

# 1998 YEAR IN REVIEW

## To Our Clients And Other Friends:

We have prepared this Review to tell you what we accomplished in 1998, but we should start with our clients' successes. Our job is to help our clients succeed, and we measure our success by theirs.

Our clients had a great year in 1998. Many of our business clients concluded interesting deals, while others won significant victories in court. Our individual clients prospered. Their successes are a source of great pride for us, and this Review describes how we helped them.

Some of our clients are in business areas that may surprise you. To serve them better, we have grown and changed: we are not the same firm we were five years ago. Of course, our practice in the trusts and estates, securities, and mergers and acquisitions areas, where our

reputation was first won, continues to be very fine indeed. Our old friends will be surprised and pleased with our bustling practices in new areas like healthcare, media and technology. Articles on page 5 feature these practice areas.

Our Review for 1997 described our remarkable growth: we added eight new partners and counsel that year. This growth continued in 1998: we have added six more partners and counsel since our last Review. This Review introduces our new colleagues, with pictures and brief biographies. Our office space is also growing, as you will see on page 6.

We hope you will find things in this Review that pleasantly surprise you.

Carter, Ledyard & Milburn

## MERGERS & ACQUISITIONS

Merger and acquisition transactions consistently represent the most active practice area within our Corporate Department. The firm has extensive experience in all types of M&A transactions, handling large and small deals involving public and private companies. In addition to stock and asset purchases, mergers and tender offers, the M&A group's 1998 workload included joint ventures, spin-offs, leveraged buyouts and venture capital transactions.

Clients who turn to us in this area extend well beyond the domestic corporate clients for which the firm acts as general outside counsel, and include overseas-based companies served by the firm's International Practice Group, financial institutions handled by our Financial Institutions Practice Group, telecom, high tech and new media clients of the Media and Technology Practice Group, and shipping industry clients of the Maritime Practice Group.

The Corporate Department attorneys who form the core of the firm's M&A group are supplemented as required by attorneys with transactional experience from the tax, ERISA, real estate, environmental, employment, securities, secured lending, intellectual property, litigation, and estate planning areas to form cross-disciplinary teams with the necessary skills for complex M&A transactions. Corporate Department Chairman Bob McTamaneay heads the following group of corporate partners and counsel whose 1998 practice included substantial M&A transactions: Jim Abbott, Steve Burger, Tom Davis, Peter Gates, Steve Glusband, Vincent Monte-Sano, Bob Riggs, Heywood Shelley, Bill Sondericker, and John Whelan. The M&A group was further strengthened on January 1, 1999 by the addition of lateral partner Alan Bernstein and the promotion to partner of Rich Pierson, both of whom have extensive M&A experience.

Last year marked another high point for the volume, size, complexity and diversity of the M&A transactions we handled. During 1998, the firm worked on more than 50 M&A matters with an aggregate transaction value exceeding \$10 billion. A few of these deals which closed or were publicly announced in 1998 are described below.

- NYSE-listed **Avnet, Inc.**'s \$24 million acquisition of the Computer Solutions Division of London Stock Exchange-listed JBA Holdings plc.
- NYSE-listed **Bowater Inc.**'s negotiation of \$375 million contracts, in two separate transactions, for the sale of the Pinkham Lumber Company and over 1.6 million acres of Maine timberland (roughly twice the size of Rhode Island) owned by its Great Northern Paper, Inc. subsidiary to J.D. Irving, Limited and McDonald Investment Company, Inc.

- NYSE-listed packaging conglomerate **Continental Can Company's** \$345 million merger with an affiliate of NYSE-listed Suiza Foods Corporation.
- **Interactive Imaginations, Inc.**'s merger with Petry Interactive and Katz Millennium to form NASDAQ-listed 24/7 Media, Inc. internet advertising agency.
- Helsinki Stock Exchange-listed **Cultor Corporation's** joint venture with NYSE-listed Monsanto Company to form Advance Nutrition, L.L.C. for the development of animal feed additives through transgenic plant technology.
- London Stock Exchange-listed **Exco plc's** \$80 million acquisition of the broking business of Intercapital Group Limited and related acquisition by Intercapital of a 60% interest in Exco.
- Internet service provider **JavaNet, Inc.**'s \$15.8 million merger with an affiliate of NASDAQ-listed RCN Corporation.
- NYSE-listed **Playtex Products Inc.**'s acquisitions of Carewell Industries, Inc. (Dentax dental products) and Binky-Griptight, Inc. (Binky pacifiers).
- NYSE-listed **Pall Corporation's** \$50 million acquisition of Rochem, a Swiss-based maker of environmental filtration equipment; and its \$26 million investment in V.I. Technologies, Inc.'s business of inactivation of viruses and pathogens for decontamination of red blood cells and/or platelets.
- NYSE- and London Stock Exchange-listed **Sea Containers Limited's** \$3.6 billion joint venture with GE Capital to create GE SeaCo SRL, one of the world's largest container leasing operations.
- London Stock Exchange- and NASDAQ-listed **United News & Media plc's** £100 million demerger of its Garban plc brokerage operations; and its \$42.5 million tender offer to acquire Amex-listed market research company Audits & Surveys Worldwide Inc.



**Richard G. Pierson** has become a partner in the New York office. Rich practices general corporate law with emphasis on public and private mergers and acquisitions, representing buyers and sellers in negotiated stock and asset purchases, venture capital investments, joint ventures, initial public offerings and other public and private securities and debt offerings. Rich represents multinational corporate clients in complex domestic and international transactions, including transnational joint ventures, licensing, manufacturing, distributorship, and agency arrangements, intellectual property matters, and general commercial contracts. He received his J.D. from New York University School of Law in 1991, and his B.S. in Finance and Marketing *magna cum laude* from Boston College in 1988.

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## TRUSTS AND ESTATES

A significant segment of our work always involves assisting fiduciaries in the administration of estates. Carter, Ledyard & Milburn is assisting the fiduciaries of 48 estates, with a total of more than five billion dollars of assets. Many of the estates are exceedingly complex. Several involve actual or threatened litigation in the state courts and the Tax Court. Several hold significant unusual assets, such as works of art, closely-held businesses, and claims against other estates, to name a few. Two of these estates were featured in major articles in *The New York Times*.

A second significant area of the Department's work is rendering general advice to bank trust departments. The firm has acted as general counsel for **United States Trust Company of New York** for over 140 years, and has been called upon to give them advice on matters relating to their fiduciary activities. We have also, from time to time, been called upon to advise **Fiduciary Trust Company**, **Bessemer Trust Company**, **Merrill Lynch Trust Company**, **Federated Investors**, and **Chase Manhattan Bank**. We also advised **Metropolitan Life Insurance Company** about setting up a trust company, and **Union Bank of Switzerland** on the same subject.

Estate planning is always a major focus of the Department's activities; all members of the Department are very active in that area. On average, members of the Department prepare more than a dozen estate plans with documentation each month.

Several members of the Department spoke at various professional meetings, with Dick Covey beginning the year as he has for many years as the lead speaker at the Miami Institute on Estate Planning, Steve Lappert speaking at the 29th PLI Estate Planning Institute, and Toni Thomas speaking to a number of different groups. Members of the Department also contributed articles to various publications, ranging from *The New York Law Journal to Trusts & Investments*. *Practical Drafting*, published quarterly by United States Trust Company and widely recognized as the most sophisticated and innovative journal in the field, is authored primarily by Dick Covey, with help from Jerome Caulfield and Mike Frankel. It is now in its 17th year, and is *must* reading for all serious trusts and estates practitioners.

## TAX EXEMPT ORGANIZATIONS

The Tax-Exempt Organizations Group has an extremely active and sophisticated practice. Toni Thomas, the head of the Group, serves on an IRS regional liaison committee which advises the IRS on policy and practice issues important to the exempt organization community and learns from the IRS its audit and policy concerns.

We assisted many private foundations (from small family foundations to those with assets well in excess of \$100,000,000) with legal issues that arose from time to time. We advised a very significant international corporation as to compliance issues for its corporate foundation (**The Dannon Institute**), including a compliance audit for the foundation. We assisted **GPU, Inc.** in creating its corporate foundation, providing advice on structural issues regarding the representation of the parent company and its subsidiaries in a form that was satisfactory to the participants. Last year a number of family foundations required help in dispute resolution, which we provided in one case by compromise and in two other cases (of siblings and divorcing spouses) by dividing the foundation and creating new foundations. We represented several estates (including six estates in excess of \$300,000,000) with very large bequests to private foundations or other charities, providing advice on the operation of the private foundation rules in the context of estate administration and on structuring litigation settlements or transactions with family members or closely-held corporations.

We participated in creating a variety of new tax-exempt organizations, including some unusual ones. We assisted our client **The Andy Warhol Foundation for the Visual Arts, Inc.** in creating a new organization to assist individual artists in all aspects of the creation, production and display of works in the visual arts, with an aim of sharing in any resultant financial success to support other artists. We assisted **Bessemer Trust Company** with establishing a tax-exempt donor-advised fund, a Westchester village to set up a centennial celebration organization (**The Bronxville Centennial Celebration, Inc.**), and a group of jewelry designers to form a tax-exempt trade association to enter into agreements for trade shows in New York City.

The success of the stock and real estate markets created some interesting structural issues for tax-exempt organizations last year. Some publicly-supported organizations have seen their assets grow to such an extent that they risk becoming private foundations. We have advised three such organizations during the past year, as to the issues and tax options consequent to this change. We also advised two religious corporations concerning their commercial real estate.

Our experience in real estate and related tax-exempt financing was also called upon. We assisted **The American Institute of Mining and Metallurgical Engineers** in the sale of a large par-

cel of commercial real estate in New York City and a subsequent sub-lease for new premises. In the healthcare area, we provided real estate legal support for **Beth Abraham Health Services** and its affiliates, including representation in sales and purchases of property, contracts with architects and engineers for a new continuing care facility in Westchester County, new civic facility bond financing and on-going compliance for outstanding tax-exempt IDA financings. We represented the **National Audubon Society** in the substitution of the letter of credit issuer for its IDA bonds for its headquarters.

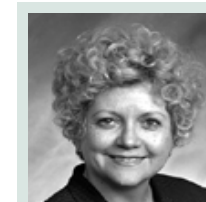
We advised foreign charitable organizations on questions of U.S. tax law, particularly where those organizations have or seek assets and investments in the United States: we assisted with structuring investments of foreign organizations in U.S.-based hedge funds and advised a Delaware charitable trust with a foreign trustee concerning its U.S. residency status for tax purposes in the face of a 1996 change in the tax laws that would have treated the trust as a foreign trust.

In the intellectual property law and licensing areas, we assisted **The American Institute of Chemical Engineers** in the creation of an affinity credit card and in contracts for sponsored technical research and licensing for plant safety software. We also advised the **Aitken Neuroscience Center** concerning the dissemination of its guidelines for treatment of brain trauma.

We also advise businesses on tax-exempt law. We were consulted by financial institutions concerning the services they propose to offer charitable trusts or private foundations, including tax advice on proposed fee arrangements and investments by a financial institution serving as a foundation trustee or investment manager, and advice concerning charitable trust issues in a financial institution's product offerings.

## PENSIONS AND BENEFITS

We advised clients of all sizes regarding the tax and ERISA aspects of their pension, 401(k) and welfare benefit programs. In addition to revising plan documents to reflect changes in the Code, regulations and IRS rulings, we assisted **GPU, Inc.** in a restructuring and conversion of their \$1 billion 401(k) program, as they switched to State Street as trustee, administrator, recordkeeper and manager for certain investment funds. We negotiated and prepared the trust agreement and services agreement with State Street, as well as investment management agreements with State Street and other fund managers. We designed and documented special severance arrangements, early retirement programs, and enhanced pension benefits for employees affected by the **GPU** plant divestiture program. We helped design and draft the documents for split-dollar life insurance arrangements for executives at **U.S. Trust** and **GPU**, did extensive work in planning and preparing documents for deferred compensation arrangements, stock options, and both cash-based and stock-based incentive compensation programs for many clients.



**Patricia Matzke** has joined the New York office as counsel. Pat focuses on ERISA issues in corporate transactions and advises on qualified pension plans, welfare benefit plans, executive compensation, defined benefit and defined contribution plan issues (nondiscrimination testing, fiduciary duties, early retirement windows, prohibited transactions, and reporting and disclosure requirements), and tax deferred annuities. She received her J.D. from Fordham in 1988, her M.A. in 1977 from NYU, and her B.A., *cum laude*, from St. John's in 1973.

## PRACTICAL DRAFTING AND THE INTERNET

As part of our service to subscribers of *Practical Drafting*, we have also created "Factors", which is actuarial software necessary for sophisticated estate planning.

Last fall, it was necessary to revise the interest rate table in the "Factors" program, since it only had slots going through the end of 1998. Modifying the original to extend the table through 1999 was only a mild problem. But distributing copies of the interim version to the several thousand users would have been a major problem if we had done it by sending out new diskettes: both because of cost and because of the ministerial

work in finding out addresses, manufacturing the diskettes, doing labels, etc.

Jerome Caulfield solved the problem by allowing users to download the new version from the CL&M Web Site! This was virtually cost-free and involved no further effort once the download pages were designed and posted. We advertised the availability of the new version in a stuffer sent along with the October issue of *Practical Drafting*. Subscribers were able to download the software at their convenience without the hassles and delays of "snail-mail" postal deliveries.

## IN COURT

Our Litigation Department knows how to try cases! We could not be more proud of our stand-up trial lawyers and the results they regularly deliver to our clients. In 1998, in addition to our normal litigation case-load, we won two major jury trials and one major commercial arbitration for our clients:

- Litigation partner Larry Carnevale achieved a multi-million dollar award in favor of a client based in Europe after fifteen months of hearings in an international commercial arbitration before the American Arbitration Association of New York. The case, the particulars of which must remain confidential, concerned relationships in the credit card industry and tested the viability of "best efforts" commitments in commercial contracts. Larry received substantial assistance from partner Bill Sloane, associate Jeff Boxer, and legal assistant Nina Westerman.
- Litigation partner Bill Sloane obtained a Federal jury verdict of over \$900,000 in favor of **Active Technologies, Inc., Vectronics Limited, and Rada Electronics, Ltd.**, Israeli companies doing business in the U.S. Active and Vectronics had sued Altera Corporation for Altera's wrongful termination of a distribution agreement. Bill, Peter Killough of our Washington office, and Ron Israel tried the case. Steve Glusband, our partner in charge of several Israeli high-tech companies, was invaluable in corporate and contract law aspects of the case.
- A team from several of our departments and practice groups won a \$16 million award, plus expenses of litigation, for the **City of Newburgh, New York**, against Central Hudson Gas and Electric Corporation. The jury award is the largest award ever for clean-up of a manufactured gas site. This case involved contamination from a former manufactured gas plant which Central Hudson had owned, and

which our client sought to have them clean up. During our four and one half year representation of the City of Newburgh, we have secured agreements that our client would not be responsible for any clean-up costs, that Central Hudson would install a clarifier at our client's wastewater treatment plant at no cost to our client, and that our client would participate in proceedings at the New York State Department of Environmental Conservation, which will set the standards for Central Hudson's clean-up efforts. Our team included environmental partner Cliff Case, environmental counsel Jean McCarroll, litigation partner Bill Sloane, and litigation associates Lorraine Doran, Simon Malko and Rina Yano, and legal assistant Bill Borenstein.

Other trial work continued. Litigation partner Bob Hoegle, counsel Mary Diemer and Jack Cahill, and associates Chris Boam and Peter Killough of our Washington office continued their defense of **Liberty Mutual Insurance Company** in a major insurance coverage action for bodily injury liability arising from exposure to asbestos-containing products. This action, which is pending in the U.S. District Court for the District of Columbia, involves six other insurance companies.

Theft of trade secrets or confidential information and enforcement of employment contracts is a burgeoning area for us. We handled a number of cases involving non-compete agreements in a variety of business areas including public relations, the recording industry and the broker-dealer securities industry. These fast-paced cases usually involve emergency relief procedures such as temporary restraining orders and preliminary injunctions. Larry Carnevale has handled many of these cases, and is often assisted by counsel Judy Lockhart and associate Jeff Boxer.

Our Washington office advised clients engaged in arbitrations and civil litigation involving telecommunications regulatory issues.

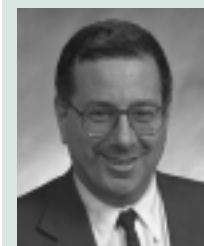
White collar criminal defense practice is another important area. Last year, we defended a global chemical manufacturer in connection with a Department of Justice anti-trust grand jury investigation. Litigation partner Larry Carnevale led the defense team which, over the life of the investigation, has involved a substantial portion of the firm's litigation staff. Bob McTamane, Chairman of the Corporate Department, gave substantial support on antitrust issues.



**Mary S. Diemer** has become counsel in the Washington, DC office. Mary's complex commercial litigation practice focuses on securities, telecommunications and banking matters. She received her J.D. *cum laude* from Boston University School of Law in 1988 and her B.A. *cum laude* from George Washington University in 1985.

## STRUCTURED FINANCE

Reflecting the increasing significance of structured transactions and securitizations to the financial markets, the firm's structured finance practice continued to expand in 1998. Building on its experience in representing **Sea Containers Ltd.** in its securitization of a portion of its container fleet in 1997 (and expanded in 1998), the firm has represented its corporate trust clients in a variety of transactions involving arbitrage between the fixed income municipal bond and the floating rate obligations and collateralized loan obligations and derivative securities based on bank loan obligations. It also began to represent one of the leading providers of management services for the special purpose entities which are used in many structured finance transactions.



**Aaron R. Cahn** has joined the firm as counsel in the New York office. Aaron represents banks, financial and other institutions in finance and loan transactions, recovery and enforcement litigation, foreclosures and replevin actions, restructurings, workouts, bankruptcy proceedings and related state and federal court litigation. Aaron has experience in commercial multi- and single-asset real estate bankruptcies, real estate foreclosures, workouts and restructurings. He has worked with both sellers and acquirors of debt and equity positions and assets of troubled, distressed and bankrupt entities. He has represented creditors in state and federal court litigation, including loan recovery, enforcement proceedings, secured loan litigation and the defense of lender liability, usury and modification claims. He received his J.D. from Brooklyn Law School in 1974 and his B.A. from Duke University in 1970.

## EMPLOYER CLIENTS

Navigating the numerous laws, rules, and regulations which govern the employment relationship is complicated. We help our clients with all of the legal issues and complexities that employers must deal with in the employment arena. Employment contracts present many problems and issues, and we have become very active in advising on them. We advise in the area of contractual infringement, or "poaching" of employees. In addition to our traditional broker-dealer clients in the financial industry, employers in other industries have begun to call upon us in this area, including information technology companies and media companies. In November, we sponsored the second annual "Raiding on Wall Street Conference" in conjunction with *Securities Week*. In addition to poaching issues, we advised on a number of other employment contract issues, including trade secrets, noncompete provisions, and other post-termination contractual provisions.

Disgruntled employees often raise claims of wrongful termination, employment discrimination, and even defamation. We represented employers in a variety of such

cases before agencies and courts. Most significantly, we are representing a number of defendants in an employment discrimination case brought by the former New York State Attorney General in connection with his high-profile efforts before the State elections in November to rid "Wall Street" of sexual harassment and other forms of discrimination.

We recommend that our clients take an active role in managing the legal problems of being an employer. For example, we worked with many clients to review and update their anti-harassment policies and employee manuals, as a result of two Supreme Court cases on sexual harassment decided last summer. We also advised many of our clients on the intricacies of disciplining employees and terminating employment. We advised several large clients concerning employment issues arising from corporate acquisitions, reorganizations and reductions-in-force. We provided advice to many of our clients on their benefit plans, including ERISA, health and pension plans.

## MARITIME

Carter, Ledyard & Milburn continues to be one of the few New York firms that offer full legal services to maritime clients. Transactions we handled in 1998 include:

- Represented partners in the sale of their joint venture interest in Manzanillo International Terminal, a container port in the Republic of Panama, to Stevedoring Services of America.
- Represented **American Marine Advisors** in the qualification of its subsidiary American Marine Securities as a U.S. registered broker dealer, and negotiated and documented a \$50 million credit facility with De Nationale Investeringsbank N.V. for use by our clients in making investments in shipping transactions.
- Represented **Ivarans Lines**, a Norwegian shipping company, in a stock and asset sale to a wholly owned subsidiary of Canadian Pacific. With the purchase of Ivarans Lines, CP acquired the Ivarans Lines business and brand name, its organization of some 250 people, mostly in the U.S. and Brazil, three services, nine chartered ships, a container fleet of 26,000 teu, and customer and supplier contracts.
- Represented a German shipowner in a dispute with an oil trader and time charterer who instructed the vessel to proceed to Iraq for loading. Upon arrival, the Iraqi state marketing organization refused to load the vessel because the Iraqi crude oil exports exceeded the provisions in the Oil for Food Program. The vessel waited for over 20 days before the charterer arranged for alternative employment and refused to pay for the vessel's detention. At arbitration in New York, the charterer argued that the failure to load was due to a force majeure event, and that it was not responsible for the vessel's detention. The arbitrators found the charterer liable for the vessel's detention and awarded damages and attorney's fees to our client.

## ENVIRONMENTAL PRACTICE

Our Environmental Practice group, headed by Steve Kass, Cliff Case and Jean McCarroll, had an exceptionally busy 1998, culminating in a successful jury verdict which Cliff, Jean and Bill Sloane (with the support of a team of dedicated associates) won in one of the longest Superfund jury trials since the enactment of the federal Superfund law in 1980. The Group also assisted clients in managing the environmental components of complex corporate and real property transactions in this country and abroad, securing permits for new water supply facilities, negotiating state and municipal benefits for our clients' New York City headquarters, carrying out our governmental clients' development projects and regulatory responsibilities, preserving rural open space and urban historic districts for environmental organizations, and overseeing complex environmental assessments for three new state-of-the-art golf courses.

In the Superfund litigation, we won a jury verdict of \$16 million for the **City of Newburgh, New York**, in December, 1998. The award is for remediation of coal tar contamination of riverfront property where the City operates its wastewater treatment plant. The contamination was caused by migration of wastes from a nearby former manufactured gas plant owned and operated by Central Hudson Gas and Electric Corporation. This is the largest award we know of for remediation of a site contaminated with manufactured gas plant wastes. This case is also discussed in our "In Court" article on page 3.

The group also continued to brief clients and professional associations on current developments in environmental laws affecting corporate trustees, securities offerings, and acquisitions. Jean McCarroll chaired the Environmental Law Committee of the Association of the Bar of the City of New York, and she and Steve Kass continued to write the regular Environmental Law column for the New York Law Journal. Steve also taught a seminar on international environmental law at Pace Law School, lectured at NYU's Wagner School on environmental aspects of corporate transactions and assisted the Natural Resources Defense Council in its efforts to help save the Rufiji Delta in Tanzania.

Our Corporate Department advises many issuers of securities, and we provide substantial advice on the tax consequences of those transactions. For example we advised a variety of investment funds, including publicly-offered funds (regulated investment companies and grantor trusts), common trust funds, hedge funds and other privately placed on-shore and off-shore funds. We gave tax advice on the launch of DIAMONDS and Sector SPIDERS on the American Stock Exchange, and helped structure other new securities products. We advised an exchange-listed client to convert to REIT status. Our Tax Department advised **GPU, Inc.** regarding several financial transactions, including an offer of approximately \$300 million of Trust Preferred Securities to be offered to the public in 1999, and an \$85 million total return equity swap that **GPU** entered into with Morgan Stanley to hedge certain of its investment portfolios.

Because many of the firm's clients are offshore, we frequently advise in the international tax area. We advised foreign issuers on the private placement of both equity and debt securities in the U.S. markets, worked with Swiss and Luxembourg tax advisers to devise a hybrid security for a large privately-held chemical company, and provided tax planning for a U.S. person who acquired a grand cru vineyard in Bordeaux and for the 1999 America's Cup Challengers syndicate.

## REAL ESTATE CLIENTS

The firm's Real Estate Department represents clients engaged in commercial leasing transactions, ground lease transactions, conveyances of real property, and financing transactions affecting real property (both permanent loans and construction loans). We provide advice to our clients on a wide range of related issues, including air rights transfers, regulatory approvals, joint ventures and industrial development bond financing. Two areas were particularly active in 1998: representation of landlords and tenants (including, in particular, financial institutions) in commercial leasing transactions, and representation of tax-exempt property owners. The firm represents two religious corporations with extensive land holdings in Manhattan, and also represents **Beth Abraham Health Services**, the **National Audubon Society** and **Westbeth Corp. Housing Development Fund Company, Inc.** in connection with real estate matters. In addition to significant leasing work, the firm advises on income tax issues and other matters that are of unique interest to tax-exempt organizations holding real property or otherwise engaged in real estate transactions.

Our leasing group has provided tenant representation to financial institutions and business corporations in some of the largest leasing transactions in New York City in recent years, and is familiar with the special needs and interests of such entities, including uninterruptible power supplies and other back-up systems, leases of roof spaces for satellite dishes, special requirements for data centers, options to expand, rights to assign or sublet, and rights to operate 24 hours a day, 7 days a week. The leasing group also has extensive experience with negotiation of "work letters" and other construction-related issues. In addition, the firm has represented tenants in negotiating with New York State, New York City and the State of New Jersey for tax abatements and other incentives in connection with leasing transactions.

In order to provide clients with representation on the wide range of issues presented by a complex commercial lease, in the course of lease negotiations Real Estate Department lawyers work with the Tax Department and the Environmental Practice Group, as well as firm attorneys with special experience in construction law and financing transactions.

During 1998, the firm worked on leasing transactions, representing both landlords and tenants, involving aggregate fixed rents of more than \$1.7 billion and more than 2.3 million rentable square feet. As one example, Joe Ryan and Barbara Brown represented a major financial institution in connection with a lease of three floors of office space, aggregating approximately 126,000 square feet, in a building currently being constructed by a major developer. The firm also represented **United States Trust Company of New York**, as trustee, in its lease of premises at 2 Broadway for the benefit of the Metropolitan Transportation Authority.

As an example of its conveyancing work in 1998, the firm's Real Estate Department represented a New York State agency in connection with the \$54,100,000 purchase from various limited partnerships of a multi-use complex consisting of an office and industrial building, a decked parking facility and a separate surface parking facility. The source of funds to purchase the complex was from the sale of tax exempt bonds and funds from the City of New York. The complex will be converted to educational uses over time, and the various selling partnerships had divergent and competing sales objectives. The matter required extensive negotiation and unusual due diligence investigations.

## TAX

Our Tax Department advised extensively on the tax issues arising in the deregulation of the electric utility industry, representing both formerly-regulated producers and independents in sales of nuclear and fossil fuel plants and buy-outs of power purchase agreements. In particular, we counseled **GPU, Inc.** and its subsidiaries on the tax issues relating to their generation plant divestiture program under which 25 of **GPU's** fossil fuel plants as well as their Three Mile Island Nuclear Generating Facility Unit 1 are to be sold to four different purchasers for an aggregate purchase price of nearly \$2.7 billion. In connection with the sale of TMI-1, we prepared IRS ruling requests regarding the federal income tax treatment of the transaction. We also assisted **GPU** in structuring securitization financing for future receivables relating to "stranded costs," including commenting on the relevant state legislation and preparing a request for IRS rulings. We also counseled **GPU International, Inc.** and its cogeneration project partnerships on tax issues involving the \$500 million restructuring of the projects' power purchase agreements with Niagara Mohawk Power Corporation.

## MEDIA & TECHNOLOGY CLIENTS

We represent dozens of technology-based clients ranging from start-ups to established, publicly-traded corporations. Our computer clients are engaged in developing and marketing hardware and software, web site development, internet service providing, broadcasting and marketing, and providing administrative, marketing and financial services to computing companies. Our media and telecommunications clients include broadcasters, cable operators and programmers, telecommunications carriers, service providers and resellers, satellite carriers, wireless carriers and equipment manufacturers. Our biotechnology clients include research institutes as well as drug and medical service manufacturers. Our client list includes **Advanced Telecommunication Network, Inc., Avnet, Inc., CastleNet LLC, CIDCO, Inc., Corechange Inc., Eltek Ltd., Encore Media Group LLC, Fox Sports Net, Interis, Inc., ISG International Software Group Ltd., JavaNet, Inc., Kaneka Pharma America Corp., Magic Software Enterprises Ltd., MER Telemanagement Solutions Ltd., MGM Networks Latin America LLC, Redwood Partners, Screaming Media.Net, Inc., Trinity Biotech plc, United News & Media plc** and **Vicon Fiber Optics Corp.** Some are managed from offshore, particularly from Israel and the United Kingdom.

We often guide a start-up through its initial formation, financing, growth, and securities offerings. We regularly act as the general counsel for established clients by providing corporate, contract, employment, real estate, technology-based litigation, securities, intellectual property and regulatory law services. Other clients need licensing and intellectual property advice or representation before state and federal government agencies such as the FCC or the FDA.

In 1998 we handled the following media and technology matters:

- Represented **Interactive Imaginations, Inc.** in its merger with Petry Interactive and Katz Millennium Interactive Marketing to form **24/7 Media, Inc.**, one of the leading Internet media companies in online advertising services.
- Represented **Fusion Telecommunications International, Inc.**, a provider of international and domestic telecommuni-



**Alan J. Bernstein** has joined the firm as a partner in the New York office. Alan's corporate practice focuses on transactions for high technology companies. His work includes mergers and acquisitions, representing buyers and sellers in negotiated stock and asset purchases; public offerings and private placements, representing issuers and underwriters in initial public offerings, secondary offerings, and venture capital investments; and technology licensing, joint ventures and corporate partnering arrangements. He was formerly a partner with Bingham Dana LLP. Alan received his J.D. from Boalt Hall School of Law, University of California at Berkeley in 1983 and his B.A. from Stanford University in 1976.

cations service in several matters, including the acquisition of Siesta Telecom (a provider of pre-paid calling cards) and the acquisition of the assets of International Communications Group, Inc. (a reseller of international and domestic telephone services).

- Represented **Bottle Rocket, Inc.** in licensing transactions involving advertising-supported content distribution through premier destination and portal web sites, and in connection with equity financing of its business.
- Represented several telecommunications service providers, including **RCN Corporation** and **CTC Communications, Inc.**, in obtaining approvals from the FCC and/or from various state public utility commissions for proposed corporate reorganizations. CL&M also represented telecommunications providers and resellers in obtaining initial authorizations from the FCC and state public utility commissions to provide service, and in several complaint and enforcement proceedings.
- Licensed financial analytics software to Bridge Information Systems, for distribution on their financial network, generating substantial license fees for our client over a multi-year term.
- Represented **ART Advanced Recognition Technologies Inc.**, a developer of speech and handwriting recognition soft-



**John F. Cahill** has joined the firm as counsel in the Washington, DC office. Jack was formerly Group Counsel at USF&G Corporation where he led the legal group responsible for handling national environmental and toxic tort related insurance coverage and defense. He also managed the company's Information Technology segment and served as co-chairman of USF&G'S Year 2000 Action Committee. Jack will focus on complex commercial litigation and regulatory matters emphasizing information technology, telecommunications, environmental, and related insurance issues. He received his J.D. *cum laude* from Georgetown in 1983, his M.S. in Microbiology from University of Virginia in 1977, and his B.S. from Manhattan College in 1974.

ware, in a \$10 million private securities placement in the United Kingdom.

- Assisted **SCANA Corporation** in Federal Communications Commission investigation concerning licensing irregularities within a subsidiary, which SCANA had voluntarily reported to the Commission. SCANA was permitted to retain essential FCC licenses and to continue to invest in other telecommunications ventures subject to FCC jurisdiction.
- Negotiated and concluded for **Netlink USA** a settlement and compliance agreement with the National Association of Broadcasters, ABC, CBS, FOX and NBC, their network affiliate organizations, and several hundred broadcast stations. The agreement established the first industry-wide methodology for satellite carriers to comply with the Satellite Home Viewer Act when delivering distant network signals to home satellite dish owners.
- Advised **Liberty Media Corporation** regarding regulatory issues and Federal Communications Commission licenses in connection with the ATT/TCI merger.

## HEALTHCARE CLIENTS

In 1998, our Healthcare Group advised on virtually all of the legal issues that face a hospital or other healthcare provider:

One of the biggest issues is financing for new construction or renovation. We advised on a number of securities offerings sponsored by healthcare clients, including advice to **Comprehensive Care Management Corporation** on two civic facility bond financings from the New York City Industrial Development Agency totaling \$6.5 million, advice to **Park Housing Development Fund Company** in closing an \$8.2 million capital advance from the U.S. Department of Housing and Urban Development to construct a 95-unit housing project for the elderly in the Bronx, and advice to **Beth Abraham Health Services** on compliance with the requirements of its outstanding Industrial Development Authority financing.

Once financing is in place, healthcare providers require extensive legal services in planning and implementing construction projects. In this vein, we advised Beth Abraham Health Services in the planning phase of the development of its continuing care community in Hastings, New York.

Financing for this project is expected to begin later this year.

Third party reimbursement for medical care has sparked controversy, as Medicare and other government agencies have challenged reimbursement claims by healthcare providers. We advised several hospitals in this area.

Hospitals sometimes expand their services through joint service agreements. We advised **Lawrence Hospital** and its affiliate, **LC Service Corporation**, in terminating its medical office facility in Riverdale, which it jointly financed and operated with Columbia-Presbyterian Health Systems. We also advised the **Aitken Neuroscience Center** on a proposed affiliation agreement with Cornell Medical Center/New York Hospital.

And of course, we also provided a variety of legal services to our healthcare clients, including intellectual property (advised the Aitken Neuroscience Center on IP issues related to its guidelines for treating head injuries), income tax (advised on the new intermediate sanctions tax rules affecting exempt organization officers and directors), and estates law (advised Lawrence Hospital on bequests).

## IN THE NEWS - ANTITRUST

Bob McTamane, the head of our Corporate Department, has been widely quoted by reporters on the Microsoft antitrust case. His view provides a fresh perspective: "At the end of the day, antitrust law should be measured by the effects on consumers in terms of product quality and prices. If Microsoft is a monopolist, which I don't think it is, it would have price control and its browser would sell for a lot more than \$50. Microsoft has very effectively competed in a competitive environment with a good product that people like." (*Dow Jones News Service*). *Business Week* and other news organizations also quoted Bob. His op-ed pieces regarding the government's case, or rather its lack of a case, against Microsoft appeared in *The New York Times* and *The National Law Journal*. "When this case is over, the software industry will look nothing like it does today, but Microsoft and the poor taxpayers will have made the lawyers rich debating who makes the best videotape," Bob wrote to *The New York Times*.

At the turn of the last century, Carter, Ledyard was famous for its defense of John D. Rockefeller and Standard Oil. A century later, we are still speaking our minds in this critical regulatory field.

## PROFESSIONAL ACTIVITIES

Our attorneys love what they do. And they love to talk about it. As always, we wrote articles, hosted conferences and roundtables, and gave speeches in 1998:

- **Steve Kass** was a panelist in December at the Americas Society and Council of Americas's program "International Justice vs. National Sovereignty: Implications of the Pinochet Case." Steve was also actively involved with Human Rights Watch and spoke out about the Russian Naval Captain on trial because he exposed nuclear safety violations.
- **Bill Sondericker** was a member of the AAA Committee on Rules Revision that promulgated amendments to the AAA Commercial Arbitration Rules that took effect on January 1, 1999.
- **Tom Whalen** and **Bob Riggs** teamed up with *Seatrade Review* in December to host the publication's first ever "Ship Finance Roundtable." The occasion brought together shipping industry leaders to discuss the current climate and forecasts for ship financing. The roundtable transcript appeared in the February 1999 issue of *Seatrade Review*.
- In November, the firm partnered with *Securities Week* to sponsor the second annual "Raiding On Wall Street—Are Your Most Valuable Assets Protected?" conference. The program focused on employee recruitment and retention issues in the securities industry and was accredited by the New York State CLE Board for 6 credit hours. **Larry Carnevale**, the conference chairman, reviewed recent industry developments and **Bob McTamanev** provided advice on drafting employment agreements.
- In March, **Judy Lockhart** was a faculty member of the New York City Bar's program "Defending Depositions: A Primer for New Attorneys."
- Throughout the year, **John Whelan** lectured frequently on offshore mutual funds and other securities-related issues at the New York Institute of Finance.
- **Howard Barnet** delivered a speech entitled "Need-to-Know Tax Aspects of Structuring an Acquisition or Sale of a Privately Held Business" at the Investigative Services and Security Industry's M&A Forum in April.
- **Steve Kass** and **Jean McCarroll** continue to write the "Environmental Law" column in *The New York Law Journal*. **Cliff Case** also contributes articles on environmental matters on a regular basis.
- **Gary Sesser** and **Tom Bardo** wrote "Shipping Deregulation Speeds Up" for *Lloyd's List*. The article explained the importance of the U.S. Ocean Shipping Reform Act.
- **Bob Hoegle**, with help from **Tom Bardo** and **Chris Boam**, published "Foreign Ownership Caps and the WTO Agreement: The Movement Toward 'One Size Fits All'" in *CommLaw Spectus: Journal of Communications Law and Policy*. Bob also participated in "The Practice Group," a roundtable of six experienced communications practitioners hosted and published by that journal.
- **Mary Diemer**, Associate Editor of *Litigation News*, which is published by the ABA's Litigation Section, continued her bi-monthly contributions to that publication of practical interest to litigators.

## OFFICE EXPANSION

Our midtown office is relocating to new and expanded conference center and office space on the 41st floor at 570 Lexington Avenue, between 50th and 51st Streets. The new office should open around April 1. It will have three attorney offices and three conference rooms, and will be used for convenient client meetings, presentations and seminars in the midtown area. The "look" of the office design and furniture will be in keeping with the building, which has been called one of the city's best examples of Art Deco architecture.

The next construction project will be the renovation and reconfiguration of our offices at Two Wall Street and the buildout of the 19th floor, which we have just leased. When this work is completed, we will have nine contiguous floors in the building. Adding an additional floor will enable us to expand our conference facilities and add additional attorney office space. We have also taken a floor in the concourse of the building, for use as "war rooms" for large litigation projects.



## ALUMNI NEWS

In May 1998, the firm hosted an alumni cocktail party at the New York Yacht Club. More than 100 current and former CL&M attorneys attended, with the most senior alumnus being **Morgan Ames**, who was with the firm from 1947 to 1949.

We are pleased at the success that our former colleagues are enjoying. Here are a few:

**Jo Ann Engelhardt** was named President and Chief Executive Officer of Merrill Lynch Trust Company-Florida in May.

In April, **Robert Ferris** became Managing Director of Carton-Iseman Capital, Inc., a New York City based private equity group.

**Eric Freedman**, who is Assistant General Counsel of Public Utility District No. 1 in Everett, Washington, finds practicing law for an electric utility challenging since the industry has undergone massive changes.

*Crain's New York Business* profiled **Stanley Grayson** in October when he was selected to head the Public Finance Department at Prudential Securities. It is envisioned that under his guidance Prudential Securities will be back in the top 10 of the municipal bond business. *Crain's* stated that Mr. Grayson is "the top-ranking African-American working in muni bonds."

**Ned Hetherington**, who is Vice President and General Counsel of Sea Containers Ltd., and **Roz Krakauer**, who is consult-

ing counsel to Sea Containers, were assisted by our firm in 1998 with the GE SeaCo joint venture with GE Capital and the acquisition of Express Navigation Inc.

**Ralph Johanson**, who is Managing Counsel of Corporate, Finance & Securities at Mobil Corporation, has been deeply involved in negotiating and implementing the merger between Mobil and Exxon that will create the world's largest private corporation.

**Jerry McIntyre** is Senior Vice President for Business Development and General Counsel of Geneva Pharmaceuticals Inc., a subsidiary of Novartis A.G.

**Arnie Nemirow** is Chairman, President and Chief Executive Officer of Bowater Incorporated. During the last six months, we have represented Bowater in negotiating the sale of substantial timberland in Maine to affiliates of J.D. Irving, Limited and McDonald Investment Company, Inc.

**Thomas O'Keefe**, President of Mercosur Consulting Group, published a book entitled *Latin American Trade Agreements*.

**Sally Ganong Pope** is currently President of the Academy of Family Mediators, the largest international professional association of mediators. She was also a member of the team that designed the mediation training for the United States Postal Services REDRESS Mediation Program for EEOC Cases. She continues to act as a mediator and trainer for the Postal Service.

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Visit us on the web for firm history, news and events, attorney profiles, recruiting, and client links. We also use our web site to distribute articles and advisories on changes in the law. For example, Jerome Caulfield placed on our web site the actuarial software which we distribute as part of *Practical Drafting*, the estate planning journal. A more complete discussion of this interesting use of the internet is on page 2.

You can also contact any of our attorneys by email. Use the last name of the intended recipient and "@clm.com."

CARTER, LEDYARD & MILBURN

New York • Washington, DC

2 Wall Street • New York, NY 10005 • 212-732-3200 • Fax: 212-732-3232  
1350 I Street, NW • Washington, DC 20005 • 202-898-1515 • Fax: 202-898-1521  
Email: info@clm.com • Web: www.clm.com