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## CITY IN-HOUSERS

# Life On The Municipal Dime Often Persecuting, Painful

*Penny-pinching, restrictive settlement policies work in favor of plaintiffs*

By **THOMAS B. SCHEFFEY**  
*Law Tribune Staff Writer*

In a matter of minutes, any Connecticut city can lose millions with a big courtroom defeat.

But some of the well-intentioned safeguards for economy and accountability of city law departments practically guarantee they will be sitting ducks in big personal-injury or employment cases. Recently, a few have been whacked.

Last year in Greenwich, in a case that plaintiff's lawyer Stewart M. Casper offered to settle for \$500,000, the town saved on outside counsel fees by preparing the case in-house. Then, two weeks before trial, Greenwich brought in defense ace Paul E. Pollock, of Bridgeport's Bai, Pollock, Blueweiss & Mulcahey. Assistant Town Attorney Valerie E. Maze joined in.

Casper, in an interview, said Greenwich's in-house lawyers seriously underestimated both the extent of his client's damages, and the murkiness of the law of municipal immunity. The town bet heavily the jury would find that filling in a hole on a sledding hill was discretionary, not ministerial. It didn't.

"Paul tried a superb case for having it dropped in his lap two weeks before," said Casper, of Stamford's Casper & de Toledo. His oncologist client's shattered leg and spinal injuries produced a \$6.3 million verdict in April 2004. Greenwich, to cut losses from fruitless appeals and millions more in interest, settled for a cold \$6 million seven months later.

In Greenwich, settlements can only be approved by a special town committee, not by the town attorney alone. In New Haven, a seven-member settlement committee meets every two weeks. Under its

1993 city charter, no settlement of more than \$5,000 can occur without committee approval.

New Haven Corporation Counsel Thomas Ude said he's never failed to get a quorum of four, even for an emergency meeting. But during summer vacation time, he conceded, it can be dicey. Sometimes minutes count.

In Hartford in 2003, Deputy Corporation Counsel Michael C. Collins wanted the city council to approve an emergency settlement. Collins knew the nine white and Hispanic firefighters were willing to settle their reverse-discrimination suit for far less than \$300,000. But a Democratic minority of four refused to go into executive session, preventing settlement talks. Three days later, the firemen, represented by Bethany civil rights attorney Norman A. Pattis, won a \$3.2 million verdict.

In that case the city wasn't using under-qualified trial counsel—it had two Shipman & Goodwin litigators. But the cumbersome settlement processes led first to brinkmanship, then defeat.

In New Haven, it isn't just settlement authority that's on a short political tether. Each of the 12 lawyers under Ude are appointed for one-year terms by the mayor. Ude's job security tracks the mayor's, in two-year terms. Ude said Democratic Mayor John DeStefano, who's running for governor, gives great weight to the corporation counsel's hiring recommendations for in-house lawyers. But by city charter, the mayor ultimately has the final choice.

This control, Ude noted, "certainly has an advantage over an essentially civil service position, where it can be difficult to motivate people to really excel."

Sword-of-Damocles political accountability, however, didn't avert the unfortunate



Contributed Photo

**City legal departments can be run more like a collection of solos than as a team. But New Haven Corporation Counsel Thomas Ude said his office in recent years has made strides in getting its in-house attorneys to work together.**

career meltdown of Martin Echter, at one time the lead litigator in Ude's office.

Pattis, a frequent adversary in cases against New Haven, praised Echter as "Columbo-esq in his ability to tease out information from a witness, when he was at his best."

But Echter wasn't at his best when he missed multiple filing deadlines in two police officers' career discrimination cases. As a result, the city forfeited its right to contest liability. In the subsequent 2004 trial purely on damages, New Haven attorney Karen Lee Torre won an \$880,000 verdict, and Echter was forced to resign, as aldermen and editorialists frothed.

Small mistakes Echter planted in another case bloomed in his absence. A young female firefighter's hostile workplace claim last month resulted in the U.S. Court of Appeal for the Second Circuit affirming an

unexpectedly large “front pay” award for her the rest of her working life of nearly \$1 million.

In Echter’s defense, Ude said, “In the many cases he won, Marty saved the city millions.”

New Haven, however, isn’t alone in having a municipal law office where mediocrity and inefficiency often face too few natural enemies.

A 2003 analysis of the Hartford corporation counsel’s office, conducted by Daniel Papermaster of Bingham McCutchen’s Hartford office, found it more like a department of eight solos, with little communication and teamwork. Too much lawyer time was consumed with paralegal and secretarial tasks, the study concluded.

To New Haven’s Ude, that sounds like New Haven’s legal department 15 years ago. “When I was on the other side of some cases, I’d call to this office,” he recalled, “and if the attorney handling the file was not around, there was nothing that could be done. Now, thanks in large part to some of my predecessors, we’ve been working to build up more of a team approach. We do have some cases assigned to more than one attorney, so people are working more like a law firm,” he said.

In his critique for Hartford, Papermaster emphatically recommended switching to a full-time corporation counsel, with strong management skills. Mayor Eddie Perez responded by hiring John Rose from Farmington’s Levy & Drone. “In larger cities, you have to have a full-time corporate counsel,” Papermaster said in an interview. “Everything in our world has gotten too complicated to have a part-time position.”

### Bowing To Insurers

In Stamford, longtime Corporation Counsel Thomas M. Cassone divides his time between his city job and his partnership in Bello, Lapine & Cassone. All the city lawyers under him are full-time, and Stamford has never chosen to change its charter to make the top city lawyer a full-time position. But Stamford gives settlement authority to Cassone, in conjunction with the mayor. Coincidentally, it has not sustained any huge court losses in tort or employment cases in recent years, Cassone said. “By far the biggest claims we’ve paid have been tax appeals.”

Even without a settlement committee’s input, Stamford gets substantial independent evaluation of cases from its insurers and excess coverage carriers. The city self-insures

for the first \$250,000 of its exposure, per case, but the “overage” or umbrella carriers add their own assessment of legal risk.

“Sometimes the[y] tell us ‘we want you to throw in your self-insured retention because we want to settle this claim,’” explained Cassone. “And if you don’t, they can decline to pay the overage. In other words, you’re flying solo. That has happened to the city of Stamford a couple of times, where we capitulated because we weren’t willing to take that risk.” The overage carrier’s power to do this come from the so-called ‘hammer clause’ in standard policies.

In New Haven and Greenwich, the self-insured retention can go as high as \$1 million in large cases, such as wrongful death matters.

Casper, who won the \$6 million sledding case for Dr. Nicholas Stroumbakis, commented that \$500,000 or \$1 million in settlement authority “is a tremendous amount of power to give a small group of city officials.” In his experience, said Casper, his trial lawyer counterparts in the defense bar or insurance companies’ professional risk managers are more able to assess the true value of a case in progress.

When a city has \$1 million allocated to a case, it can be tempting to have all of the pretrial work done in-house, to avoid expensive outside counsel rates, as occurred in the Stroumbakis case. But highly successful New London plaintiffs’ lawyer Robert I. Reardon said that’s unwise: “I think that municipalities and insurance companies that use in-house counsel who are not equipped to handle these complex cases are penny wise and pound foolish,” he said. “They think they’re going to save money by using counsel who is either a town attorney, or a lawyer who is a general practitioner in their community, where these cases are highly technical and require highly-skilled lawyers from the outset.”

Reardon said he’d actually “prefer to have a topnotch lawyer on the other side from day one, so we can both work up the case properly and have it ready for trial, so the result is based on the merits of the case, rather than the skill of the attorney in preparing it.”

But Pattis admitted he’s in it to win, and feels duty bound to his client to take advantage of any weaknesses in a city’s case, including its defense lawyer.

He said, when he goes up against James Tallberg of Updike, Kelly & Spellacy, or West Hartford’s Scott Karsten, “I know I’m



Law Tribune File Photo

**It may be tempting for cities to save money by completing all of the pretrial work in-house. But New London plaintiffs’ lawyer Robert I. Reardon calls such an approach ‘penny wise and pound foolish.’**

up against the A team. But there are B, C and D teams, and the farther down the alphabet we go, the better it is for my client.”

Candidly, Pattis said that saving money by limiting the defense at the beginning of an employment or discrimination case can be devastating for a city. “The single most important factor for a municipal defendant in an employment case is: get rid of that case on summary judgment. It’s worth every dollar spent on that,” he advised. “An employment case going to verdict can cost a lot of money.”

Because those cases are based on broken trust, a jury of people who’ve struggled to keep jobs in Connecticut’s challenging economy can be highly sympathetic, Pattis noted. “If you can get before a jury like that and give them just a scent of injustice, good things can happen—if you’re a plaintiff.” ■

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