



New York City Law Department  
2011 ANNUAL REPORT



PHOTO: LAW DEPARTMENT 100 CHURCH STREET HEADQUARTERS

## ADVOCATES for an Evolving City

Like the City we serve, the law is a living, breathing entity that evolves and changes over time. Actions taken today to meet the needs and demands of the nation's largest municipality will shape its future landscape. From its earliest roots 400 years ago, the Office of the Corporation Counsel has worked diligently to ensure that the City of today—and tomorrow—receives the finest possible legal representation. In the face of an increasingly complex and challenging legal arena, we never stray from the heart of our mission: a timeless commitment to public service, diversity, integrity, and inclusiveness.

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# INTRODUCTION



Every day, our millions of residents and visitors rely on the extraordinary dedication and expertise of the New York City Law Department. Whether our attorneys are working in the courtroom, at the negotiating table, or in the office, they are integral to keeping our City moving forward.

The Law Department is always looking for smarter and more streamlined ways of doing things. Over the past decade, its professionals have successfully reduced the City's tort caseload, saved taxpayers money, and spurred economic development. They have done it by respecting and protecting New Yorkers' rights, drafting innovative legislation, and pioneering problem-solving strategies in areas from juvenile justice to pensions to public health.

The 2011 Annual Report provides a look at another remarkable year for the Law Department. Together with Michael A. Cardozo, the longest-serving Corporation Counsel in our City's modern history, I am proud to commend our tremendous team of lawyers, administrators, and operations staff. New Yorkers truly appreciate their service, and we look forward to their continued success.

*Michael R. Bloomberg*  
 Michael R. Bloomberg  
 MAYOR

I am pleased to present the New York City Law Department's 2011 Annual Report. Our Office strives for excellence in every regard, and we look with pride on the past year's many accomplishments.

As the City's legal representative, our role is broad, multifaceted, and always evolving. At various times we defend the City against litigation; bring major affirmative cases; draft critical legislation; advocate for the City's financial well-being; offer wise counsel; and promote a greener, safer, and healthier New York. We work with the constant awareness that our decisions today are the foundation for the City's future—and that our work impacts the millions who visit or call New York home.

Our many 2011 achievements include defending new City health initiatives, rigorously pursuing money owed to the City, drafting and negotiating the transactions that underlie the latest development projects, strengthening the City's criminal justice efforts, and working to safeguard the environment.

I am privileged to work alongside the finest attorneys and staff as we help build the New York of tomorrow.

*Michael A. Cardozo*  
 Michael A. Cardozo  
 CORPORATION COUNSEL

# ABOUT THE LAW DEPARTMENT



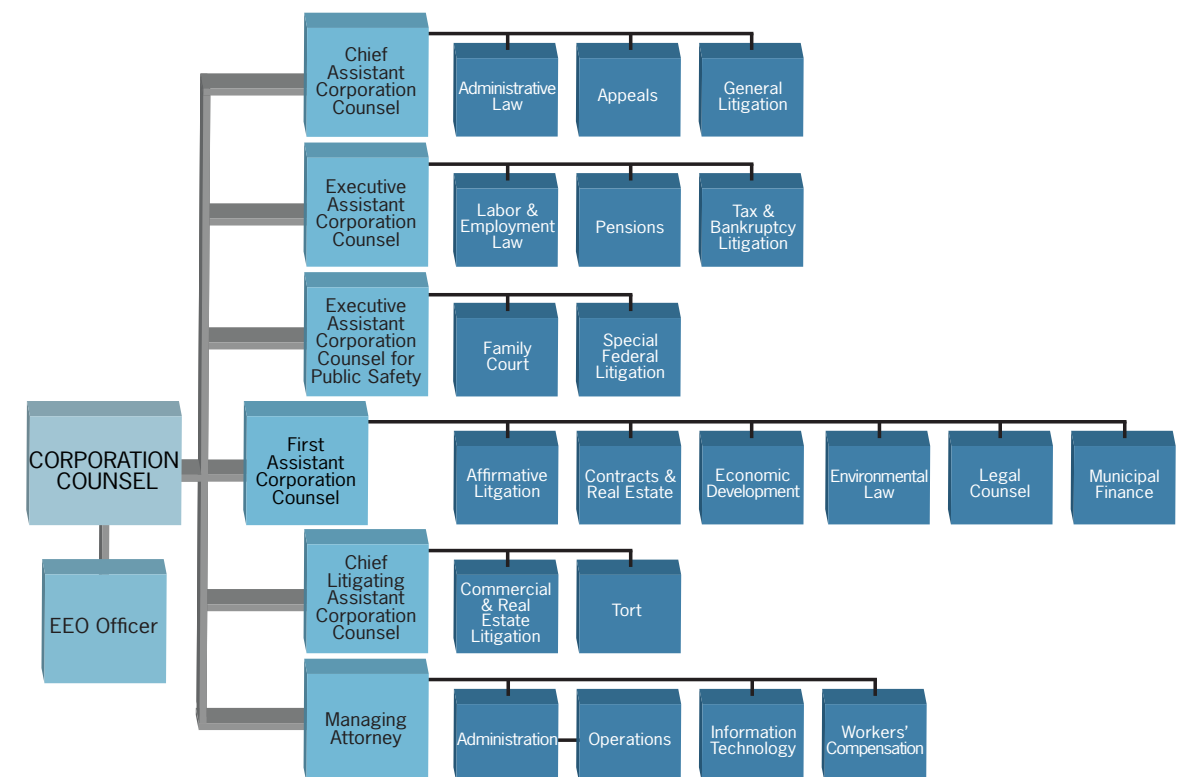
## EXECUTIVE STAFF

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|---|--|
| <b>Standing from left to right:</b>                             | <b>Seated from left to right:</b>  |
| MANAGING ATTORNEY<br>G. Foster Mills                            | EQUAL EMPLOYMENT OPPORTUNITY OFFICER<br>Muriel Goode-Trufant                   |
| CHIEF LITIGATING ASSISTANT CORPORATION COUNSEL<br>Lawrence Kahn | FIRST ASSISTANT CORPORATION COUNSEL<br>Jeffrey Friedlander                     |
| EXECUTIVE ASSISTANT CORPORATION COUNSEL<br>Paul Rephen          | CORPORATION COUNSEL<br>Michael Cardozo   |
| CHIEF ASSISTANT CORPORATION COUNSEL<br>Leonard Koerner          | EXECUTIVE ASSISTANT CORPORATION COUNSEL FOR PUBLIC SAFETY<br>Celeste Koeleveld |

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 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, New York, the Law Department handles an active caseload of over 80,000 lawsuits and legal matters each year. In addition to litigation, attorneys draft and review local and State legislation; approve leases, contracts, and financial instruments for the sale of municipal bonds; negotiate and structure business transactions; and provide legal counsel to City officials on a wide range of issues, such as immigration, education, judicial selection reform, and environmental policy.

The Department's 17 legal divisions are assisted by three support divisions, a law library, and Litigation Support, which gives advice on electronic discovery and other techno-legal issues and which runs the huge document databases litigators need. Litigation Support also does practice management, handling the Department's matter management system and assisting Department staff by providing over 800 reports annually.





## 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 examples of headlines in 2011:

### JANUARY

**"City's Plan to Assign Conflict Cases to Institutional Providers Upheld"**  
*New York Law Journal*,  
 January 5

**"New York Floats Rules for Cleaner Heating Oil"**  
*The New York Times (Green Blog)*,  
 January 28

### MARCH

**"New York City Settles Class Action Over Time Spent by Foster Care Youth in Psychiatric Hospitals"**  
*New York Law Journal*,  
 March 15

### MAY

**"City Cracks Down on Illegal Manhattan Hotels"**  
*DNAinfo*,  
 May 15

**"Unicyclist's Suit Falls Flat in Court as Judge Scoffs at Idea Constitutional Rights Were Violated"**  
*Daily News*,  
 May 19

### JULY

**"Court Clears Way for Hospital Corporation Layoffs"**  
*The New York Times*,  
 July 8

**"Appeals Panel Sides With City in Halting Yellow Bus Service"**  
*New York Law Journal*,  
 July 8

### SEPTEMBER

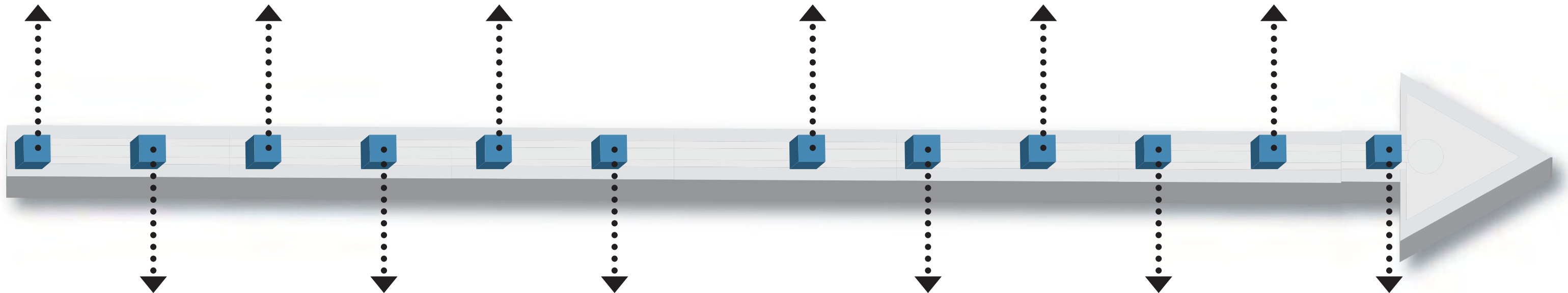
**"Big Sunset Park Rezoning Gets Green Light: Court Rules in Favor of City's 2009 Effort Covering 128 Blocks in the Neighborhood, Limits Building Heights on Side Streets, While Allowing Taller Structures on Avenues"**  
*Crain's New York Business*,  
 September 9

**"NYC Cracking Down on Counterfeit Merch to Protect Image, Money"**  
*amNewYork*,  
 September 26

### NOVEMBER

**"Judge Rules For City In Evacuation Of Zuccotti Park, Says Tents Must Go; Appeal Likely"**  
*Daily News (Daily Politics Blog)*,  
 November 15

**"Corporation Counsel Announces Clerkship For Law Graduates"**  
*The Chief-Leader*,  
 November 28



### FEBRUARY

**"Ferries to Ply East River Far More Regularly Soon"**  
*The New York Times*,  
 February 2

**"Bloomberg Signs Legislation Expanding Smoking Ban"**  
*NY1 News*,  
 February 22

### APRIL

**"NYC Mayor Breaks Ground at Brownfield Cleanup Site"**  
*The Associated Press*,  
 April 18

**"City in Settlement Over Use of 'Tavern on the Green' Name"**  
*The Wall Street Journal*,  
 April 29

### JUNE

**"Appeals Court Clears Way for Upper East Side Transfer Station"**  
*Reuters*,  
 June 6

**"City Goes to Court Over Charter Schools"**  
*WNYC*,  
 June 21

### AUGUST

**"City Subscribes to Nine More Years of Cable"**  
*The Wall Street Journal (Metropolis Blog)*,  
 August 10

**"Judge Dismisses Claims Against Brooklyn Bike Lane"**  
*WNYC*,  
 August 17

### OCTOBER

**"In Queens, Neglected Sector Attracts Big Developers"**  
*The New York Times*,  
 October 19

**"Queens Teenager Accused of Sexual Abuse to be Tried in Family Court"**  
*NY1 News*,  
 October 28

### DECEMBER

**"Bloomberg Builds Legacy With Appointments of 'Highly Qualified' Civil, Family Court Judges"**  
*New York Law Journal*,  
 December 12



## LEGAL DIVISIONS

Administrative Law  
Affirmative Litigation  
Appeals  
Commercial & Real Estate Litigation  
Contracts & Real Estate  
Economic Development  
Environmental Law  
Family Court  
General Litigation  
Labor & Employment Law  
Legal Counsel  
Municipal Finance  
Pensions  
Special Federal Litigation  
Tax & Bankruptcy Litigation  
Tort  
Workers' Compensation



PHOTO: ZUCCOTTI PARK, LOWER MANHATTAN

## ADMINISTRATIVE LAW

**CHIEF** Gabriel Taussig

**DEPUTY** Robin Binder

The Administrative Law Division litigates on behalf of the City in challenges related to laws and regulations adopted to promote public health and safety, protect consumers, and enhance New York City's quality of life. Attorneys also bring civil actions to obtain compliance with laws and regulations, and prosecute violators of the City's Administrative Code in the Criminal Court. As of October 2011, the Division also represents the City's five pension funds in litigation challenging individual benefit determinations.

### Win in a Flavored Tobacco Challenge

Attorneys won a federal case upholding a ban on the sale of flavored tobacco products. Because of their appeal to minors, sales of flavored tobacco products (such as bubblegum and fruit-flavored chewing tobacco) are prohibited by City law throughout the five boroughs, except in tobacco bars. The plaintiffs—manufacturers and distributors of smokeless tobacco products—had claimed that because federal law regulates various aspects of the sale and use of tobacco products, the City was pre-empted from adopting its restrictions. However, in a comprehensive decision, the Court rejected that argument.

### Prospect Park West Bike Path Case

In conjunction with the Environmental Law Division, Administrative Law attorneys defended claims against the installation of a bike path along Prospect Park West in Brooklyn. Petitioners claimed the project was arbitrary and improper. Attorneys for the City argued that the action was filed too late, and a State Court judge agreed. The City also demonstrated that the path was part of a permanent "street calming" project for the busy thoroughfare, initiated in response to community concerns. An appeal is ongoing.

### Defending Regulations of the Crane Industry

Division attorneys prevailed in a lawsuit brought by an industry group, The Steel Institute, against the City, challenging code regulations of the crane industry enforced by the Department of Buildings. The plaintiff contended that the City's laws were invalid, because they were pre-empted by federal regulations set forth by the Occupational Safety and Health Act. The Court disagreed, finding that the City's laws support the vital goal of public safety and do not conflict with the federal safeguards.

### Crackdown on Illegal Hotels

The Division has helped facilitate the City's efforts to take action against dangerous illegal hotels that pose a fire risk to inhabitants. With the Legal Counsel Division, Administrative Law drafted legislation strengthening the City's enforcement powers, and Division attorneys later successfully defended a federal challenge to that law. The Division also regularly prosecutes fire and building code violations in Criminal Court.

## PRACTICE SPOTLIGHT

### Handling Legal Issues on the Occupy Wall Street Protest

The Division has worked in tandem with others at the Law Department to oversee evolving issues relating to the high-profile Occupy Wall Street protests. The protests drew international media attention to Zuccotti Park, a small, privately owned public space. In November, the park was cleared due to safety and public health concerns, as well as the property owner's request. The City planned to reopen the park after the encampment was removed and it was cleaned, but protestors sought immediate court relief that would allow them to reestablish their encampment. Division attorneys argued the City's side and prevailed.



PHOTO: TIMES SQUARE

## AFFIRMATIVE LITIGATION

**CHIEF** Gail Rubin

**DEPUTY** Eric Proshansky

The Affirmative Litigation Division represents the City as plaintiff on a wide range of issues, including civil racketeering, fraud, nuisance, restitution, antitrust, products liability, breach of contract, insurance, and State and federal funding for government programs. The Division protects the City’s interests and advances the City’s agenda by commencing claims and recovering monies owed to the City.

### “Smoking Out” Illegal Cigarette Ventures

Division attorneys entered into a court-ordered consent decree closing down tobacco shop Island Smokes after the City sued it for evading cigarette taxes through a “roll-your-own” cigarette business. The Division also filed a federal lawsuit against a Kentucky-centered ring of individuals and companies that operated over the Internet as significant sources of bootlegged cigarettes in New York City, in violation of federal cigarette trafficking and racketeering statutes.

### Settling an Illegal Billboard Case for \$3 Million

The City reached a \$3 million settlement with private company Lamar Advertising in December 2011 over penalties the company had incurred for operating illegal billboards. Under the settlement, Lamar paid \$3 million and agreed to remove over 1,000 illegal signs, many in residential areas. The company also agreed to remove the structures used to support the signs to prevent others from illegally posting signs and avoid potential problems with graffiti and vandalism. This case is part of a larger effort to enhance public safety and quality of life and collect penalties imposed on those who break City codes and rules.

### Shutting Down Out-of-State Gun Dealers Who Sought to Avoid an Injunction

The City prevailed on an appeal by two out-of-state gun dealers seeking to avoid an injunction requiring that their sales be monitored by a court-appointed Special Master. The City’s lawsuit against 27 out-of-state gun dealers to curb the trafficking of illegal guns into the City—many of which ended up in the hands of criminals—was largely resolved through settlements. These two dealers defaulted and then challenged the court-imposed injunction. The Second Circuit Court of Appeals affirmed the default judgments against the dealers, determined that an injunction can be imposed upon them, and remanded the case to the District Court to “fine-tune” the terms of the injunction.

### Holding Banks Accountable for Foreign Currency Exchange Transfers

New York City joined the New York State Attorney General in bringing claims against the Bank of New York Mellon for improper foreign currency exchange transactions that impacted the City’s pension funds. Over a 10-year period, the bank consistently gave the worst or nearly the worst interbank rates of the trading day to its customers. The bank made nearly \$2 billion from these trades over that period, and the City pension funds lost tens of millions of dollars.

## PRACTICE SPOTLIGHT

### Recovering Money from Pharmaceutical Companies after Medicaid Fraud

The City has netted over \$45 million thus far in settlements with defendants in a litigation involving Medicaid fraud by virtually all the major pharmaceutical companies. In August 2004, the Division—together with outside counsel—filed a federal action against 44 pharmaceutical companies alleging that these companies reported grossly inflated average wholesale prices and other prices of their drugs. Because Medicaid reimburses based on average wholesale price, a higher average wholesale price gives the retailer an incentive to purchase that company’s drug over others. This fraud resulted in the City, State, and federal governments grossly overpaying for drugs.



PHOTO: HUDSON RIVER PARK NEAR PIERS 92 AND 94

## APPEALS

**CHIEF** Leonard Koerner  
**DEPUTY** Francis Caputo

The Appeals Division is responsible for nearly all appeals in matters litigated by the Law Department in State and federal court. Its cases involve virtually every area of substantive law, even some criminal law issues. Attorneys file approximately 725 briefs annually, and last year appeared in 22 appeals in the New York Court of Appeals—the State’s highest court.

### Win in a Major Campaign Finance Case

A federal appeals court ruled in the City’s favor in a highly important case challenging certain Campaign Finance Act provisions. Those provisions limit campaign contributions by individuals and entities having business dealings with the City, exclude such contributions from matching public funds, and expand the prohibition on corporate contributions to include partnerships, LLCs (limited liability corporations), and LLPs (limited liability partnerships). Significantly, the win affirms the City’s authority to restrict such campaign contributions.

### Education

Division attorneys successfully defended the City in an ongoing, longstanding challenge to the Department of Education’s (DOE’s) policy of banning worship services in public school buildings; a bid to halt the release of teacher evaluation reports under the Freedom of Information Law (FOIL); a lawsuit alleging that the City had failed to use State funds earmarked for reducing school class sizes; and an effort to compel the DOE to reinstate costly yellow school bus service for middle school students living on Staten Island and part of Queens.

### Employment and Benefits

The Division prevailed in a major case involving the City’s authority to determine the size and composition of its workforce in the midst of budget constraints; a firefighter’s attempt to secure an accident disability pension following injuries he incurred during a firehouse brawl; an attempt to compel the City to cover healthcare benefits for State Off Track Betting retirees with no guarantee of State reimbursement; a matter establishing that municipal unions cannot pursue arbitration and court challenges in tandem; and numerous individual claims by municipal employees against the City.

### Regulatory and Quality-of-Life Issues

Division attorneys successfully defended the City’s restriction of billboards along arterial highways and within the view of public parks; the regulation of art vendors within City parks; the Taxi & Limousine Commission’s policy of suspending taxi drivers’ licenses when drivers are arrested on criminal

charges; and the Rent Guidelines Board’s authority to approve certain supplemental rent increases for apartment renewal leases.

### Personal Injury Liability

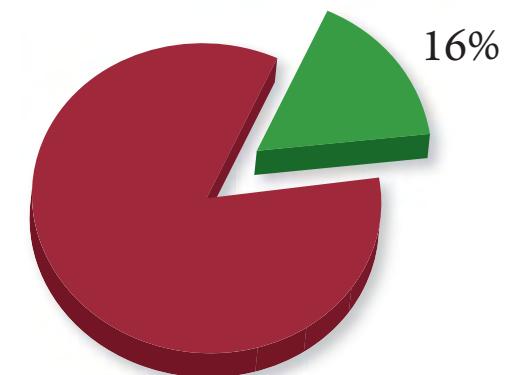
An appellate court reversed a \$2.7 million verdict against the DOE for a high school student accidentally injured by a classmate while playing softball. A court also found for the City in a woman’s claim that the Parks Department was liable for injuries she incurred riding in Prospect Park on a horse rented from a private company.

### Land Use

Division attorneys successfully defeated challenges to two major development projects planned for Manhattan. A State appellate panel rejected environmental challenges to the City’s determination to acquire and construct a large sanitation garage and salt-storage facility in TriBeCa, and the same Court also upheld the City’s approval of the redevelopment of Piers 92 and 94 along the Hudson River, as a mid-sized trade show facility.

### Criminal Justice

Appeals attorneys defeated an inmate’s FOIL request for unredacted police reports containing the names and statements of witnesses who did not testify at his murder trial, and a lawsuit alleging that police had improperly entered the home of a youth who had stolen a computer. The Division also successfully represented the City in matters challenging aspects of its indigent defense policies.



*The Appeals Division accounts for about 16 percent of the New York Court of Appeals’ civil docket.*





PHOTO: CONSTRUCTION IN LOWER MANHATTAN

## COMMERCIAL & REAL ESTATE LITIGATION

**CHIEF** Eric Rundbaken  
**DEPUTY** Jonathan Becker  
**DEPUTY** Nancy Brodie

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

### **Landmark Agreement to Create a New East Side Park**

The Division led efforts to resolve a 10-year boundary dispute between the City and Sutton Place South Corporation (SPSC) over property behind One Sutton Place South, a co-op building. Under the agreement, most of the co-op's current back yard, which sits atop the FDR Drive, will be transformed into a 10,000-square-foot waterfront public park. The City and SPSC will each contribute \$1 million to design and construct the new park, which will connect two existing waterfront parks.

### **Defending the City in a Difficult Homeless Subsidies Case**

Division attorneys successfully defended the City in a class action challenging the termination of the Department of Homeless Services' Advantage program, which had provided rent subsidies to homeless families and individuals but was unfortunately defunded by the State. The plaintiffs claimed that the City had entered into contracts with both the recipients of aid and their landlords, even though the City was not a party to any lease or other contract documents. After trial, the Court dismissed the plaintiffs' arguments, finding that the City had the right to terminate the program. A State appellate panel sustained the decision.

### **Defeating a Water Pollution Control Plant Delay Claim**

In a significant victory, Division attorneys won summary judgment dismissing a contractor's \$12-million claim against the City's Department of Environmental Protection based on unavoidable delays in beginning construction of a water pollution control plant. The Court enforced the contractor's waiver of claims—given in exchange for an extension of time to complete the project—and rejected the contractor's argument that its waiver did not apply to delays before the start of construction.

### **Facilitating Construction of an Important Sanitation Garage**

The Division successfully litigated issues relating to a planned Manhattan facility consisting of two units: one owned by

the City to be used by the Department of Sanitation as a garage and the other owned by United Parcel Service, also for garage use. After the City's victory in obtaining a license to access adjacent property during construction, the Court dismissed the adjoining landowner's effort to halt the project entirely, based on an adverse possession claim over an eleven-foot strip of land that is part of the construction site.

### **Defending a Provision in a City Contract**

The Division won dismissal of a plenary action seeking over \$20 million, brought by a defaulted electrical contractor. The contractor had failed to comply with a contract provision requiring an Article 78 proceeding as the sole remedy to challenge a default determination. The Court held that the contractor's failure to bring an Article 78 thus waived its right to seek monetary damages.

## PRACTICE SPOTLIGHT

### **Historic Labor Agreement Preserved by Federal Court**

Division attorneys successfully defended a comprehensive series of Project Labor Agreements (PLAs) between the City and a group representing dozens of construction trade unions. The PLAs—governing labor relations at projects valued at \$6 billion—cover matters such as work rules, dispute resolution, wages and benefits, and collective bargaining representation. By preventing strikes and standardizing work rules, the PLAs are expected to save \$300 million. A federal judge determined that the PLAs do not violate the National Labor Relations Act, allowing critical public works projects, such as a new 911 call center and a new police academy, to proceed. The plaintiffs have appealed.

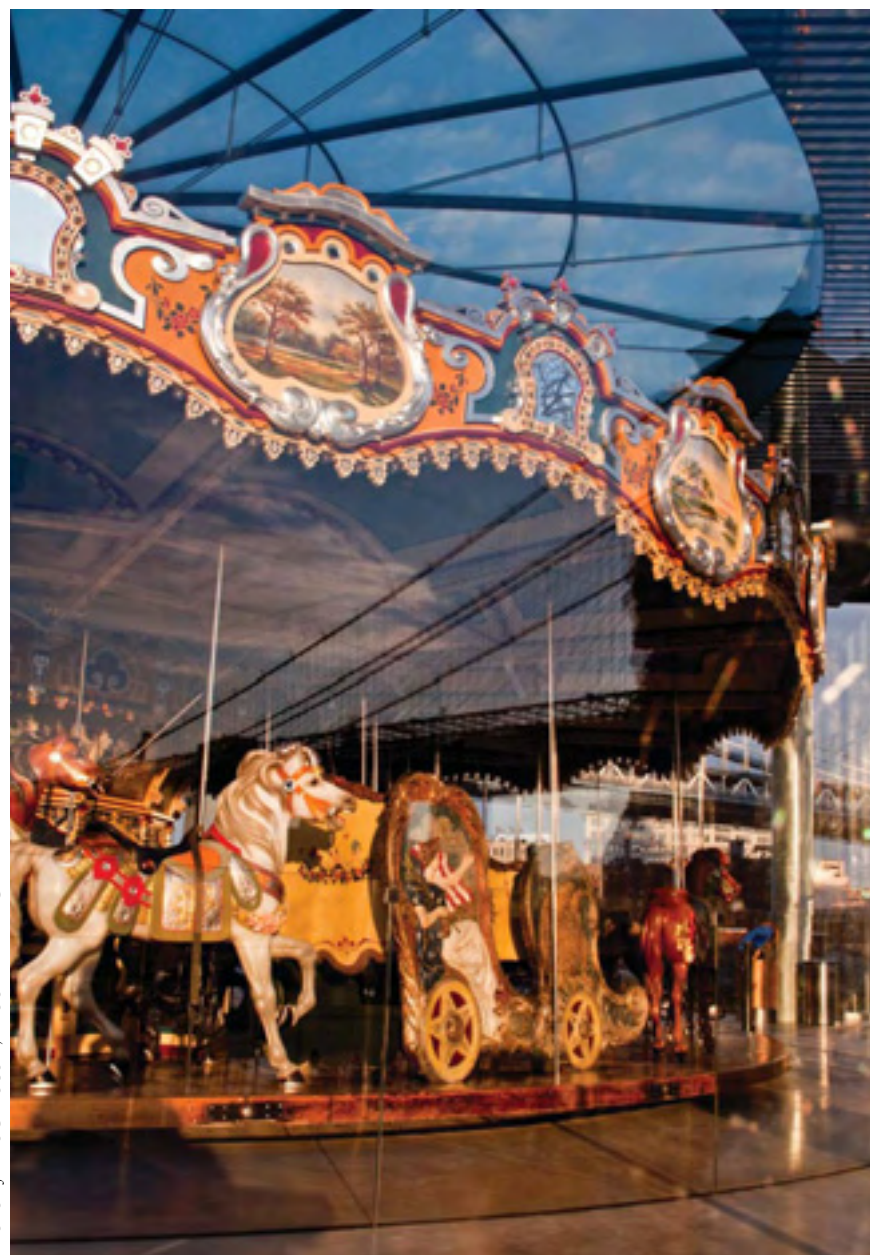


PHOTO: "JANE'S CAROUSEL," BROOKLYN BRIDGE PARK

## CONTRACTS & REAL ESTATE

**CHIEF** Steven Stein Cushman  
**DEPUTY** Howard Friedman

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.

### Standard Human Services Contract

Working with the Deputy Mayor for Health and Human Services, the Mayor's Office of Contract Services, and the City's social services agencies, Division attorneys developed the City's first standard human services contract, which is now used by all City agencies. The contract standardizes critical terms governing the provision of client services by the City's contractors, which often have contracts with multiple City agencies. It thus provides certainty to the City and its contractors and improves the efficiency of the procurement system for social services.

### Snow Emergency Preparation

Division attorneys helped the Deputy Mayor for Operations and the City Department of Sanitation to optimize a menu of methods for mobilizing contractors during snow emergencies, including developing a variety of new standby contracts for various zones throughout the City. The contracts and methods provide a balance of public and private resources to be used to clear streets during snowstorms.

### Harlem Children's Zone Promise Academy Charter School

Working with the Deputy Mayor for Education and Community Development, the City Department of Transportation, and the City Housing Authority, Division attorneys negotiated agreements facilitating the development of the Harlem Children's Zone Promise Academy Charter School. The project involved funding for, and the transfer of property to, the Charter School—as well as the mapping and construction of a City street.

### Tavern on the Green

Under the direction of the First Deputy Mayor, Division attorneys worked closely with the City's Department of Parks & Recreation and Department of Design and Construction to prepare for the restoration of the Tavern on the Green building to its original design and to solicit a concessionaire to operate a restaurant in the building once it is restored.

### Brooklyn Bridge Park Carousel

In conjunction with the Mayor's Office and the Brooklyn Bridge Park Corporation, Division attorneys negotiated and drafted agreements for the donation, installation, and operation of "Jane's Carousel," a restored, historic carousel in Brooklyn Bridge Park.

## PRACTICE SPOTLIGHT

### Best Value Procurement of Goods and Standard Services

Division attorneys worked closely with the Mayor's Office and the City's Office of State Legislative Affairs on the State Legislature's passage of amendments to State law allowing for the purchases of goods and standard services to be based on "best value" to the City rather than simply the lowest price. The Division has also been working with the Mayor's Office of Contract Services to implement the new law, including the drafting of amendments to the Procurement Policy Board Rules and guidance to City procurement officials.



PHOTO: THE HIGHLINE

## ECONOMIC DEVELOPMENT

**CHIEF** James McSpirtt  
**DEPUTY** Betty Woo

The Economic Development Division serves as transactional counsel for the City on real estate development, land use, commercial, and other projects. The Division’s work reinforces the City’s economic base and creates jobs, office space, housing, cultural amenities, and public open space while reimagining the City for the 21st Century. Division attorneys work closely with City Hall, New York City Economic Development Corporation (NYCEDC), and many other City agencies on all aspects of the transactions, from inception to closing, as well as post-closing administration.

### Roosevelt Island Science and Engineering Campus

The Division worked on an historic agreement starting the process toward the eventual construction of a two-million-square-foot applied science and engineering campus on Roosevelt Island. Cornell University won the competitive bidding process to operate the campus, which will ultimately support up to 2,500 students and nearly 280 faculty members by 2043.

### Agreement to Close Last Major Gap in Manhattan “Greenway”

Division attorneys helped negotiate an agreement that provides a framework for the United Nations to expand its New York City campus, making it possible to finance the completion of Manhattan’s 32-mile waterfront “greenway” by filling in the last remaining major public space gap between 38th and 60th Streets on the East Side.

### Cable TV Franchise Renewal Agreements

The Division worked closely with the Department of Information Technology and Telecommunications on a nine-year renewal of the City’s cable TV franchise contracts with Time Warner Cable and Cablevision. The new contracts authorize the two companies to continue using the City’s streets to run their cables in competition with Verizon’s new FiOS system. All three companies now have City contracts that run to July 2020. These franchises are expected to generate over \$100 million a year in revenue to the City. As a result of the latest agreement, the City will also receive more than \$60 million worth of additional services, investments, and upgrades benefitting the public.

### New East River Ferry Service

Division attorneys helped facilitate this key component of the City’s comprehensive waterfront plan. The new service provides year-round ferry transportation between the East Side of Manhattan and parts of Queens and Brooklyn. BillyBey Ferry Company, the largest private ferry operator in the country, is providing service.

### Sale of Federal Building Number 2

Division attorneys assisted in the simultaneous transfer of Federal Building Number 2 from the U.S. General Services Administration to NYCEDC and from NYCEDC to Salmar Properties, LLC. Salmar Properties will reactivate the 1.1 million-square-foot, eight-story industrial building, adjacent to the Gowanus Expressway along the Sunset Park waterfront, which has been vacant for over a decade. It is expected that as many as 1,500 construction and permanent jobs will be created at the facility. The project represents a key component of the Sunset Park Vision Plan and the City’s overall industrial policy.

### Ongoing Major Development Projects:

The Division continues work on numerous ongoing development projects throughout the five boroughs. Representative examples include:

1. World Trade Center Redevelopment
2. Far West Side Development
3. High Line Expansion
4. Columbia University Expansion
5. Flushing Commons Development
6. Hunters Point South Affordable Housing Project
7. Atlantic Yards and Brooklyn Nets Arena
8. Brooklyn Academy of Music Cultural District
9. Commercial Development in Downtown Brooklyn
10. Sunset Park Industrial Waterfront Modernization
11. Hunts Point Produce Market
12. Charleston Retail Development

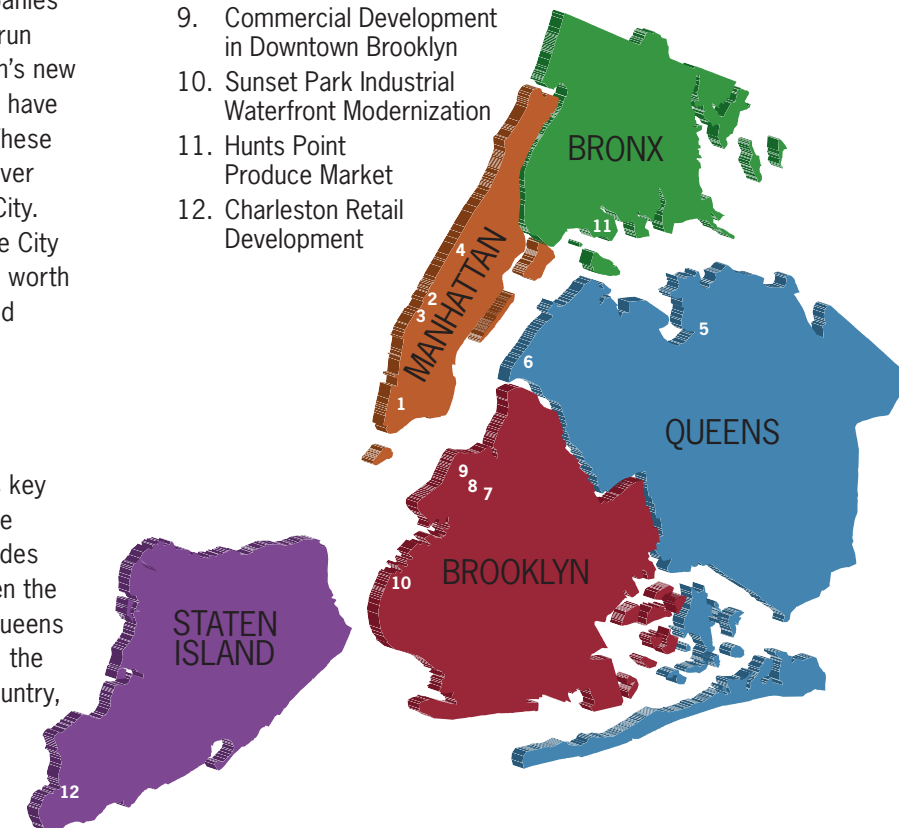




PHOTO: DIGESTERS, NEWTOWN CREEK WASTEWATER TREATMENT PLANT

## ENVIRONMENTAL LAW

**CHIEF** Susan Amron

**DEPUTY** Hilary Meltzer

The Environmental Law Division represents and advises the City on environmental and land-use matters involving drinking water, wastewater, and stormwater management; solid waste management; energy resources; hazardous waste remediation; environmental review of City initiatives and private development projects; climate change planning; and implementation of PlaNYC (the Mayor’s sustainability initiative).

### **Defending the City's Environmental Review**

The Division works closely with other City agencies to review potential environmental impacts of proposed City actions and defend the City’s environmental reviews in court. In 2011, Division lawyers provided advice in connection with the environmental reviews of the City’s proposal to issue new yellow taxicab medallions, the redevelopment of Governors Island, and the Police Department’s proposed security plan for the World Trade Center campus. The Division also defended legal challenges to the environmental reviews of the City’s Sunset Park rezoning; the proposed redevelopment of Willets Point, Queens; and the proposed expansion of Manhattan’s Hospital for Special Surgery.

### **Protecting the City's Drinking Water**

In 2011, the Division worked closely with the Mayor’s Office and the Department of Environmental Protection (DEP) to help ensure that natural gas production involving hydraulic fracturing is not allowed in the watershed of the City’s upstate reservoirs or near City water supply infrastructure. While natural gas is an important energy source that can promote economic growth, the City believes that “hydrofracking” poses a threat to water quality and the integrity of City aqueducts and other water supply infrastructure. Attorneys are also helping to explore means of enhancing flood hazard mitigation in the watershed, which was devastated by 2011’s Hurricane Irene.

### **Prioritizing Investments in Water Quality Improvement**

Working with the DEP and the National Association of Clean Water Agencies, Division members have advocated for a more strategic approach to improving water quality in impaired waterways. Reducing water pollution from urban areas can require costly infrastructure improvements, and therefore prioritizing capital projects with the greatest impacts allows for continued water quality improvement while maintaining affordable water rates. Prioritizing can be challenging under federal and State

environmental laws, which generally impose strict liability. Division attorneys are collaborating with colleagues nationwide to address these challenges.

### **Managing the City's Solid Waste**

The Division continues to work closely with the Department of Sanitation and the Mayor’s Office in defending the City’s Long-Term Comprehensive Solid Waste Management Plan (SWMP), its 20-year plan for managing solid waste. In 2011, the Division won a third court challenge to the proposed East 91st Street Marine Transfer Station in Manhattan. Division lawyers also successfully defended a proposed transfer station in Queens and assisted the United States in defeating a federal court challenge to the Federal Aviation Administration’s determination that this transfer station is compatible with air safety at nearby LaGuardia Airport. Transfer stations export the City’s residential waste in sealed shipping containers and are critical components of the SWMP.

## PRACTICE SPOTLIGHT

### **Improving Air Quality**

In conjunction with other cities and states, the Division uses litigation to improve the City’s air quality and protect public health. The City intervened in the D.C. Circuit to support the Environmental Protection Agency’s (EPA’s) Cross State Air Pollution Rule, requiring power plants in upwind states to reduce emissions of pollutants that are preventing downwind states from meeting federal air standards for ozone and fine particulates. The City also intervened to support EPA greenhouse gas emission standards for medium and heavy-duty trucks and previously supported the EPA in a challenge to its regulations addressing light-duty trucks. When the EPA does not go far enough to protect air quality, the City has challenged it to do more. In *Mississippi v. EPA*, the City seeks to require the EPA to adopt more stringent ground level ozone standards.



PHOTO: QUEENS COUNTY FAMILY COURT

## FAMILY COURT

**CHIEF** Angela Albertus  
**DEPUTY** Alan Sputz

The Family Court Division is divided into two subunits—Interstate Child Support and Juvenile Delinquency Prosecution. The Interstate Child Support Unit represents petitioners seeking child support in cases where one parent is out-of-state. The Juvenile Delinquency Prosecution Unit, which houses the Major Case Unit and the Sex Offense Prosecution Unit, prosecutes juveniles accused of committing acts that would be crimes if they were adults. In cases where the Court finds guilt by plea or trial, attorneys then seek 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.

### Interstate Child Support Unit

During 2011, the Unit received 6,062 new cases, secured 1,396 final orders of child support, and established paternity in 489 cases. Attorneys defended against 1,763 petitions from non-custodial parents to reduce support. Of custodial parents who sought court relief, 78 percent were granted it. On behalf of the City, the Unit filed 162 cases in 28 other states, the District of Columbia, and a number of foreign countries, including Australia, Germany, Israel, and the United Kingdom. Recently, the Unit recovered a \$34,000 lump sum payment on behalf of a Pennsylvania mother seeking child support arrears.

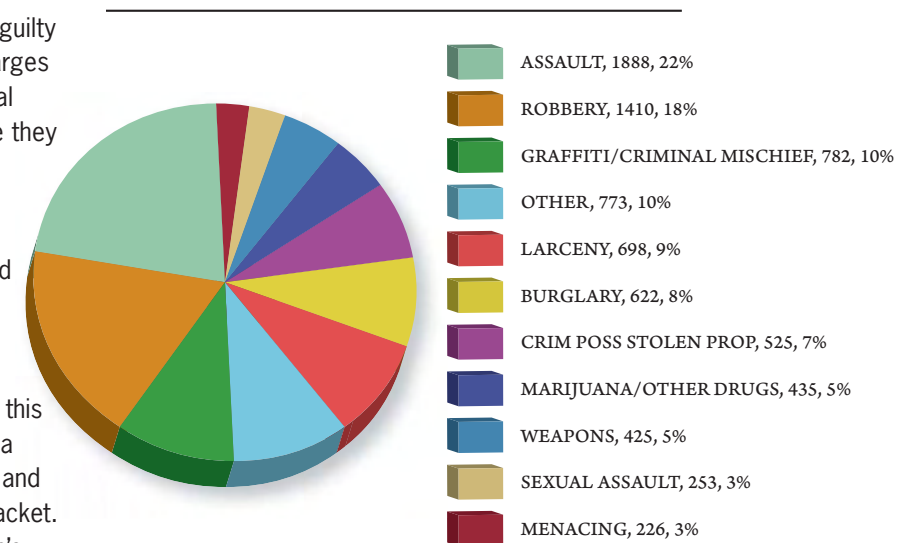
### Successful Juvenile Prosecutions

The following cases illustrate the range of serious offenses the Division prosecutes:

- Harlem Shopping Cart Case**  
 The Major Case Unit handled the much publicized prosecution of two boys, aged 12 and 13, who were arrested for tossing a shopping cart from the fourth floor of a shopping mall garage in East Harlem. The shopping cart plummeted to the garage’s main level, striking and critically injuring a woman who was exiting the mall. Both juveniles pled guilty to felony second-degree assault charges and were placed in private residential facilities for up to 18 months, where they will receive rehabilitative services.
- Serial Sexual Assaults**  
 The Sex Offense Prosecution Unit filed petitions against a 15-year-old for committing a series of violent sexual assaults against women in Queens. DNA evidence played a crucial role in this case. The youth’s DNA was found on a knife left at one of the crime scenes, and one victim’s blood was found on his jacket. DNA recovered from one of the victim’s undergarments and under her fingernails matched the juvenile as well. Due to the overwhelming evidence, plea agreements were reached, sparing the victims from having to testify in court. Based on felony pleas to first-degree sexual abuse, the youth can be placed for up to 18 months in a residential facility, which can be extended annually until his 18th birthday.

### Success With Alternative Sentencing Initiative

When delinquent youth are not a significant risk to public safety, the Division works to identify and access appropriate services from community-based alternatives. One such example is 15-year-old Samantha F., whose only arrest was for shoplifting. Samantha had struggled with a long history of depression and non-compliant behavior at home and school. Her mother had sought assistance through various programs, including the court system, without success. Court reports indicated that Samantha had further trouble with truancy, substance issues, and hospitalizations after suicide attempts. Samantha, who stayed out of her home for days at a time and suffered trauma after having been recruited by a gang and possibly sexually exploited, was also diagnosed with post-traumatic stress disorder. Division social workers successfully advocated for her to receive services from a family-focused, home-based therapy program. She was granted a period of probation to comply with the program, which specializes in treating youth with higher mental health needs and who have experienced trauma.



2011 Citywide Juvenile Delinquency Referrals, by Crime Category, Total = 8037



PHOTO: HAMILTON HALL, COLUMBIA UNIVERSITY

## GENERAL LITIGATION

**CHIEF** Thomas Crane  
**DEPUTY** Jonathan Pines  
**DEPUTY** Marilyn Richter

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.

### **Win in a Case on Releasing Teacher Evaluation Data**

Attorneys won a case brought by the teachers' union to prevent the Department of Education (DOE) from releasing teacher performance reports requested by several large news organizations pursuant to the Freedom of Information Law. The teachers' union, which unsuccessfully appealed the decision, argued that releasing teachers' names would violate their privacy, but the City contended that the information is public.

### **Protecting the NYPD's Use of a Stop & Frisk Database**

The Police Department maintains an information database on people arrested or issued summonses, as required by law, and also uses it as an investigative tool. The New York Civil Liberties Union filed a class-action lawsuit asserting that since those records are subject to sealing pursuant to the Criminal Procedure Law—absent a subsequent conviction—the NYPD must physically expunge them from its database. Division attorneys successfully argued that the law does not require the sealed records to be expunged and that the plaintiffs did not suffer injury from the records' mere existence. The Court agreed and dismissed the case, finding first that the sealing statutes do not prohibit the NYPD from maintaining the records and, in fact, require the maintenance of such records for disclosure under certain circumstances. The Court also held that no non-constitutional rights were implicated by use of the records in subsequent criminal proceedings and that the sealing statutes did not create a private right of action in the event of a violation.

### **Defending Education: School Closings and Co-locating Charter Schools**

The Division handled several cases relating to closing failing schools and co-locating charter schools with district public schools. Attorneys successfully defended the DOE's decision to close 22 failing schools and co-locate 15 public charter schools in DOE buildings. In addition, the Division secured favorable decisions in two cases that challenged the

State Education Department's authority to rule on school co-location matters. Attorneys also successfully defended the co-location of public charter schools with district schools on the Upper West Side and in Brooklyn.

### **Resolution of a Lawsuit Involving Youths Leaving Foster Care**

The Division handled a proposed class action alleging that youths aged 18-21 leaving foster care were not receiving transitional Medicaid benefits, lacked assistance in securing appropriate post-discharge housing, and were not receiving supervision until their 21st birthdays, in violation of State law. The parties resolved the Medicaid issues amicably. With respect to the housing and supervision issues, the parties concluded a settlement concurrently with the filing of a complaint. This favorable resolution permitted the agency to focus resources on implementing appropriate policies, rather than on discovery.

## PRACTICE SPOTLIGHT

### **Defending the City's Indigent Defense Plan**

The Division prevailed in a major legal challenge to changes in its indigent defense plan by a group of bar associations. Criminal defendants who cannot afford an attorney are represented by court-appointed "18-B" attorneys, and the City's new plan changed how cases with conflicts of interest are assigned by shifting these cases to institutional providers like Legal Aid. The bar associations claimed that the City could not legally change the plan without their consent, but a State Court determined that the plan complies with State law requirements. The case is presently on appeal.



PHOTO: FDNY FIREHOUSE, ENGINE 277/LADDER 112

## LABOR & EMPLOYMENT LAW

**CHIEF** Georgia Pestana  
**DEPUTY** Paul Marks

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 every City agency, as well as lawsuits brought against high-ranking City officials.

### **Defending Reassignment of Poor Teachers**

Division attorneys have successfully litigated a series of cases brought by former and current teachers challenging their reassignment to administrative duties pending determination of charges of misconduct or incompetence. The teachers claimed that their reassignments constituted unlawful discipline without due process and were intended to induce them to resign. The courts have consistently ruled in the City's favor, finding that removing teachers charged with misconduct or incompetence from classrooms while awaiting the outcome of disciplinary hearings does not violate the law.

### **Win in a Coach's Challenge to One-Year Suspension**

The Division successfully defended the Department of Education (DOE) from a lawsuit brought by a high school physical education teacher and football coach challenging his one-year suspension from coaching. The coach was suspended after the Public Schools Athletic League determined that he had violated policies prohibiting schools from recruiting students to transfer schools in order to play on a sports team. Rather than follow the established grievance process to challenge his suspension, the coach sought a temporary restraining order lifting his suspension and requiring the DOE to allow him to resume his coaching duties immediately. In dismissing the lawsuit, the Court agreed that the coach should have exhausted the grievance processes before filing a lawsuit. In addition, the Court did not disturb the one-year suspension.

### **High-Profile Defense of FDNY Hiring Practices**

The Division continues to litigate a high-profile lawsuit brought by the U. S. Department of Justice and a group of firefighters over two civil service tests for the position of firefighter. In 2009, the Court found that the tests had a discriminatory impact on Black

and Hispanic firefighter applicants and were not proven to be job-related. The City has defended the Fire Department's efforts to continue expanding the diversity of its ranks without engaging in quota-hiring. In addition to continually improving its recruitment efforts, in 2012, the City will be administering a state-of-the-art test developed by multiple testing experts. Division attorneys are appealing the appointment of a monitor to oversee FDNY Equal Employment Opportunity, recruitment, and candidate processing.

### **Suit Over Deputy Sheriff Layoffs**

Attorneys successfully defended the Department of Finance's planned layoffs of several deputy sheriffs. For budget reasons, the Department eliminated a number of positions, prompting the affected deputy sheriffs to sue over proposed layoffs. Despite initially enjoining the layoffs, the Court eventually agreed that the City's actions were not in bad faith.

## PRACTICE SPOTLIGHT

### **Impact of Military Duty on Pensions**

The Division is representing the City in a case of "first impression"—a completely original issue of law—concerning the calculation of a retiree's pension under the Uniformed Services Employment & Reemployment Rights Act of 1994 (USERRA). The employee had been on active military duty for a significant period prior to retiring. The Court was asked to determine whether USERRA requires the City to assume that the employee would have worked overtime if he had not been deployed and calculate his pension on his base salary plus the imputed overtime.

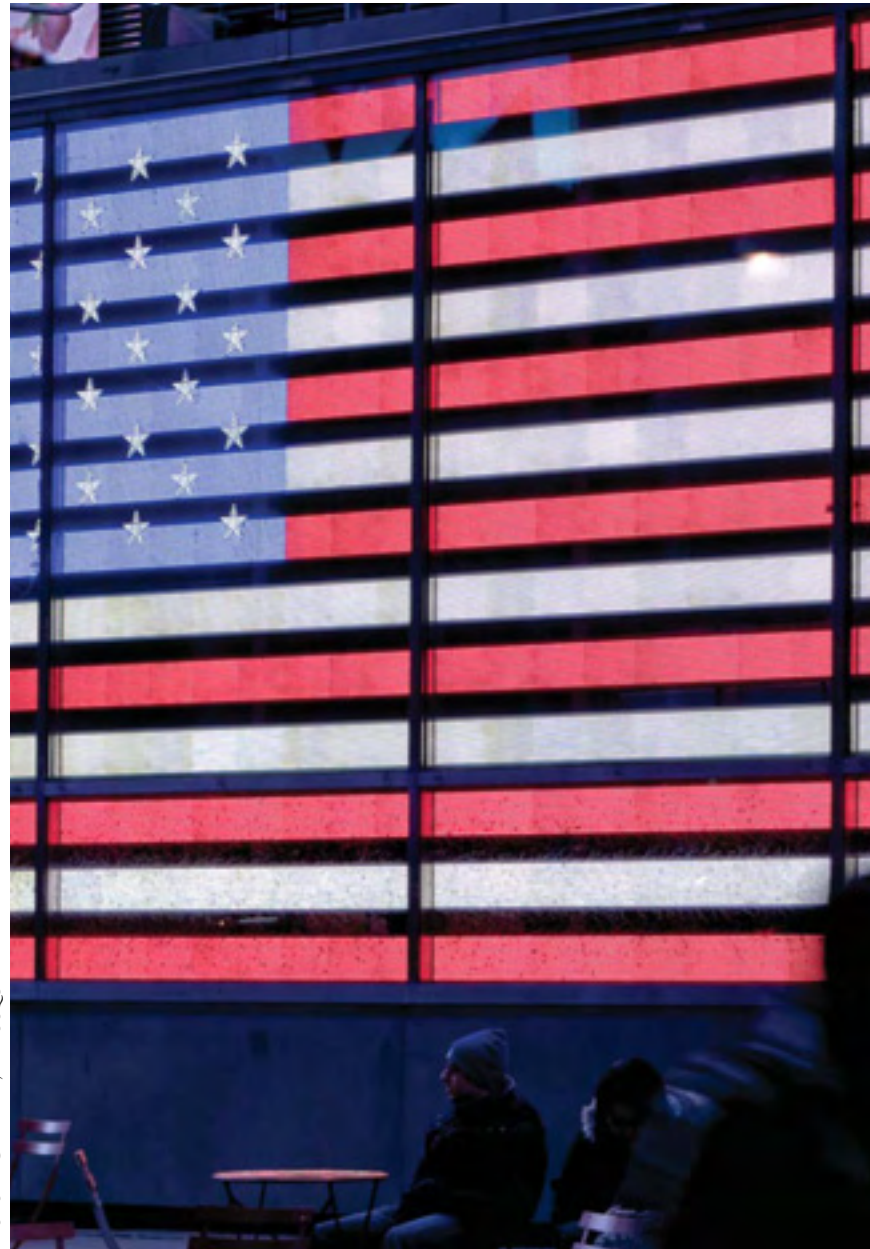


PHOTO: DIGITAL MAP, TIMES SQUARE

## LEGAL COUNSEL

**CHIEF** Stephen Louis  
**DEPUTY** Martha Mann Alfaro

The Legal Counsel Division advises the Mayor, other elected officials, and City agencies on a wide range of municipal law issues and drafts and reviews City, State, and federal legislation. Recent efforts have focused on such matters as improving transportation services, building a greener and more environmentally sustainable City, supporting information transparency and digital innovations, and making government more efficient.

### Five Borough Taxi Legislation

Division attorneys worked closely with the Taxi and Limousine Commission (TLC) and the Mayor's Office to draft new State legislation, and subsequently worked with State officials on key amendments to it. The legislation implements a new system that enables for-hire vehicles to be licensed to pick up passengers by hail in the outer boroughs and northern Manhattan, providing new transportation opportunities for millions of New Yorkers. It will also enhance taxi and limousine service for the disabled.

### Expanded Home Heating Oil Regulations

In conjunction with the Environmental Law Division, Legal Counsel attorneys helped develop proposed new rules to reduce emissions from the approximately 10,000 boilers in New York City that burn Numbers 4 and 6 oil, the dirtiest heating oil types available in New York. The new regulations, when fully implemented, will require that all boilers in New York City burn low-sulfur Number 2 oil or natural gas, reducing the amount of fine particles emitted from heating buildings.

### Counsel on the City's Digital Strategy

The Division advised the Mayor's Office and the City's Chief Digital Officer on the creation of Road Map for the Digital City, a comprehensive strategy to make New York the nation's leading digital city. The plan provides a framework to enhance the information exchange between government and New Yorkers and promote the City's tech industry. On an ongoing basis, the Division advises the Mayor's Office and the Chief Digital Officer on the implementation of the Road Map's elements and partnerships with major social media companies.

### Consolidation of Administrative Tribunal Hearings

With input from the Division, the Office of Administrative Trials and Hearings (OATH) gained increased oversight of hearings on tickets issued to restaurant owners, taxi

drivers, and other City small businesses. An executive order drafted by Division attorneys and signed by the Mayor transferred management of the administrative tribunals of the Department of Health and Mental Hygiene, and the TLC to OATH. OATH's specialization in tribunal administration enables it to make these hearing processes easier and more efficient while improving enforcement efforts.

## PRACTICE SPOTLIGHT

### New City Legislation

The Division provided key input on dozens of new City laws. For example, Division attorneys worked with the Department of Health and Mental Hygiene and the City Council in expanding the ban on smoking to include City parks, beaches, boardwalks, and pedestrian plazas. Other significant legislation included the following:

- Promoting locally grown food and reducing wasteful packaging.
- Providing increased care for animals at City shelters.
- Limiting the Department of Correction from honoring detainer requests by U.S. Immigration and Customs Enforcement under certain circumstances.
- Updating the City's electrical code.
- Giving landlords an alternate payment method for first-time heat and hot water violations while providing stronger enforcement of habitual violators.
- Enhancing CityMap, the City's interactive online map, and adding informational resources online, including executive orders and certain agency agreements.
- Facilitating environmentally sustainable practices in rooftop development.



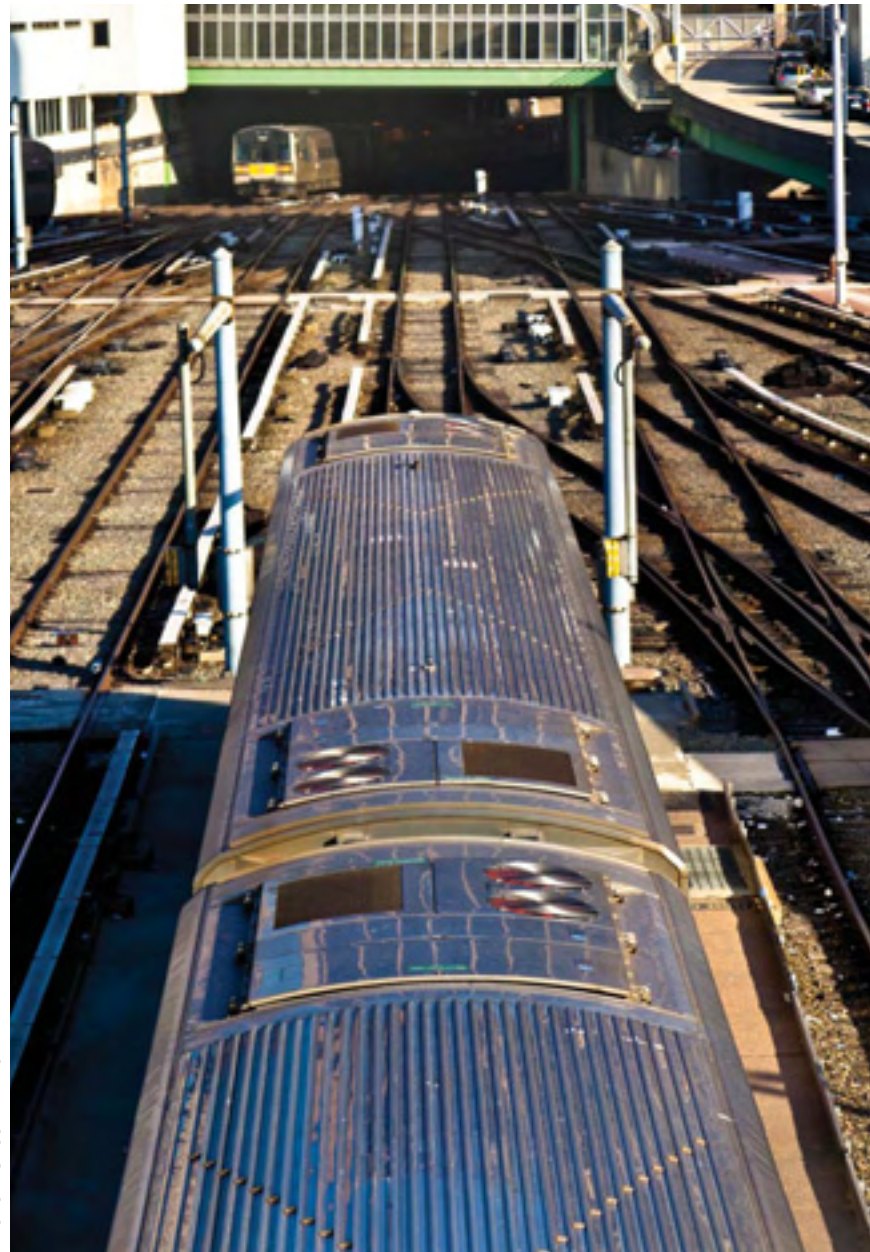


PHOTO: HUDSON YARDS

## MUNICIPAL FINANCE

**CHIEF** Albert Moncure, Jr.  
**DEPUTY** Olivia O'Neill

The Municipal Finance Division serves as counsel to the City on all bond transactions. New York City is one of the largest issuers of municipal bonds in the country. The proceeds of its debt issuances finance capital projects that impact virtually every aspect of City life. The City issues debt through its general obligation bonds, and through authorities and local development corporations. Additionally, State agencies issue debt on behalf of the City. Each year, the Division oversees billions of dollars in financial transactions. The Division also performs corporate governance work for the City's debt issuing authorities and local development corporations.

### 2011 Bond Program

In 2011, the City issued nearly \$2.5 billion of general obligation bonds, and the New York City Transitional Finance Authority (TFA) issued \$4 billion of Future Tax Secured Bonds and \$650 million of Building Aid Revenue Bonds (BARBs). The bonds were issued for both capital and refunding purposes, in fixed rate and adjustable rate form, and with tax-exempt and taxable status.

The BARBs—as well as \$100 million of TFA Future Tax Secured Qualified School Construction Bonds (QSCBs)—were issued exclusively for education-related purposes. QSCBs are taxable bonds for which the federal government pays a subsidy directly to the issuer. These bonds were authorized under the American Recovery and Reinvestment Act of 2009 (ARRA), and although the applicable provisions of ARRA expired in 2010, QSCBs can be issued to the extent that prior allocations of bonding authority have not been utilized.

The Division participated in the issuance of \$2 billion in New York City Municipal Water Finance Authority bonds and \$679 million in New York State Environmental Facilities Corporation bonds in connection with the City's water and sewer system.

In addition, due to the expiration of numerous liquidity and credit facilities backing City and TFA adjustable rate bonds (a nationwide phenomenon), the Division oversaw the closing of approximately \$2 billion in transactions to convert the bonds to fixed or other rates—or to substitute or extend the facilities.

### Bonds to Finance Manhattan West Side Development

The Division, together with the Economic Development Division, represented the Hudson Yards Infrastructure Corporation (HYIC) in connection with the October 2011 issuance and sale of the HYIC's \$1 billion Senior Revenue Bonds, Fiscal 2012 Series A. These bonds were issued to finance additional costs of the extension of the Number 7 subway line from its current terminus at Times Square to a new terminal station at West 34th Street and 11th Avenue. The subway extension

is intended to help facilitate a mixed-use development in the Hudson Yards Financing District on the far west side of Midtown Manhattan. Debt service on the bonds is anticipated to be paid from revenues received in connection with development in the Hudson Yards Financing District, with the City paying the interest component of the bonds until development generates sufficient revenues. The HYIC previously issued \$2 billion of Senior Revenue Bonds, Fiscal 2007 Series A, in December 2006 to finance the first phase of the subway extension.

### Funding Agreement for the Next Phase of a Biotechnology Incubator

In conjunction with the Economic Development Division, the Division participated in creating a funding agreement by which New York City Economic Development Corporation granted funds to be used for a substantial expansion of the State University of New York Downstate's Advanced Biotechnology Incubator, Phase III. The Incubator provides affordable space for start-up and early-stage companies in the biotechnology research, development, and manufacturing fields. At full occupancy, the Incubator will accommodate up to 30 companies and employ approximately 200 people.

**\$4 BILLION**  
 IN TFA FUTURE TAX SECURED BONDS

**\$2.5 BILLION**  
 IN GENERAL OBLIGATION BONDS

**\$2 BILLION**  
 IN NEW YORK CITY MUNICIPAL WATER FINANCE AUTHORITY BONDS

**\$1 BILLION**  
 IN HYIC SENIOR REVENUE BONDS



PHOTO: FINANCIAL DISTRICT, MANHATTAN

## PENSIONS

**CHIEF** Inga Van Eysden

The Pensions Division counsels City agencies on pension-related matters. With close to 600,000 active and retired members and approximately \$115 billion in assets, the five City pension funds are cumulatively one of the largest public pension funds in the country. They include the New York City Police Pension Fund, the New York City Fire Department Pension Fund, the Teachers' Retirement System, the Board of Education Retirement System, and the New York City Employees' Retirement System. Division attorneys represent the City pension funds in certain institutionwide litigation and appellate matters, 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.

### Drafting Pension Reform Bills

This past year, the Division has been involved in drafting a number of pension reform bills aimed at reducing municipal pension costs and improving the efficiency of managing pension fund assets.

### Defending Pension Fund Determinations and Fighting Fraud

In 2011, the Division was restructured to focus on legal counseling, legislative matters, pension-related appeals, and securities litigation. During the past year, attorneys also litigated several cases, including challenges to pension benefits and disability retirement determinations.

- **Disability Benefits Revoked**

Attorneys defended the City's decision to halt disability retirement payments to a former police officer who was caught doing manual labor for his construction company. After two medical reviews, he was determined to be no longer disabled and was placed on an eligibility list for reappointment as a police officer. However, he failed a re-employment exam by testing positive for cocaine and was found unqualified for reappointment as a police officer or any other City position.

- **Death Benefits for WTC Fiancée**

After six years of litigation, the Division prevailed in a lawsuit challenging the Fire Department Pension Fund's decision to grant domestic partner benefits to the fiancée of a firefighter who died on 9/11. After the World Trade Center attacks, the State amended a law to allow domestic partners to receive death benefits. The firefighter's parents, who were also receiving partial death benefits, fought the Fund's decision to grant the fiancée the remainder.

- **Recovering Pension Fund Assets**

In the fall of 2011, the New York City pension funds wrapped up an individually filed securities fraud claim against a health care provider that had operated a Ponzi scheme. The total recovery was nearly \$68 million, constituting more than 75 percent of the pension funds' \$89.4 million principal investment in the securities. In another securities litigation involving fraudulent mortgage lending practices, the Division and outside counsel secured a class-wide settlement of \$75 million, even after the complaint had been dismissed.

## PRACTICE SPOTLIGHT

### Defining Accident Disability Retirement

Attorneys prevailed before the State's highest court in the Fire Department's decision denying accident disability retirement to a firefighter injured in an alcohol-fueled fight with a colleague at their firehouse. The petitioner sustained brain trauma and was deemed disabled by the Medical Board. The City, in a separate tort action, paid the injured firefighter \$3.75 million to settle his tort claims. However, the petitioner also claimed he was entitled to the higher paying accident disability, rather than ordinary disability, retirement. Division attorneys defended the Fire Pension Fund's decision and prevailed before the Supreme Court, the Appellate Division, and the Court of Appeals.



PHOTO: CROWDS IN LOWER MANHATTAN

## SPECIAL FEDERAL LITIGATION

**CHIEF** Muriel Goode-Trufant  
**DEPUTY** Heidi Grossman  
**DEPUTY** Patricia Miller  
**DEPUTY** Frances Sands

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 officers, 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.

### Trial Practice

In 2011, the Division expanded its trial practice and won an unprecedented 21 consecutive defense verdicts. Noteworthy cases include the following:

- Hernandez Subway Stabbing Case**  
 Attorneys secured a win in this case, involving a man who stabbed a police officer and then sued for excessive force. Hugo Hernandez was stopped by a police officer for smoking on a subway platform, and he responded by stabbing the officer in the head. In defense, the officer fired shots which hit Hernandez. Nearby officers who heard the shots responded and arrested Hernandez, who tried to flee. The jury determined the officers used reasonable force to make the arrest, and Hernandez is serving a 20-year sentence for the attack.
- Man Who Killed a Police Officer Sues**  
 The Division won a lawsuit brought by Lee Woods—who is serving a life sentence for his role in the murder of Police Officer Russel Timoshenko. Woods alleged that he was beaten unconscious by five correction officers on Riker’s Island and woke up in a pool of blood. Video from a security camera revealed that Woods threw food at the officers and refused to let them take him out of his intake cell. He continued to struggle with officers after he was removed and punched an officer in the face. Woods sustained minor injuries as officers tried to subdue him. Footage from another camera showed him walking and clearly conscious and then casually standing in his cell.

- Suit Over Police Informant Death**

Attorneys secured a jury verdict in the City’s favor in a high-profile case involving the death of police informant Anthony Velez. Velez called in a tip to police about the presence of a gun and drugs in a Brooklyn apartment. Computer checks on the apartment revealed that a number of outstanding arrest warrants were associated with people who lived there. Police went to the apartment to execute one of those warrants for an absconder wanted for rape. There, officers found Velez exiting the apartment, and they stopped and frisked him for weapons. Police let him go, as he was not carrying any weapons, but the occupants of the apartment were arrested. Several hours after the arrests, Velez was shot to death by an unknown third party. The plaintiff’s counsel argued the police owed the decedent a special duty and should have arrested him to maintain a “cover” instead of letting him go. However, a jury agreed that the officers had acted reasonably and were not responsible for Velez’s death.

## PRACTICE SPOTLIGHT

### Demonstration Cases

Division attorneys continue to handle close to 80 cases related to demonstrations, many of which stem from protests occurring during the 2004 Republican National Convention. The Division is also handling a number of cases concerning the Occupy Wall Street protests.



PHOTO: I BOWLING GREEN, MANHATTAN

## TAX & BANKRUPTCY LITIGATION

**CHIEF** Rita D. Dumain

**DEPUTY** Lisa Bova-Hiatt

**DEPUTY** Vincent D'Orazio

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

### **Defeating a Landlord's Attempt to Void Participation in an Affordable Housing Program**

The Division overcame a landlord's bid to rescind its participation in the City's J-51 tax abatement program. The program is an important component of affordable housing policy, in which owners abiding by rent stabilization laws receive certain tax incentives. London Terrace, the owner of a residential housing complex in Manhattan, had begun charging market rate for some units while still in the J-51 program. London Terrace argued that it should be able to exit the program upon reimbursing its tax credits, similar to rescinding a contract. The City argued that the program is not a contract, and the Court agreed.

### **Defending a Parking Surtax Exemption for Certain Manhattan Residents**

Division attorneys successfully defended a federal class action challenging an exemption to the City's parking surtax, which only certain Manhattan residents receive. The City moved to dismiss the plaintiffs' complaint on various grounds. Relying on a U.S. Supreme Court decision in *Levin v. Commerce Energy*, both the District Court and Second Circuit found for the City, holding that cases such as these should not be heard by federal courts in accordance with established comity principles.

### **Defending the Tax Commission's Authority on a Fee to Review Property Tax Assessments**

Division attorneys prevailed in a challenge to the Tax Commission's authority to implement a rule setting a \$175 fee for an administrative review of applications concerning properties with an assessed value of \$2 million or more. Four Queens property owners claimed that the Tax Commission lacked authority to adopt the fee rules and that the rules are unconstitutional. The Court rejected the arguments and recognized the City's ability to assess fees, provided the fees charged are reasonably related to a regulatory program's accomplishments.

### **Enforcing City Billboard Regulations in Bankruptcy Court**

The Division convinced a Bankruptcy Court to deny a preliminary injunction against the City's enforcement of billboard regulations. The injunction was sought by a Chapter 11 debtor, Contest Promotions, that rents space to post billboards on building exteriors. Contest Promotions is involved in a legal dispute with the Department of Buildings (DOB) over whether its billboards comport with City regulations. The company filed for Chapter 11 protection and asserted that, under the Bankruptcy Code, it is thus entitled to an automatic stay from enforcement by the DOB and the Environmental Control Board (ECB). Division attorneys argued that the DOB and ECB activities were exempted from the automatic stay based on precedent establishing that the City's regulation of signs is designed to protect substantial public interests in promoting traffic safety and preserving aesthetics.

## PRACTICE SPOTLIGHT

### **Advancing Significant Development Projects to Shape the City's Future**

Division attorneys are engaged in matters related to the City's acquisition, through eminent domain, of property to enable the Number 7 subway line extension. The Division is also involved in the acquisition of land for the Staten Island Bluebelt, an initiative preserving open spaces and wildlife habitats, while naturally improving drainage and filtering storm water. In Queens, the Division is defending the City's right to acquire property for the Willets Point Redevelopment Plan to revitalize the largely industrial neighborhood.



PHOTO: NEW YORK HARBOR

## TORT

**CHIEF** Fay Leoussis  
**DEPUTY** Steven Levi  
**DEPUTY** Ellen Lombardi  
**DEPUTY** David Santoro

With 200 attorneys and as many support staff, the Office's largest division defends the City against over 6,000 new personal injury and property damage cases annually. The Division maintains offices in all five boroughs and has special units to address issues such as risk management, early settlement, catastrophic injuries, and toxic torts (i.e. tort claims based on exposure to a toxic substance).

The Division's cases can span a wide range of issues, including complex questions of governmental and qualified immunity; matters involving the boundaries of duty and foreseeability; interpretation and application of the federal and State constitutions and civil statutes; the extent of property interests and potential recovery for violation of those interests; and straightforward negligence cases, such as trip-and-falls, accidents in City-owned buildings, and injuries sustained from car accidents.

### Special Units Lend Expertise

The Division has specialty units to address its varied work. The Special Litigation Unit handles high-exposure and catastrophic injury cases; the World Trade Center-Toxic Tort Unit litigates 9/11-related and toxic tort cases; the Early Intervention Unit seeks to resolve meritorious cases quickly and economically; and the Risk Management Unit proactively manages risk on City initiatives.

### Concluding Staten Island Ferry Litigation

With assistance from outside counsel, the Division finalized the massive litigation that arose following the 2003 Staten Island Ferry accident. In total, seven cases were tried to judgment, and 165 claims were settled, bringing this longstanding matter to a close.

### Fighting to End the "Litigation Lottery"

In collaboration with the Corporation Counsel and the Legal Counsel Division, the Division advocates for key tort reform measures, including for medical malpractice cases, to safeguard public funds while fairly compensating injured plaintiffs.

The Division emphasizes the following measures:

- Preventing the City from having to pay all damages for economic loss (joint and several liability) caused by multiple defendants when the City is 50 percent or less at fault.

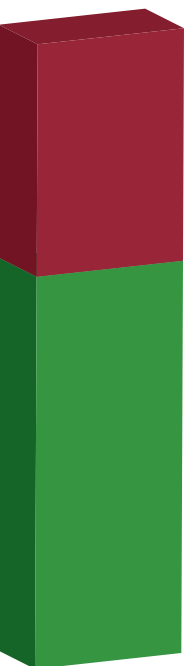
- Linking the interest rate the public pays for judgments and accrued claims to the 52-week U.S. Treasury Bill rate, which is consistent with the rate paid for judgments in federal court.
- Barring public compensation for a plaintiff who is equally or primarily responsible for his or her injuries.
- Setting a sliding scale for attorneys' contingency fees in all tort actions to ensure that plaintiffs receive a greater share of awards and encourage attorneys to accept reasonable settlements.
- Expanding the number of cases adjudicated by judges trained in medical malpractice cases.
- Encouraging courts to decide whether scientific and medical testimony in medical malpractice cases is sufficiently reliable for a jury.

### Amassing Verdicts for the City

In fiscal year 2011, 81 of the Division's cases progressed to verdict, and 48 were won, demonstrating an impressive win rate of 60 percent.

Examples of Cases Won:

- In *Jannace*, the plaintiff claimed a knee injury from a City elevator dropping suddenly. However, through witnesses and reports, the City demonstrated that the plaintiff was not on the elevator.
- In three cases arising from a building fire, the Court dismissed actions based on an alleged negligent inspection. The Court found that the City was immunized from liability in its performance of a governmental function involving a discretionary act—and that in any event, the plaintiffs failed to demonstrate a duty owed to the plaintiffs.
- In *Thompson*, the plaintiff claimed she re-injured her hip when she fell in the lobby of a City building. At trial, the City established that the plaintiff was recovering from hip surgery and merely lost her balance.
- In *Corona*, a plaintiff claimed that an unmarked police car struck his motorcycle and that officers had assaulted him. The City vehemently denied these claims, and a jury agreed.



60%  
WIN RATE



PHOTO: GRAND CENTRAL STATION

## WORKERS' COMPENSATION

**CHIEF** John Sweeney  
**DEPUTY** Mindy Roller

The Workers' Compensation Division represents the City and related entities at all hearings, trials, and appeals before the New York 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. Workers' Compensation strives to provide employees the medical and wage replacement benefits to which they are entitled, while objecting to and, if necessary, litigating unwarranted claims.

New York enacted its workers' compensation statute to address 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 payment of all related and necessary medical costs. 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 the City's approximately 200,000 covered employees. Employees not covered under this statute, but rather by union contracts, include uniformed police officers, firefighters, and uniformed sanitation workers.

### Exposure to Medical Issues

Claims involve nearly every conceivable medical condition, including work-related psychiatric diagnoses, respiratory ailments, heart conditions, and orthopedic conditions. Division attorneys acquire a broad range of medical knowledge and obtain excellent experience by regularly cross examining medical and lay witnesses.

### Diagnostic Testing

To reduce costs and provide timely medical attention, the Division has embarked on a program to provide necessary diagnostic tests. Through the program, employees needing tests such as X-rays and Magnetic Resonance Imaging scans (MRIs) are provided with contact information for a test coordinator designated by the Division. They are given a list of facilities in their area and can schedule their test at the facility of their choice. Tests can be arranged with a single phone call and take place in a few days. The results are then sent to the employee's treating doctor. This process has resulted in prompt testing and reduced costs through negotiated test fees.

### Bill Processing

Medical bill processing is a significant part of the Division's work. Workers' Compensation is now using bill review software to partially automate the processing of medical bills. The software automatically reduces any bill in excess of the medical fee schedule. This allows Division employees to concentrate their efforts on determining whether the treatment being billed is related to the case and whether the treatment is consistent with the Workers' Compensation Board's treatment guidelines.

RECEIVING AND INDEXING OVER

**14,500**

NEW CLAIMS

REPRESENTING THE CITY AT NEARLY

**15,000**

HEARINGS, TRIALS, AND APPEALS  
BEFORE THE NY STATE WORKERS'  
COMPENSATION BOARD

PAYING OVER

**\$170 MILLION**

IN WAGE REPLACEMENT BENEFITS AND  
MEDICAL COSTS TO INJURED EMPLOYEES

PROCESSING NEARLY

**200,000**

MEDICAL BILLS

OBTAINING REVENUE RECOVERIES  
IN EXCESS OF

**\$9 MILLION**

FROM VARIOUS SOURCES, INCLUDING  
STATE FUNDS, LIEN SATISFACTION, AND  
INSURANCE ARBITRATION



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## SUPPORT DIVISIONS

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Administration  
Information Technology  
Operations



## ADMINISTRATION

**CHIEF** Malachy Higgins  
**DEPUTY** Anthony Johnson

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 currently stores 170,000 boxes containing inactive case files, and is responsible for the physical maintenance of 10 citywide Law Department offices, in addition to the Kingston, New York office, which totals a half-million square feet of space.

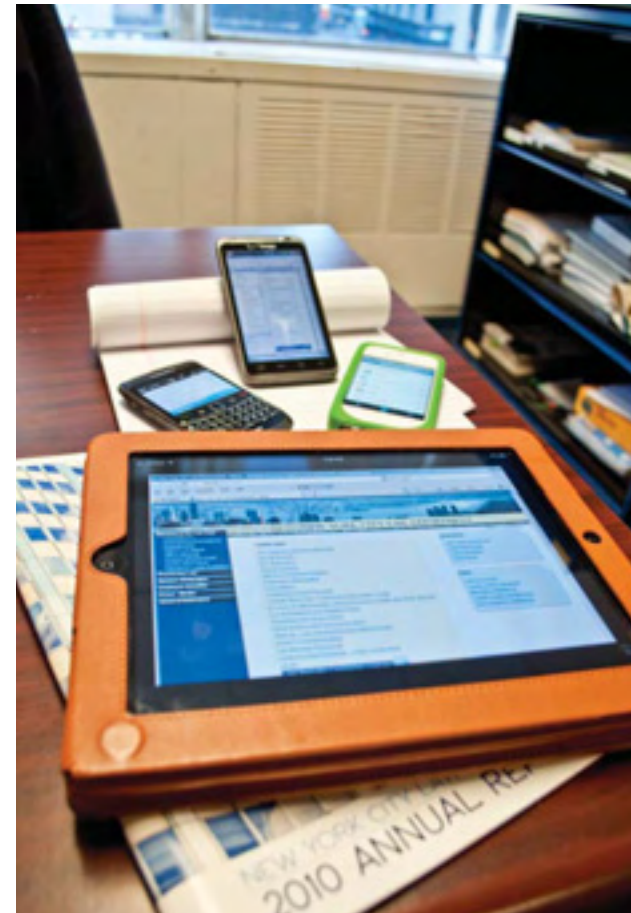
Each year, the Division handles over 38,000 paychecks, hundreds of personnel actions, thousands of payments for expert witnesses, 4,000 requests for court reporters and depositions, and hundreds of individual procurements through the Procurement Unit. Moreover, it deposits money recovered in lawsuits on the City's behalf. 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.

In 2011, Administration obtained approval to create a 250-person training room as part of the Agency's 100 Church Street lease renewal. This will enhance the Law Department's Continuing Legal Education efforts citywide. Administration also relocated over 100 employees from seven divisions/units at the Office's 100 Church Street headquarters to maximize the use of leased space and combine certain units in contiguous areas.

The Division implemented an increase to the Agency's main server room ventilation and air conditioning capacity to prevent possible network downtime, and facilitated the required capital funding from the City's Office of Management and Budget to improve the Agency's Information Technology infrastructure and upgrades to the Workers' Compensation and LawManager case management systems.

Additionally, Administration completed the categorization and shelving of approximately 50,000 archive boxes at the Law Department's Bush Terminal storage facility, which will reduce file retrieval time, and disposed of 45,000 archive boxes of expired case records from the facility to allow for additional space for closed case files, freeing up office space throughout the five boroughs.

The Division also took steps to enhance management reporting capabilities in its Fiscal and Cashiers Units in the accruals, fixed asset, and revenue accounting areas.



## INFORMATION TECHNOLOGY

**CHIEF** Joseph Mercas

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 that are cost-effective and innovative. IT effectively aligns the Agency's business and technology objectives, streamlining and improving its daily business conduct. The 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 an evolving challenge, but the Law Department is well positioned for the foreseeable future because of the technology investments and IT accomplishments of 2011.

The past year has been one of unprecedented system uptime, reliability, quality, and availability, with IT services at close to 100 percent uptime. This milestone could only be reached through the superior teamwork and dedication of IT staff in administering, maintaining, planning, supporting, updating, and securing the Law Department's network infrastructure.

The IT Division expanded Citrix, the Law Department's remote computing platform, which enables users to access work from nearly any location in the world. IT extended Citrix support this year to include not only support for Windows-based and Apple computers, but also Apple iPhone, Apple iPad, BlackBerry, and Android devices. Law Department employees with Citrix accounts can now be connected to the Office while "on-the-go."

The Division made a great number of computer desktop, laptop, security, database, and software upgrades in 2011, which have contributed to the overall stability of Agency IT systems and services. Examples include updates and upgrades to the Microsoft SQL Server (database software), Windows (the Office's desktop operating system), LawManager (the Agency's case management system), SharePoint (collaboration software), McAfee (security software), and others.

IT maintained and performed continued upgrades to the Agency's primary server room with new equipment, supplemental air conditioning, security, and controls.

The Division drove improvements to Information Technology infrastructure upgrades by writing and submitting capital purchase requests and implementing the technology, thereby powering effective solutions.

HANDLED OVER  
**38,000**  
PAYCHECKS

PLANNED  
**250-**  
PERSON  
TRAINING ROOM

HANDLED OVER  
**4,000**  
REQUESTS FOR  
COURT REPORTERS

RELOCATED OVER  
**100**  
EMPLOYEES FOR  
SPACE MAXIMIZATION

DISPOSED OF  
**45,000**  
ARCHIVE BOXES FOR  
SPACE MAXIMIZATION

CATEGORIZED  
& SHELVED  
**50,000**  
ARCHIVE BOXES  
TO REDUCE FILE  
RETRIEVAL TIME

**16,198**  
HELPDESK  
CALLS SERVED

**98%**  
IT SERVICE UPTIME,  
AVAILABILITY,  
AND RELIABILITY

OVER  
**125**  
APPLICATIONS  
SUPPORTED

OVER  
**100**  
SERVERS AND STORAGE  
DEVICES POWERING  
THE AGENCY

**24/7/365**  
WORLDWIDE  
CITRIX ACCESS

**1,841,126**  
LAW DEPARTMENT  
INTERNET PAGE  
VIEWS IN 2011





## OPERATIONS

**CHIEF** Kenneth Majerus  
**DEPUTY** Jonathan Pinn

The Operations Division's twofold mission is to provide centralized document production support and improve the Law Department's operational efficiencies. The Division is comprised of five document production and distribution units, an analysis unit, and a training 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; the service and filing of legal papers; and the creation and maintenance of document assembly templates. The Analysis Unit works to improve the Department's operational efficiencies and plays a major role in producing specialized reports, including data for the Mayor's Management Report and governmental audits.

The Communications and Docketing Services Unit (CDS) handled over 60,000 individual items, either delivered by hand or through personal service, and opened nearly 31,000 new matters in LawManager, the Office's case management system. CDS staff also handled and processed nearly 330,000 pieces of U.S. mail, requiring 10,000 production hours. CDS handled two high-priority, short-turnaround mailings totaling nearly 10,000 pieces.

The Computer Training Unit organized and presented over two dozen different computer software courses, arranged in recurring monthly schedules. In the last year, the Unit held 902 training sessions, a 12-percent increase from 2010.

The Document and Data Processing Center (DDPC) responded to over 5,000 job requests, which yielded more than a quarter-million pages and records. To complete these requests, DDPC operators logged nearly 27,000 hours.

The Duplication and Finishing Services Unit (DFS) produced almost six million pages while responding to over 15,000 work orders, a five-percent increase from 2010. DFS staff also responded to and resolved almost 1,500 help calls reported on the Law Department's 93 multi-function devices (i.e., combination print, fax, and copy machines). DFS staff printed 2,500 posters for the New York City Administration for Children's Services in a two-week period without interrupting regular operations and turned around a print request for 180 Continuing Legal Education books with color inserts within 24 hours.

The Process & Courier Services Unit (PCS) handled over 36,000 services, filings, deliveries, and pick-ups.

The Central Services Unit (CS) in Brooklyn saw increases across the board in its various services requested at the Law Department's 350 Jay Street Brooklyn office. Requests for messenger services, outsourced service of process, and requests for duplication all grew. This small satellite Unit processed over 165,000 pieces of mail and handled 203 work orders in 2011. The Unit also works with the Agency's Facilities staff to ensure that office service and environmental concerns are addressed.

## CLASS OF 2011

### Assistant Corporation Counsels



Mayor Michael R. Bloomberg, Corporation Counsel Michael A. Cardozo, First Assistant Corporation Counsel Jeffrey D. Friedlander, and Director of Legal Recruitment Stuart Smith with the 2011 class of Assistant Corporation Counsels.

The Law Department has long been committed to recruiting, retaining, and promoting a diverse community of legal professionals.

The Department's Office of Legal Recruitment processes 8,000 applications annually and hired an entry class of 46 Assistant Corporation Counsels in 2011. It also hosted 52 law students in the Agency's Summer Honors Program and hired 51 experienced attorneys.

In 2011, the Law Department announced the first-ever Corporation Counsel Clerkship program to draw more top-notch junior attorneys into public service by providing them with high-level City government experience.

In collaboration with the Legal Recruitment Office, the Professional Development Department has created and implemented an extensive on-boarding program to assist new attorneys in acclimating to the hands-on lawyering experiences they will have at the Law Department. The program includes a vast array of substantive legal

classes, skill development courses, and ethical and professionalism programming. Professional Development also hosts Continuing Legal Education programs for City attorneys and oversees the Law Department's diversity training and performance management program.

The Law Department is an Equal Opportunity Employer and would rank in the top 10 in terms of ethnic diversity when compared to the nation's 100 largest private law firms. The Department's Diversity Committee and Women's Committee enhance and celebrate a diverse workplace. The Law Department also has the largest number of openly gay attorneys among the law offices reporting this information to the National Association of Law Placement. Five of the Agency's 17 division chiefs are Black, Hispanic, or openly gay or lesbian, and more than half are women. In 2008, the New York City Bar Association named Corporation Counsel Michael A. Cardozo a Diversity Champion in recognition of his efforts to promote diversity both within the Law Department and the legal profession.

CDS DELIVERED OVER <b>60,000</b> INDIVIDUAL ITEMS BY HAND OR PERSONAL SERVICE	TRAINING UNIT HELD OVER <b>900</b> TRAINING SESSIONS	DDPC JOB REQUESTS YIELDED OVER <b>250,000</b> PAGES AND RECORDS	DFS PRODUCED ALMOST <b>6 MILLION</b> PAGES	PCS HANDLED OVER <b>36,000</b> SERVICES, FILINGS, DELIVERIES, AND PICK-UPS	CS PROCESSED OVER <b>165,000</b> PIECES OF MAIL
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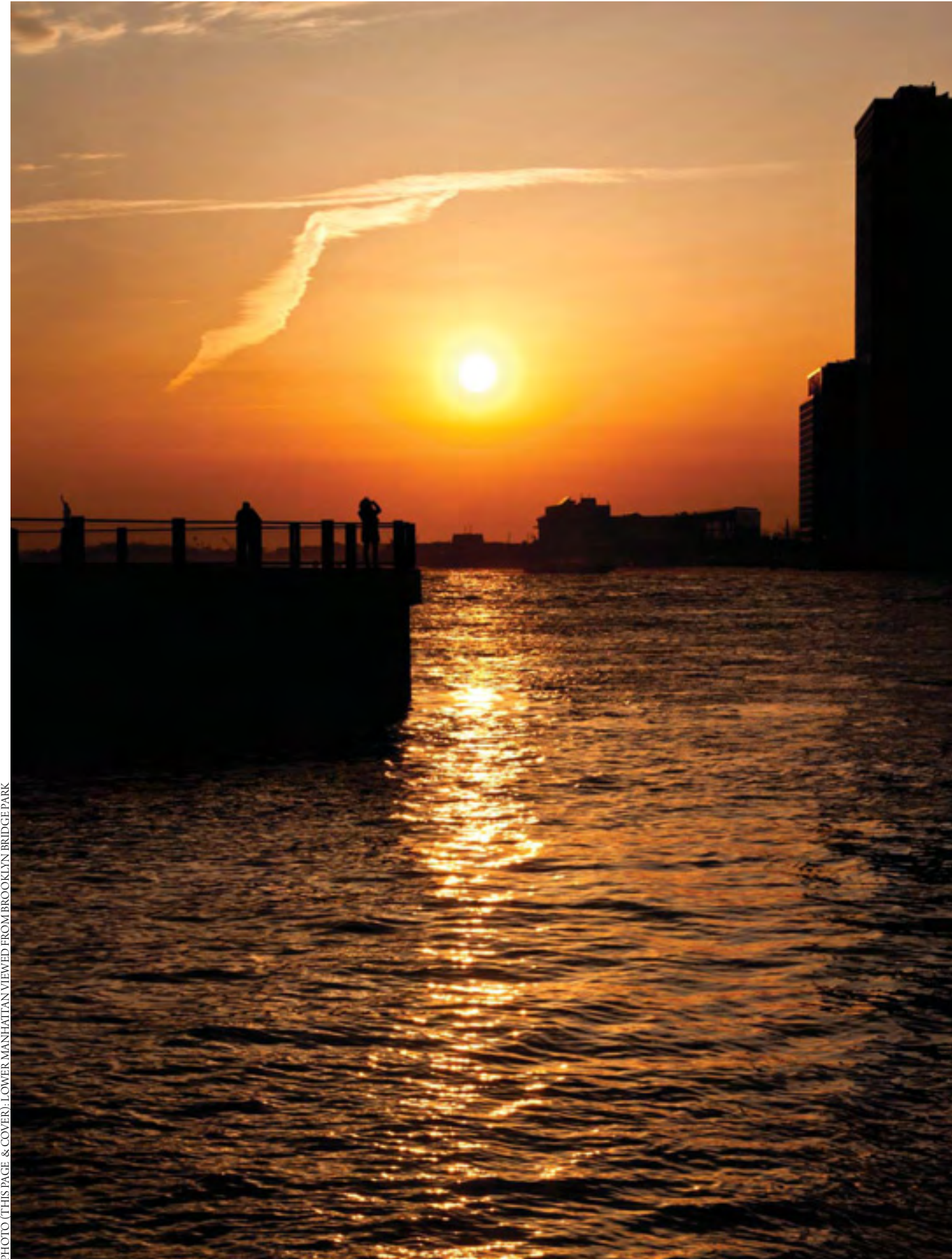


PHOTO (THIS PAGE & COVER): LOWER MANHATTAN VIEWED FROM BROOKLYN BRIDGE PARK

# 2011 ANNUAL REPORT

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New York City Department  
of Environmental Protection  
(19)

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