUTY

Balancing Free Speech – *Weingarten v. Board of Education*

The Division successfully defended a Department of Education regulation that prohibits teachers from wearing campaign and political buttons in school. Although the teachers' union argued that this mandate violated teachers' First Amendment rights, the City countered that wearing buttons injected politics into the classroom. The court agreed that it is important to avoid entanglement of the teachers' public education mission with their personal politics, and determined that the City is allowed to limit teachers to posting political materials in locations students lacked access to, such as staff mailboxes and union bulletin boards.

Defending the NYPD's Labor Practices

Division attorneys, in partnership with Seyfarth Shaw LLP, won a significant victory which saved the City hundreds of millions of dollars. Attorneys successfully defended the City in a collective action brought by 16,000 present and former NYPD police officers and detectives asserting that the police department's overtime and other compensation policies violated various aspects of the Fair Labor Standards Act (FLSA). A federal court decertified one claim and a jury, after a three-week trial, rejected two other claims. During the trial, the Court also issued numerous favorable rulings interpreting novel legal issues and confirming that the NYPD practices are lawful.

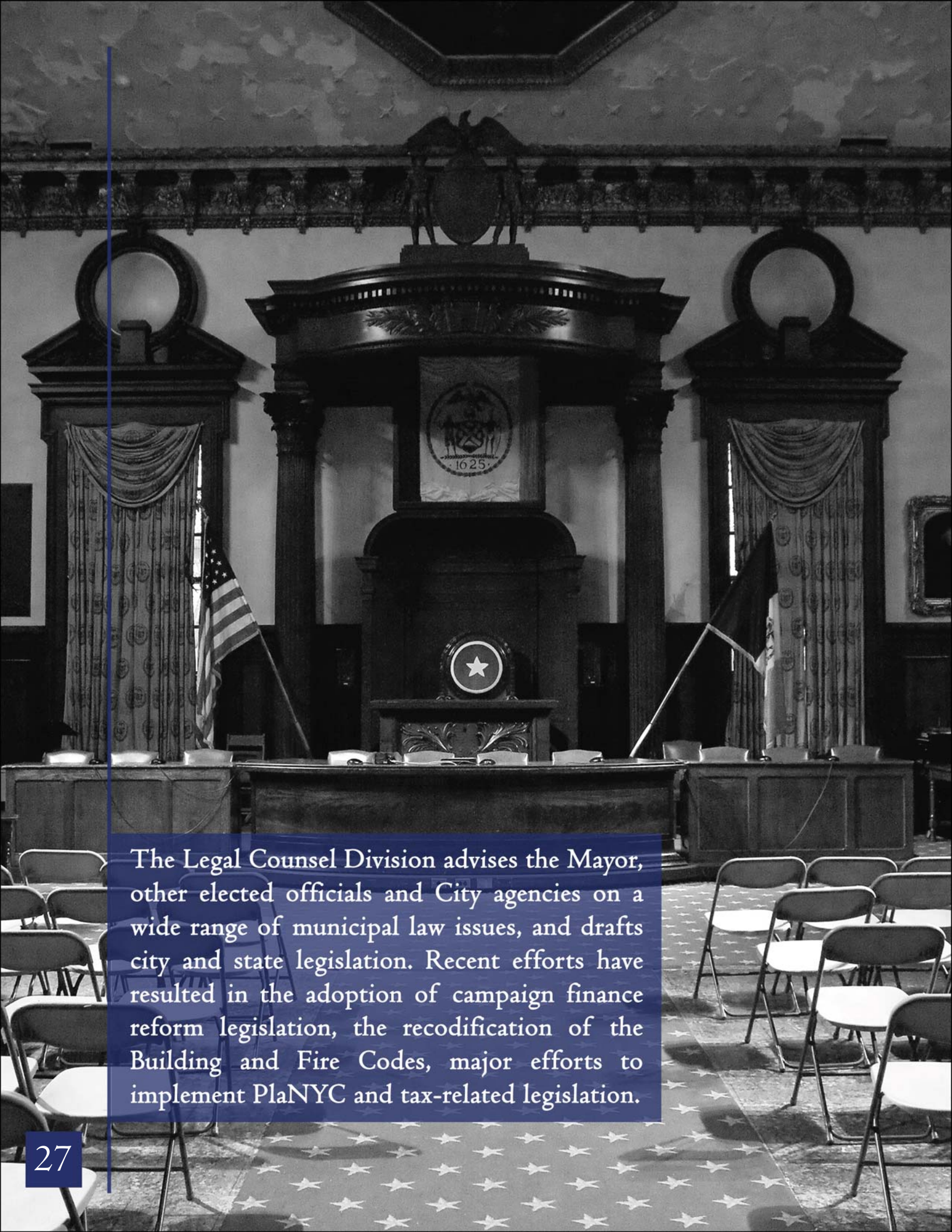
Attorneys were also successful in a related case brought by NYPD sergeants who claimed they were covered by FLSA overtime provisions. City attorneys obtained a unanimous verdict in their favor supporting the claim that sergeants are exempt from the FLSA overtime provisions and are therefore ineligible for overtime beyond what is agreed upon in collective bargaining.

Demanding a Pledge for No More Transit Strikes – *NYC Transit Authority v. TWU*

Although the City was not the employer and was not a party to the NYC Transit Authority's litigation against the Transit Workers' Union (TWU) relating to the 2005 transit strike, the City was granted *amicus* status to participate in proceedings concerning the TWU's application for reinstatement of its dues check-off privileges – the union's ability to automatically deduct union dues from members' paychecks. In the case's last stage, the City held firmly to its contention that the TWU must unequivocally represent to the court that the union recognizes it does not have the right to strike. The TWU eventually submitted to the demands in order to have its dues check-off privilege reinstated.

Supporting Our Schools – *Almontaser v. Department of Education*

Division attorneys successfully fought to allow the Department of Education to continue the hiring process for the principal of its first Arab language and culture school. After the previous principal of Khalil Gibran International Academy resigned, she sought to halt the hiring process to re-apply for the position. The court sided with the City, and a new principal was hired.



The Legal Counsel Division advises the Mayor, other elected officials and City agencies on a wide range of municipal law issues, and drafts city and state legislation. Recent efforts have resulted in the adoption of campaign finance reform legislation, the recodification of the Building and Fire Codes, major efforts to implement PlaNYC and tax-related legislation.

LEGAL COUNSEL

STEPHEN LOUIS - CHIEF | MARTHA MANN ALFARO - DEPUTY

Congestion Pricing

Division attorneys worked in collaboration with the Contracts & Real Estate and Environmental Law Divisions in assisting the Mayor's Office with the development of the congestion pricing plan. The plan would have created a source of funding to improve mass transit in addition to reducing traffic congestion in the City. Although the plan was passed by the City Council, it was ultimately rejected by Albany politicians. New York City would have been eligible for \$354 million in federal funding if the State had approved the plan.

Off-Track Betting

A multi-disciplinary team of attorneys worked with several City agencies on authorizing a deal in which New York State took over the city's Off-Track Betting Corporation (OTB), including all its liabilities while the City continues to share revenues from horse tracks located within City limits. The lengthy negotiations averted the shutdown of the OTB's 68 establishments.

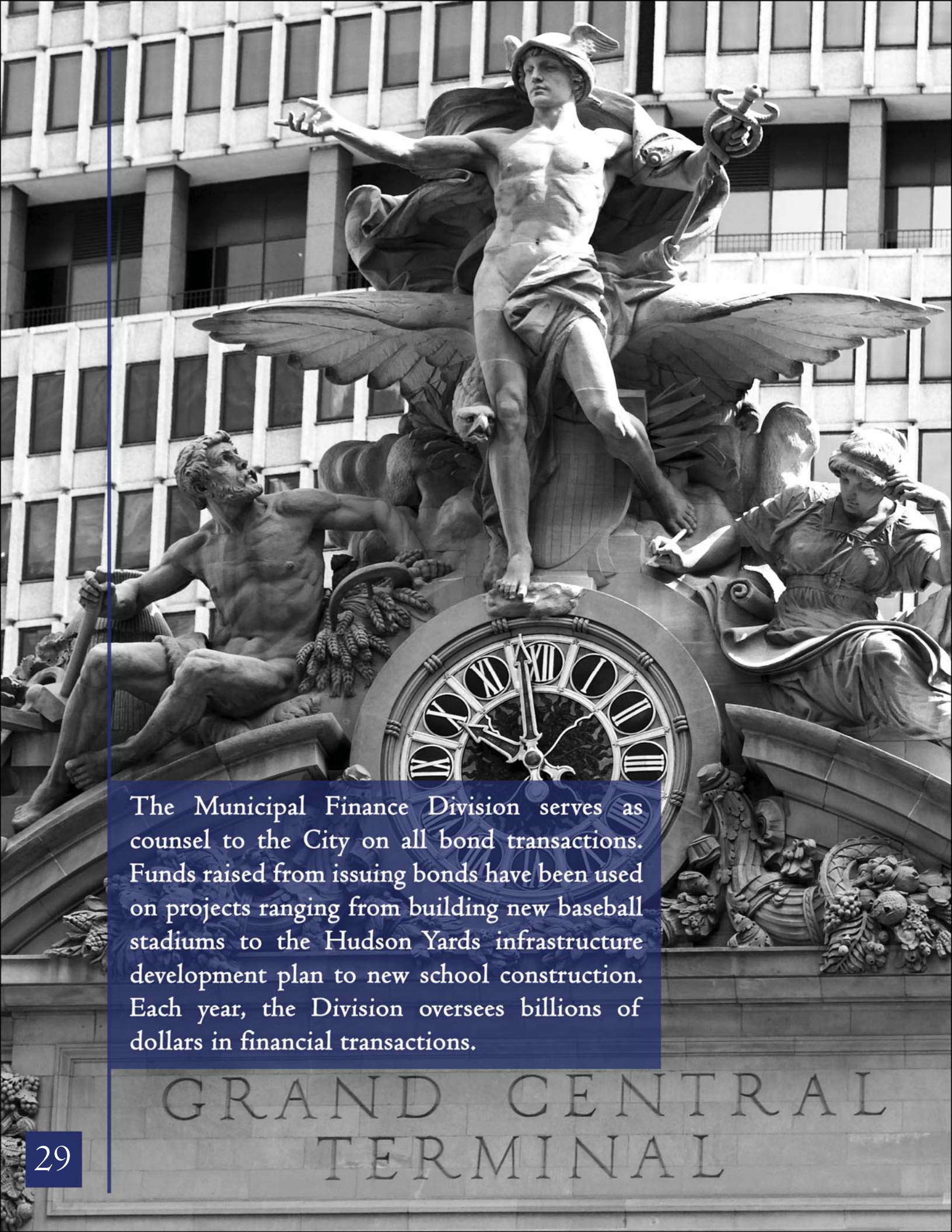
Bringing Waterfalls to the City

The Division was highly involved in the installment of a temporary public art display – *The New York City Waterfalls* – which consisted of four monumental, man-made waterfalls along the City's shores. Attorneys from multiple divisions were involved in the project, and it is estimated that the art display brought in \$69 million in tourist revenue for the City.

Legislative Efforts

The Division works closely with City Hall on federal, state and city legislative issues. This year, attorneys handled countless matters including those relating to:

- Establishing Business Improvement Districts – community organizations that promote business development
- Tax abatement programs for environmentally friendly buildings and industrial and commercial properties
- Encouraging the use of Minority and Women-owned Business Enterprises
- Property and hotel tax rates
- Establishing requirements that must be followed to film in the City
- Disposal of electronic waste
- Adoption of a new fire code
- In-store recycling of plastic bags
- Broadening protection for domestic violence victims



The Municipal Finance Division serves as counsel to the City on all bond transactions. Funds raised from issuing bonds have been used on projects ranging from building new baseball stadiums to the Hudson Yards infrastructure development plan to new school construction. Each year, the Division oversees billions of dollars in financial transactions.

GRAND CENTRAL
TERMINAL

MUNICIPAL FINANCE

ALBERT MONCURE, JR. - CHIEF | OLIVIA O'NEILL - DEPUTY

Guiding the City Through the Financial Crisis

The Division has been actively involved in mitigating the effects of the current financial crisis on City finance. For instance, Division attorneys have participated in transactions to reduce the City's risk of increased interest costs on its auction rate and adjustable rate bonds as a result of rating agency downgrades of municipal bond insurers and banks that provide credit enhancement.

Restructuring Municipal Bonds

Division attorneys played a major role, including the drafting of documents and coordination of closings, for the City's approximately \$1.8 billion Fiscal 2008 Series J and K Bonds that redeemed a substantial portion of the City's outstanding auction rate bonds; the conversion of approximately \$33 million Fiscal 2003 Series G Subseries G-5 Bonds from auction rate to fixed rate bonds; the conversion of \$19 million Fiscal 1995 Series F Subseries F-2 Bonds from adjustable rate to fixed rate bonds; and numerous transactions to replace downgraded credit enhancement banks with banks in better financial condition.

Jay Street Development Corporation

The Division represented the City in connection with the retiring by Jay Street Development Corporation (JSDC) of its entire outstanding debt – including \$266 million of auction rate bonds, debt service on which was paid by lease payments from the City to JSDC for use of the court facility at 330 Jay Street in Brooklyn. Increased interest costs for these JSDC auction rate bonds would therefore have resulted in increased lease payments to the City.

Lehman Brothers

In connection with the bankruptcy of Lehman Brothers, Division attorneys participated in the replacement of Lehman Brothers as Remarketing Agent for various adjustable rate bonds.

Credit Markets

Due to changes in the nation's credit markets, the City and the New York City Transitional Finance Authority have been entering the public credit markets with greater frequency than in the past. The Municipal Finance Division has the primary responsibility for carrying out such closings, as well as the conversions and replacements described above.



The Pensions Division represents the City's five pension funds in litigation challenging individual and class-wide benefit determinations, and provides pension-related counseling and advice to City agencies. With close to 600,000 active and retired members and assets exceeding \$83 billion, the City funds are cumulatively one of the largest public pension funds in the country. Division attorneys draft and comment on proposed legislation, assist in the implementation of new laws, and in conjunction with outside counsel, represent the City funds in securities fraud cases.

PENSIONS

INGA VAN EYSDEN - CHIEF | CAROLYN WOLPERT - DEPUTY

Fighting Securities Fraud

With outside counsels' assistance, attorneys investigate and prosecute securities fraud actions seeking to recover losses that the funds have sustained while investing assets in various companies. In the past two years, the Division has recovered almost \$20 million in connection with securities fraud settlements, and has been actively investigating companies involved in the subprime mortgage scandal.

Countrywide Financial Corporation

Representing the New York City Pension Funds in its capacity as lead plaintiff with the NYS Common Retirement System, Division attorneys continued work on the class-action lawsuit against Countrywide Financial Corporation, one of the nation's largest mortgage lenders. Late last year, the United States District Court for the Central District of California issued a favorable decision which rejected Countrywide's requests to dismiss the claims, thus allowing the lawsuit to proceed. The lawsuit alleges that Countrywide engaged in improper lending practices that led to significant losses by the City and State pension funds.

Wachovia Corporation

On October 14, 2008, the New York City Pension Funds were named lead plaintiff in a class-action lawsuit filed against Wachovia Corporation, one of the nation's largest financial service providers. The lawsuit alleges that Wachovia issued false and misleading statements regarding its exposure to subprime mortgages.

Disability Benefits Revoked - *Seiferheld v. Police Pension Fund*

The Division prevailed in a lawsuit brought by a former police officer whose accident disability retirement benefits were revoked after he was observed performing roofing work for his own company, and thereafter found to be no longer disabled to perform the duties of a police officer. The former officer then failed a pre-screening drug test for cocaine, and was consequently found unqualified for reappointment to the position of police officer or any other City position. The Court found that the decision to suspend the officer's pension, and the subsequent decision to not reappoint him to a City position, were proper in all respects.

Settlement With Teachers - *Weingarten v. Teachers' Retirement System*

The City settled a lawsuit which challenged the Teachers' Retirement System's calculation of pension benefits under the teachers' 20-year pension plan. The \$160 million settlement, which could potentially affect 30,000 retirees and 5,000 active members, is to be paid out over a 10-year period. Settlement details continue to be worked out by the parties.

World Trade Center Death Benefit Dispute - *Prior v. Fire Department Pension Fund*

Division attorneys continue to defend the Fire Department Pension Fund's decision to grant domestic partner benefits to the fiancée of a firefighter killed on 9/11 pursuant to state law. The parents brought their first lawsuit in 2004, when the Fund first granted the fiancée one half of the death benefits payable in connection with Firefighter Kevin Prior's death (the other half of the death benefits is being paid to the firefighter's parents). In 2006, the parents brought a second lawsuit challenging the decision. After remanding the fiancée's application to the Fund twice between 2005 and 2008, the Court commenced an evidentiary hearing in April 2008, which concluded in December 2008. The case remains active pending submission of post-trial briefs.



The Special Federal Litigation Division defends the City and its employees in civil rights cases brought in federal court against law enforcement officials, including police and correction officers and prosecutors. Claims often challenge a judgment made by an individual police or correction officer in performing his or her duties; Police Department policies as to how best to secure public safety; or Department of Correction policies regarding the care and custody of individuals detained by the criminal justice system. Pending cases include a wide range of factual circumstances from the policing of large-scale public events to the justification for an individual arrest. The legal principles which govern case outcomes are part of an ever-evolving body of constitutional law set forth in decisions by the U. S. Supreme Court and other federal courts.

SPECIAL FEDERAL LITIGATION

MURIEL GOODE-TRUFANT - CHIEF | HEIDI GROSSMAN - DEPUTY | FRANCES SANDS - DEPUTY

Demonstration Cases

Division attorneys are handling approximately 100 cases related to demonstrations, including two class-action lawsuits. Nearly 70 of these cases relate to demonstrations occurring during the 2004 Republican National Convention. The remaining cases are varied, including cases concerning abortion clinic protests, the 2003 U.S. Out-of-Iraq March, and Critical Mass bike rides. The proposed class action concerning massive protests during the 2002 World Economic Forum was resolved on terms favorable to the City in 2008.

TRIAL VICTORIES

Division attorneys tried an array of cases in 2008, including the following:

Immigration Law

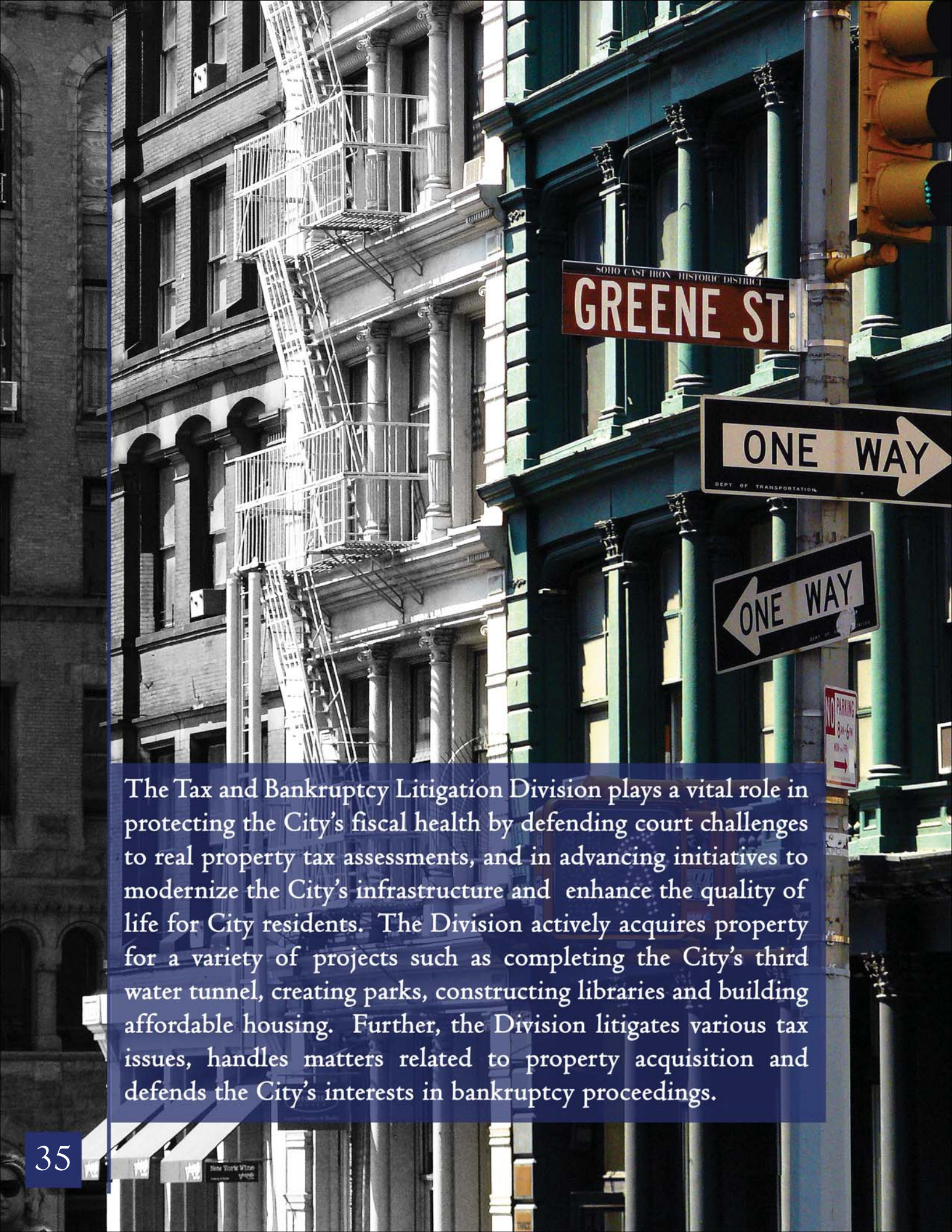
Division attorneys won a trial in which the plaintiff alleged that his immigration status was reported to U.S. Immigration and Customs Enforcement (ICE) in retaliation for the plaintiff's filing of a complaint with the Civilian Complaint Review Board. Executive Order No. 41, issued in 2003, encourages all residents to seek aid from City agencies without fear that their immigration status would be used against them. The plaintiff had become a chronic problem in his neighborhood, where he operated an illegal cab and had various disputes with residents. He had also been arrested for disorderly conduct and was issued more than 25 tickets related to the operation of his illegal cab. The plaintiff voluntarily disclosed his immigration status to police. ICE learned of the plaintiff's status during a visit by an ICE officer to the police precinct, during which the ICE officer inquired about the precinct's general knowledge of illegal immigrants in the area.

Narcotics Operation

The Division successfully defended police officers' actions during a buy-and-bust operation in East New York, Brooklyn. Although the plaintiff was not the target, officers observed him with marijuana and apprehended him. During the apprehension, the plaintiff came in contact with a metal fence, fracturing several ribs, which in turn punctured his lung. Although the plaintiff disputed at trial that he possessed marijuana, the major dispute concerned how he was injured and by whom. Although the defendant officers were not involved in the plaintiff's apprehension, he claimed that the non-defendant officers conspired with the defendants to absolve the defendant officers. The plaintiff was not credible on the stand, and after deliberations, one juror said that after hearing from the plaintiff, he did not need to hear anything else. In explaining why his testimony changed from one day to the next, the plaintiff stated, "Today is a new day."

Uniform or Plainclothes?

The plaintiff in this case claimed he was "attacked" for no reason by two plainclothes officers while he was walking with a cane near 175th Street and Monroe Avenue. The plaintiff's later versions of the events had him "attacked" by up to 10 officers in plainclothes. Division attorneys presented a much different account in their defense of the officers. After receiving a 911 call reporting a man using a cane with a gun near 175th and Monroe, uniformed officers in a police car saw the plaintiff, who fit the broadcast description and approached him. During the contact with the plaintiff, 20 bags of heroin fell out of the plaintiff's cane. As the plaintiff was being handcuffed, he feigned a heart attack and then was taken to St. Barnabus Hospital. The plaintiff only had superficial abrasions after his arrest. Since he pled guilty to Criminal Possession of a Controlled Substance, his only claim at trial was excessive force. The jury requested one read-back: the testimony of the Emergency Medical Technician regarding the attire of the police officers on the scene. Shortly after confirming that the Emergency Medical Technician testified that there were uniformed officers on the scene, the jury returned a defense verdict.



The Tax and Bankruptcy Litigation Division plays a vital role in protecting the City's fiscal health by defending court challenges to real property tax assessments, and in advancing initiatives to modernize the City's infrastructure and enhance the quality of life for City residents. The Division actively acquires property for a variety of projects such as completing the City's third water tunnel, creating parks, constructing libraries and building affordable housing. Further, the Division litigates various tax issues, handles matters related to property acquisition and defends the City's interests in bankruptcy proceedings.

TAX AND BANKRUPTCY LITIGATION

RITA DUMAIN - CHIEF | LISA BOVA-HIATT - DEPUTY | VINCENT D'ORAZIO - DEPUTY

Key Eminent Domain Win

City of New York v. Melrose Commons Urban Renewal Area, Phase II (Kaiser Woodcraft)

The Division prevailed in the State's highest court in a unanimous decision overturning two lower court rulings in a case where a claimant, whose property had been taken by eminent domain, sought to be paid by the City for all the standard industrial tools that he used in the woodworking shop that he operated on the premises. This was the first Court of Appeals decision on this topic in almost 40 years. The former owner had argued successfully in the lower courts that the City should pay for the tools and equipment he used in his woodworking business, such as saws, grinders and sanders, because their removal would cause substantial loss in value in the secondhand market. The City argued, and the Court of Appeals agreed, that loss of value means only that the items could not be used again if removed, and that the claimed items were not fixtures and should not be paid for, because they were of standard design and could be used in another business. This decision has far-reaching consequences, and will potentially save the City and State millions of dollars.

Defending the City Charter

U.S.A. ex rel. Eisenstein, et al. v. City of New York, et al.

In this case, the plaintiff, who was once a City employee residing in New Jersey, challenged New York City Charter §1127, which pertains to residency requirements for City employees, maintaining that it violates the Federal False Claims Act (FCA) among other laws. Although alleging a variety of theories in challenging Charter §1127, the focus of this case, on appeal, turns to a procedural issue arising from the FCA cause of action.

Under the FCA, the United States is allowed 60 days to elect to intervene in the action. The United States declined to intervene, and the Southern District dismissed the complaint. The plaintiff then filed his notice of appeal 54 days after the judgment was entered. The Second Circuit, in a *sua sponte* Order, directed the parties and the United States to brief the question whether the plaintiff timely filed his notice of appeal – specifically whether the 30-day time limit in Fed. R. App. P. 4(a)(1)(A) (28 U.S.C. § 2107(a)) for filing a notice of appeal, or the 60-day time limit in Rule 4(a)(1)(B) (28 U.S.C. § 2107(b)), applicable where the United States Government is a party, applies in an action under the FCA where the United States has declined to intervene. The Second Circuit determined the 30-day rule applies and dismissed the plaintiff's appeal. The plaintiff then appealed to the United States Supreme Court which granted certiorari on the question of whether the 30-day time limit or the 60-day time limit applies in an action under the FCA, where the United States has declined to intervene.

Tax Lien Foreclosure

NYC Tax Liens 1-1999 Trust & Bank of New York v. 114 Tenth Ave. Associates

Division Attorneys successfully litigated, in the context of a tax lien foreclosure, the constitutionality of service of process on the New York Secretary of State as the designated agent of a corporation. The City prevailed at the trial court and a series of appeals ensued. The Appellate Division, First Department held that the appellant was afforded constitutionally sufficient notice of the foreclosure sale of its property even though it did not receive actual notice, because its failure to receive notice was caused by the breach of its own obligation to keep a current address on file with the New York Secretary of State. The First Department also held that the decision in *Jones v. Flowers*, 126 S. Ct. 1708 (2006), the key authority upon which the appellant relied, did not apply to the facts of this case, and the Court declined the appellant's request to extend the *Jones v. Flowers* holding. The appellant appealed to the New York State Court of Appeals, and its appeal was dismissed. Thereafter, the appellant petitioned for *certiorari* to the U.S. Supreme Court, which Division attorneys opposed, and the Court subsequently denied the petition.

Defending the City in Bankruptcy Court

In re Lowery

Division attorneys successfully sought the dismissal of a motion to reopen a bankruptcy case in 2008 that had been closed in 2000. The plaintiff had filed for Chapter 7 bankruptcy relief, but failed to inform the court of a pending personal injury lawsuit against the City. Recognizing that failure to list the lawsuit on the bankruptcy petition is grounds for dismissal, attorneys for the City in the personal injury action moved to dismiss the case. The plaintiff's attorney countered by moving to reopen the bankruptcy case. Division attorneys opposed the motion to reopen, and the Court agreed strongly – holding that “the public interest in the systemic integrity of the bankruptcy process dictates that a bankruptcy court should withhold relief that encourages the concealment of assets by debtors.”



With over 200 attorneys and 200 support staff, the office's largest division defends the City against approximately 6,200 new personal injury and property damage cases annually. The Division maintains offices in all five boroughs and has special subunits that focus on specific issues such as risk management, catastrophic injuries and toxic torts.

TORT

FAY LEOUSSIS - CHIEF | ELLEN LOMBARDI - FIRST DEPUTY | STEVEN LEVI - DEPUTY | DAVID SANTORO - DEPUTY

World Trade Center Litigation

The City received a positive decision that saved it millions but, more importantly, recognized the tremendous effort the City made during the post-9/11 clean-up to recover human remains and personal items. A group of families brought suit against the City claiming that materials taken to the Fresh Kills Landfill from Ground Zero should be resifted and relocated. The City argued that the materials – over 1.5 million tons worth – had been sorted down to a quarter-inch for remains and personal effects, and that only “fines” remained. While acknowledging the loss of the families impacted by 9/11, Southern District Judge Alvin Hellerstein ruled “not every wrong can be addressed through the judicial process.”

In another 9/11-related lawsuit, the Second Circuit denied the City and contractors’ request for immunity, that as a matter of law they are entitled to, from lawsuits arising from the rescue, recovery and debris removal operations at Ground Zero. The Court determined that immunity could not be disposed of without further development of the case facts.

Staten Island Ferry Accident Settlements

With assistance from outside counsel, the Tort Division has been continuing to settle ongoing cases relating to the October 2003 Staten Island Ferry accident. By the end of 2008, 135 claims had been settled for over \$63 million and only 36 claims remain.

Deutsche Bank Fire Litigation

Division attorneys continue to handle claims brought by 16 firefighters injured when responding to the fire at 130 Liberty Street, the site of the former Deutsche Bank building, and two firefighters injured in pre-fire accidents. The building is located across the street from the World Trade Center site and was damaged during the terrorist attacks. Thus far, 10 firefighters have instituted suit. The NYC Law Department cooperated fully with the Manhattan District Attorney’s investigation into the fire. Immediately after the fire, the City worked to enhance its practices in conducting inspections of buildings undergoing demolition or deconstruction. Additional reforms have been memorialized in an agreement with the District Attorney’s Office.

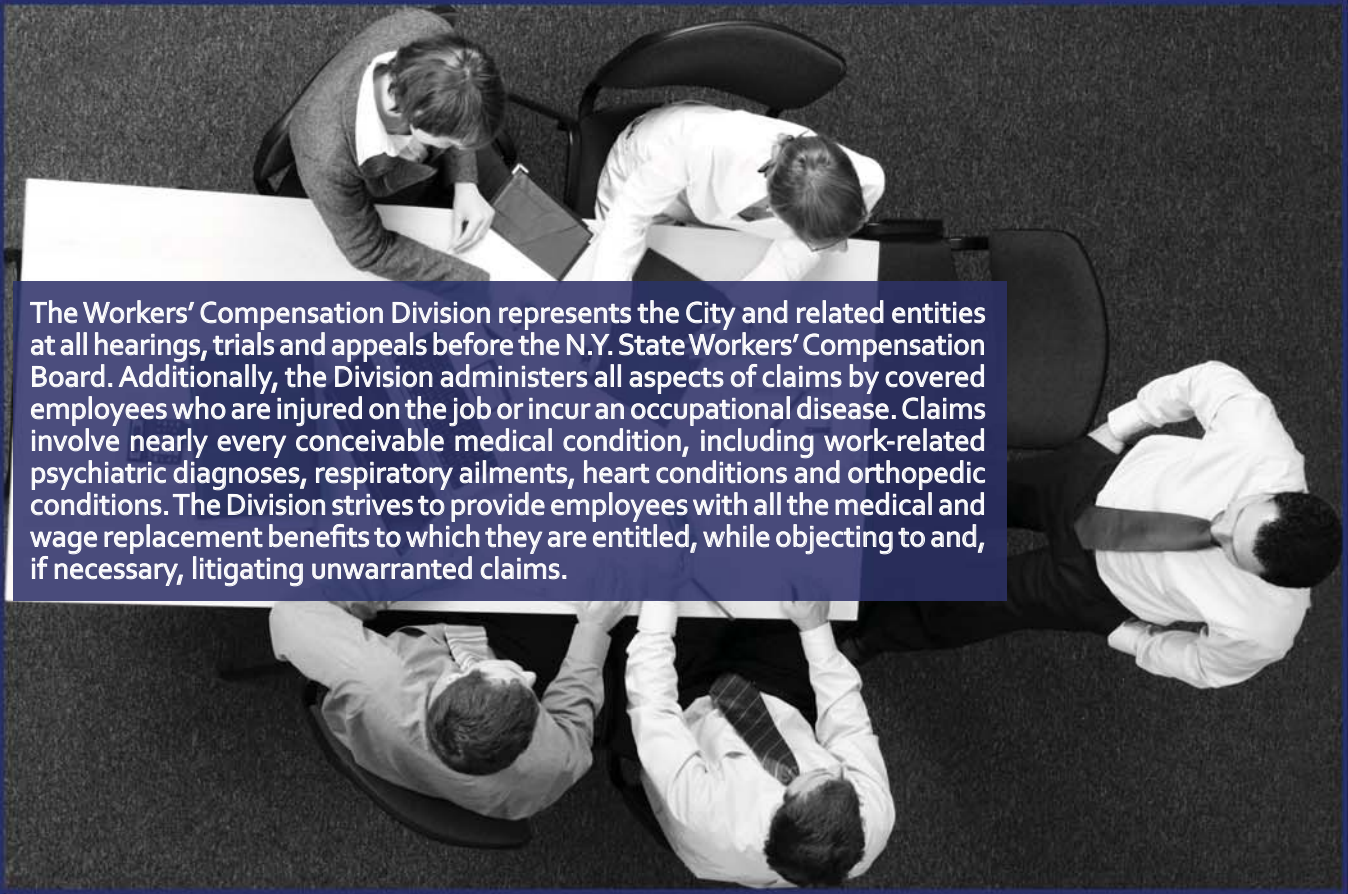
Con Ed Steam Pipe Explosion

Approximately 350 claims and 80 lawsuits have been filed in response to the July 2007 steam pipe explosion. Although most plaintiffs sued only Con Edison, Con Edison later impleaded the City and its own contractor, Team Industrial Services, Inc., in all of the lawsuits. Division attorneys continue to defend the City’s actions in these lawsuits.

Reducing Tort Claims and Payouts

The Division has made significant progress in its efforts to reduce payouts on tort claims by settling meritorious claims earlier in the litigation process. In FY 2008, the Division reduced pending cases by 28% from the previous year. There was only a 3.6% increase in tort payouts despite several multi-million dollar personal injury payouts – including settlements relating to the Staten Island Ferry accident.

WORKERS' COMPENSATION



The Workers' Compensation Division represents the City and related entities at all hearings, trials and appeals before the N.Y. State Workers' Compensation Board. Additionally, the Division administers all aspects of claims by covered employees who are injured on the job or incur an occupational disease. Claims involve nearly every conceivable medical condition, including work-related psychiatric diagnoses, respiratory ailments, heart conditions and orthopedic conditions. The Division strives to provide employees with all the medical and wage replacement benefits to which they are entitled, while objecting to and, if necessary, litigating unwarranted claims.

JOHN SWEENEY - CHIEF | MINDY ROLLER - DEPUTY

New York enacted its workers' compensation statute to address the inequities historically existing among employers and employees with regard to workplace injuries. The New York statute operates on the premise of a tradeoff. Employers assume all liability for injuries arising out of, and in the course, of employment – regardless of fault. Workers receive limited wage replacement benefits for lost earning capacity, and are entitled to have all related and necessary medical costs paid. In exchange, employees are prohibited from suing employers for personal injuries.

New York City is a self-insurer of its workers' compensation obligations pertaining to all covered City employees. Employees not covered under this statute, but by union contracts, include uniformed police officers, firefighters and uniformed sanitation workers.

Significant Matters from 2008 Include:

- Receiving and indexing over 15,000 new claims
- Representing the City at over 16,000 hearings, trials and appeals before the N.Y. State Workers' Compensation Board
- Paying over \$150 million in wage replacement benefits and medical costs to injured employees
- Processing over 200,000 medical bills
- Obtaining revenue recoveries in excess of \$10 million from various sources, including state funds, lien satisfaction and insurance arbitration



SUPPORT DIVISIONS

ADMINISTRATION

The Administration Division oversees business operations for the Law Department, and is responsible for all expenditures of funds, collection of revenue and fees, procurement rules compliance and personnel processing. Staff also provide general administrative oversight and development of internal policies, rules and regulations. Finally, the Division is responsible for ensuring the physical maintenance of eight citywide Law Department offices in addition to the Kingston, N.Y. office.



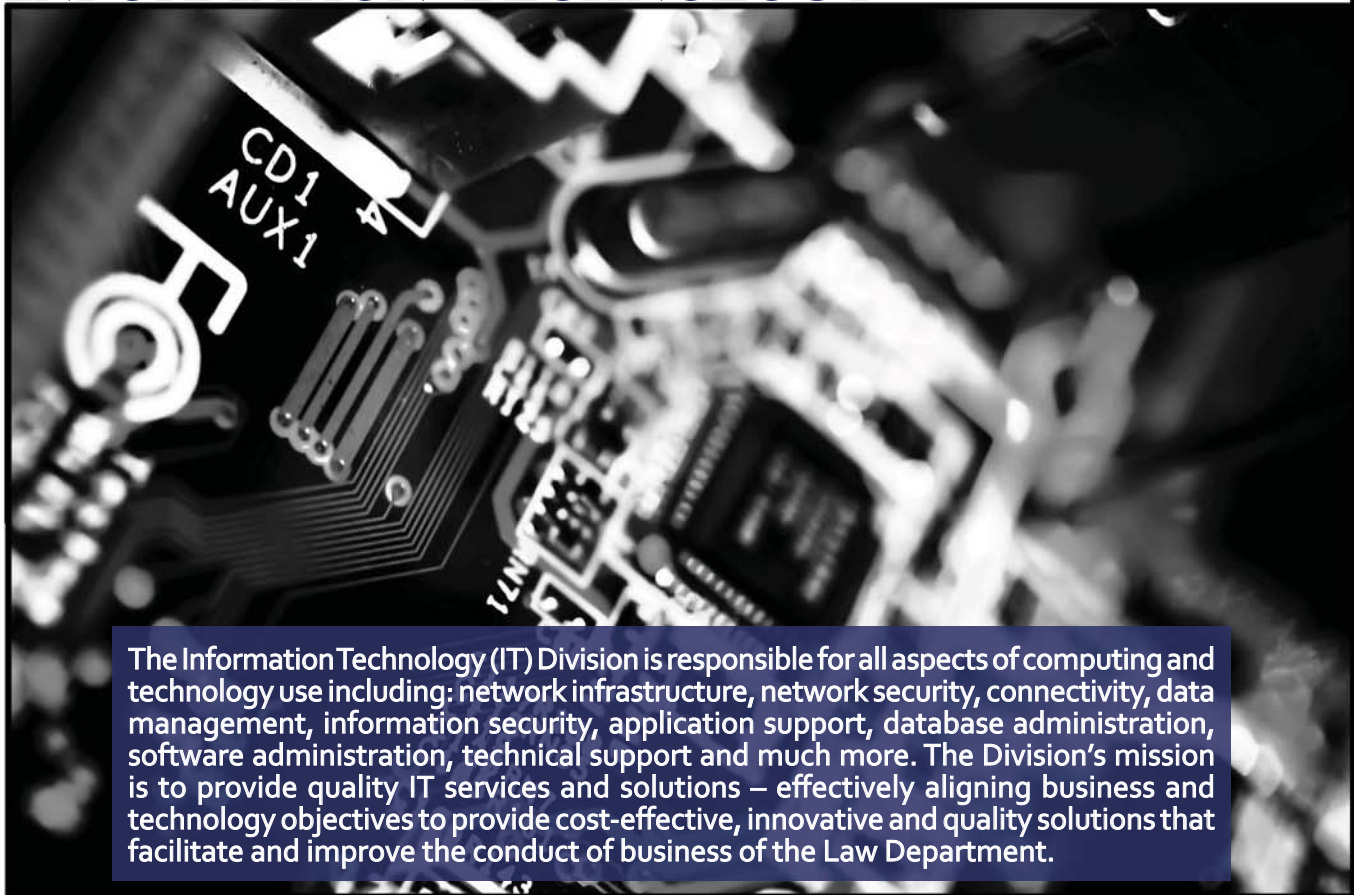
MALACHY HIGGINS - CHIEF | ANTHONY JOHNSON - DEPUTY

Each year, the Division handles over 35,000 paychecks; hundreds of personnel actions; thousands of payments for expert witnesses; 6,000 requests for court reporters and depositions; and hundreds of individual procurements. Moreover, it deposits money recovered in lawsuits on behalf of the City, and handles the enrollment of employees in the health benefits/managerial benefits program. The Division's efforts continue to focus on expansion and renovation of the Law Department's facilities, speedy responses to staff changes, and automation of systems and processes to increase the Department's efficiency. The Division also provides oversight and advice to other Department enterprises, such as information technology initiatives, equipment upgrades and management evaluations.

Highlights of Accomplishments from 2008:

- Maximized citywide Continuing Legal Education training by configuring large conference areas for simultaneous training sessions.
- Exercised 100 Church Street five-year lease renewal option which will expire in 2013.
- Secured approximately 70,000 square feet for file storage for agency in an offsite location.
- Successfully implemented NYCAPS automated Personnel Action Request (PAR) process.
- Secured additional space at 100 Centre Street and Grand Concourse Courthouse buildings for both the Family Court Division Weekend & Holiday Program and the Bronx Tort Trial Unit.
- Began work with the Office of Emergency Management to ensure the Department's compliance with Mayor Bloomberg's Executive Order No. 107. This Order mandates Mayoral agencies to have Continuity of Operations (COOP) plans developed by December 2009 in order to ensure essential services remain operational during citywide emergencies.

INFORMATION TECHNOLOGY



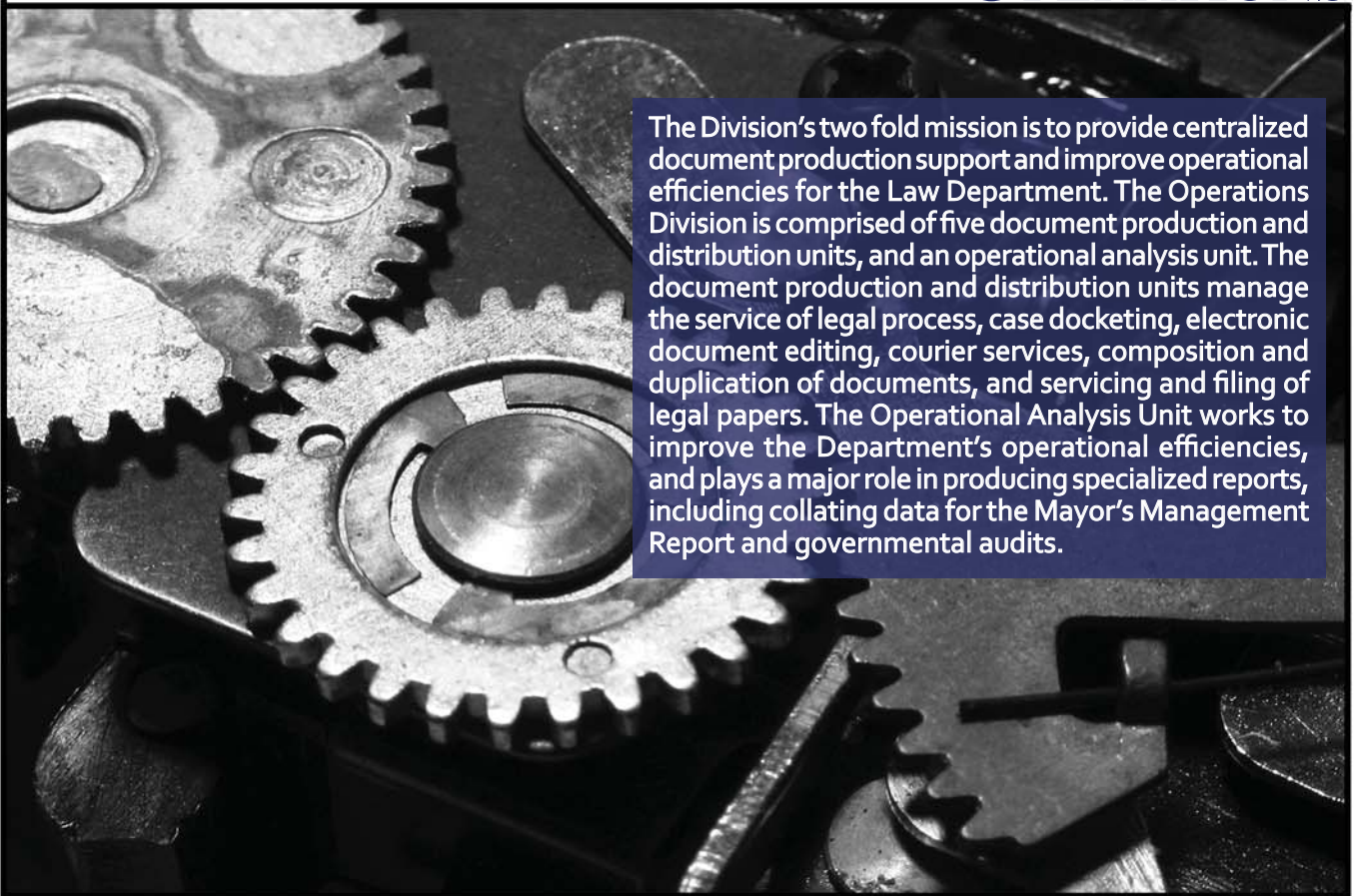
The Information Technology (IT) Division is responsible for all aspects of computing and technology use including: network infrastructure, network security, connectivity, data management, information security, application support, database administration, software administration, technical support and much more. The Division's mission is to provide quality IT services and solutions – effectively aligning business and technology objectives to provide cost-effective, innovative and quality solutions that facilitate and improve the conduct of business of the Law Department.

JOSEPH MERCES - CHIEF

The Information Technology (IT) Division is comprised of four sub-units: Application Services, Network Services, Technical Support and Information Security. Keeping up with today's fast-paced world of technology is a challenge, but the Law Department is well positioned for the foreseeable future because of the technology investments and IT accomplishments made in 2008.

Highlights of Accomplishments from 2008:

- As email is a business critical application, additional server hardware was added as well as new uninterruptible power supplies - improving manageability and providing greater stability to the Microsoft Exchange environment.
- A new Symantec Enterprise Vault environment was established to provide improved email archival and retention.
- The new Bronx Grand Concourse Office was established with new computers, network hardware and dedicated connectivity that further expanded the Law Department's local area network footprint across the five boroughs.
- Network Drive upgrades were made that improved overall availability and reduced down time.
- Network Bandwidth upgrades were made, thus reducing latency and improving overall network speed.
- The 100 Church Street building cabling replacement, a multi-month project, has continued to upgrade all building cabling that connects computer equipment to switches and servers at the Manhattan office. The upgrade, which will be completed in 2009, will ultimately provide additional bandwidth, improved data communications quality and speed. The project consisted of three phases:
 - New Cisco switch fiber replacement
 - New computer desktop category 6e cabling to switches
 - IT server room fiber and cabling upgrade
- To keep the Law Department in pace with technology, many computer desktop, laptop, security and software upgrades were made.



The Division's two fold mission is to provide centralized document production support and improve operational efficiencies for the Law Department. The Operations Division is comprised of five document production and distribution units, and an operational analysis unit. The document production and distribution units manage the service of legal process, case docketing, electronic document editing, courier services, composition and duplication of documents, and servicing and filing of legal papers. The Operational Analysis Unit works to improve the Department's operational efficiencies, and plays a major role in producing specialized reports, including collating data for the Mayor's Management Report and governmental audits.

KENNETH MAJERUS - CHIEF | JONATHAN PINN - DEPUTY

Highlights of Accomplishments from 2008:

- Central Services staff in Brooklyn handled and processed 268,367 legal documents, many of them related to Workers' Compensation claims, a 19% increase over last year.
- The Communications and Docketing Services Unit (CDS) handled over 61,000 individual items either delivered by hand or through personal service, a 6% increase over 2007, and opened nearly 20,000 new matters in LawManager, the office's case management system. CDS staff also handled and processed nearly 317,000 pieces of U.S. mail, requiring nearly 10,000 production hours.
- An expanded Computer Training Unit organized and presented 12 different computer software courses, arranged in recurring monthly schedules. In the last six months of the year, 312 employees were trained: 206 Support Staff and 106 Attorneys.
- Division staff facilitated equipment, services and training at 100 Centre Street and the Grand Concourse for the Family Court Division Weekend & Holiday Program and the Bronx Tort Unit.
- Operations analysts continued working with LawManager staff to test system patches, and launched into an effort to clean and consolidate the data in the Entity Notebook, the directory of all the parties involved in our litigation and transaction matters.
- The Document and Data Processing Center (DDPC) responded to 6,800 job requests, of which 1,800 were received via our intranet, a 20% increase over calendar year 2007.
- The Duplication and Finishing Services Unit (DFS) produced over 8 million pages during the calendar year from 15,000 work orders. Of those orders, nearly 3,000 were requests for PDF or other image files, which didn't require any printed pages.
- DFS and DDPC collaborated to create two knowledge bases: the Pensions Decision Bank and the Tax & Bankruptcy Division S-File database. Hundreds of files were scanned, indexed, named and saved online to be used for legal research and online collaboration.
- Staff in DDPC, DFS, Training and the Process & Courier Services Unit (PCS) worked with staff in General Litigation to design, proofread (English & Spanish), print, mail and otherwise distribute 3,800 posters in the *McCain v. Bloomberg* matter.
- The Process & Courier Services Unit handled nearly 27,000 services, filings, deliveries and pickups.

CLASS OF 2008



Center, Front Row: Mayor Michael R. Bloomberg and Corporation Counsel Michael A. Cardozo along with the 2008 class of Assistant Corporation Counsels and Law Department staff.

The Law Department, an equal opportunity employer, has long been committed to recruiting, retaining and promoting a diverse community of professionals. The Law Department's Diversity Committee works to enhance the recruitment and retention of attorneys of all backgrounds. Our Women's Committee focuses on issues of particular importance to the 60% of our attorneys who are women. Each fall, the Law Department hosts a diversity reception for law students and attorneys to learn about our work and meet our attorneys.

Today, diversity is reflected throughout the ranks of the Law Department. Five of our 17 division chiefs are Black, Hispanic or openly gay or lesbian and a majority of our attorneys work in a division led by a female division chief. More than 20% of the attorneys in the office self-identify as Black, Hispanic or Asian. Moreover, the Law Department has the largest number of openly gay attorneys among the law offices reporting this information to the National Association of Law Placement. The New York City Bar Association recently named Corporation Counsel Michael Cardozo its 2008 Diversity Champion because of his efforts to promote diversity both within the Law Department and in the legal profession.

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