

2000 YEAR IN REVIEW

To Our Clients and Other Friends:

We love to practice law. We take pleasure in the analytical challenges presented by various fact patterns, the challenge of achieving a client's goals within the constraints of applicable law, the tension between theory and actuality in the marketplace. Through it all, however, we never lose sight of one of the true pleasures of the profession: the process of learning about our clients, their businesses, the industries they are in, the challenges they face, the customers they seek. This is our window on the world, through which we watch the economy in general and individual industries in particular; emerging products and their impact on our lives; tensions between the public sector and the private sector and how they are resolved; business models and their implementation; and new

kinds of property and their value. In this *Year in Review*, we would like to share with you some of what we have seen, some of what we have done, and some of what we have learned, so that you may experience some of the pleasure that we have taken in being a part of our clients' lives and businesses. These pages reflect not only how our clients have grown (or, in the case of new enterprises, come to life), but also the initiatives they have undertaken and the challenges they have faced and how they have grappled with them. Hopefully you will be impressed, and in some cases inspired, by what our clients have done; we know we are.

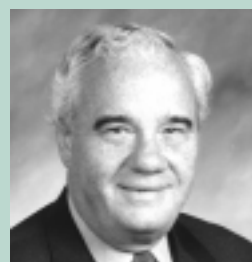
Carter, Ledyard & Milburn

EXPANDING INTELLECTUAL PROPERTY GROUP

(For a report on our growing IP practice, see "Intellectual Property" on page 2.)



Rose Auslander joined Carter, Ledyard's New York office in September. Rose received her J.D., *magna cum laude*, from New York University School of Law, where she was articles editor of the *New York University Law Review*. She received her B.A., *magna cum laude*, from the City University of New York. Before joining us, Rose was a litigation associate for six years at the intellectual property boutique Fross Zelnick Lehrman & Zissu, and was a litigation associate for two years at Cravath, Swaine & Moore.



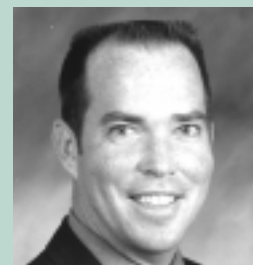
L. Lawton Rogers III, founder of Rogers & Killeen, has specialized in intellectual property law for over thirty years and is recognized in the Martindale-Hubbell Bar Register of Preeminent Lawyers. He has an LL.M. in Patent Law and Trade Regulation from George Washington University School of Law, is a graduate of Georgetown University Law School, and has an Electrical Engineering degree from the University of South Carolina. Lawton has been active in the litigation of intellectual property rights, including patent, trade dress, trade mark, trade secret, unfair competition, domain name and antitrust cases. He is admitted to the Bar in the District of Columbia, Virginia and the United States Patent & Trademark Office.



Mark C. Comtois is active in both the acquisition and litigation of intellectual property rights, principally in the telecommunications and wireless arts. Mark was formerly a partner at Rogers & Killeen and served as a Nuclear Submarine Officer for six years after graduating with a Mechanical Engineering degree from the U.S. Naval Academy. He obtained extensive industrial experience before receiving his J.D. from the George Mason School of Law.



D. Joseph English is active in both the acquisition and litigation of intellectual property rights, principally in the halide lighting and metal-working arts and the television industry. Joe was formerly a partner at Rogers & Killeen and served as a Nuclear Submarine Officer for eight years after graduating with a Mechanical Engineering degree from the U.S. Naval Academy. He received his J.D. from Catholic University, Columbus School of Law.



Patrick D. McPherson is presently active in both the acquisition and litigation of intellectual property rights, principally in telephony and telecommunications. Pat was formerly a partner at Rogers & Killeen and served as a Nuclear Submarine Officer for seven years after graduating with a Naval Architecture degree from the U.S. Naval Academy. He received his J.D. from Catholic University, Columbus School of Law and spent two years in the market regulation division of the N.A.S.D.

FIRM WINS WATERSHED TAX CASE

The gift tax cost of establishing a Grantor Retained Annuity Trust ("GRAT") dropped last year thanks to the arguments Dick Covey and Jerome Caulfield made to the U.S. Tax Court on behalf of Sam Walton's sister-in-law in *Walton v. Commissioner*.

GRATs are trusts established for a fixed term (typically, two years) under which the trust grantor retains the right to an annuity payment. The device enables the grantor to transfer a portion of the future appreciation in the value of the trust property to descendants inexpensively. To the extent the property transferred to the trust is worth more than the value of the retained annuity, however, the grantor has made a taxable gift.

Mrs. Walton's GRATs provided that the annuities would be payable to her for two years and that, if she died during that term, the annuities would continue to be paid to her estate. An IRS regulation directly on point said that the term annuity had to be valued as an annuity for the shorter of two years or the period of time ending with Mrs. Walton's earlier death. The regulation had the effect of decreasing the value of the annuity and increasing the taxable gift.

Dick and Jerome argued that, notwithstanding the IRS regulation, the retained annuities should be valued as term annuities that would be payable in all events. The Tax Court agreed, holding that the IRS regulation in question — Reg. §25.2702-3(e) (Example 5) — was an invalid interpretation of the statute enacted by Congress.

Under the *Walton* decision GRATs can now be truly "zeroed out" — created with no gift tax cost at all — by structuring the retained annuity as one that is payable in all events for the entire term. Completely zeroing-out would not be possible if Example 5 were still valid.

INTELLECTUAL PROPERTY

Befitting the start of a new Millennium, we made a giant leap in the area of technology and intellectual property in 2000. Rose Auslander, a Counsel who focuses on copyright, trademark and licensing matters, joined our New York office in September, and all seven attorneys from Rogers & Killeen, an established, full-service intellectual property boutique, joined our Washington office in November. The Washington group is led by Lawton Rogers and his colleagues Mark Comtois, Joe English and Pat McPherson. Intellectual Property now represents one of our largest practice groups.

Copyrights, Trademarks and Licensing in New York. Rose Auslander has represented record label, television, publishing, fashion, financial service, Internet-related, and consumer product clients in a variety of unfair competition, trademark, trade dress and copyright disputes. Among her successes was a victory in a case of first impression on surname marks in the Second Circuit, *Lane Capital Management, Inc.*

Since joining us, Rose has been extraordinarily busy with a variety of important cases. She has represented our client Sweden's **TT Sounds Good AB** in seeking injunctive and monetary relief from the infringement and dilution of its METHODS OF MAYHEM mark by heavy metal musician Tommy Lee, MCA Records and Universal Music and Video Distribution. Expedited trial is scheduled for April 2001.

Since taking over the defense of the German brewer **Warsteiner Brauerei** (the maker of Eisenbeck beer) against infringement and dilution claims by Brauerei Beck following a decision by the U.S. Patent and Trademark Office in favor of Brauerei Beck, Rose and associate Peter Killough have successfully opened the record for extensive discovery of third party use of the plaintiff's mark, Beck's. Trial on Warsteiner's appeal of the PTO decision is expected to be set for later this year.

Another music industry client, Sweden's **Ejay AB**, turned to us to help combat a pornographic website that had been posted under an infringing name. We succeeded in shutting down the website without resort to litigation. We also represented virtual reality innovator **VI[Z]RT, Ltd.** of Israel in successfully negotiating an agreement for the installation of their display system at the New York Stock Exchange.

Full-Service IP (including patents) in Washington, DC. The Rogers & Killeen group's domestic and foreign practice includes all phases of patent, trademark, copyright, trade secret, unfair competition, domain name dispute, computer and internet law, including both acquisition and litigation. Primary technical expertise is in telecommunications, wireless communications, computer software, semiconductors, fiber optics and lighting. Trade identity emphasis is on the entertainment and television industries.

The leader of the group is Lawton Rogers. Lawton has specialized in intellectual property law for thirty years. In addition to three associates, Lawton brought with the practice three experienced partners: Mark C. Comtois, D. Joseph English and Patrick D. McPherson.

With the addition of this group, we offer comprehensive intellectual property services including:

- **Intellectual property audits** We assist clients in creating cohesive strategies to protect intellectual property rights both domestically and abroad, to evaluate intellectual property portfolios in acquisitions and mergers, and to draft agreements for joint ventures and other cooperative business efforts.
- **Patents/Technology Counseling** We prepare and prosecute patent applications domestically and abroad through an ex-

tensive network of foreign associates, evaluate the risk of infringement of the intellectual property rights of others, assist in design-around efforts, and negotiate licenses.

- **Trademarks** We assist clients in businesses of all kinds with: *Audits:* We help clients ensure proper use and marking of their own trademarks and copyrights and those of others, and maintain proper protection of rights of publicity. *Clearance:* We work with our clients to clear, register, and protect their trade identifiers: company names, house brands, product marks, packaging, product and package configurations, sounds and scents. We clear and obtain domain name registrations and integrate their protection with our clients' trade identifiers. *Registration:* We prosecute our clients' trademark applications in the U.S. Patent and Trademark Office, including responses to Office Actions and to opposition and cancellation proceedings. Our attorneys coordinate worldwide trademark filing, licensing, and protection strategies through our extensive network of foreign associates. *Customs:* Our attorneys are well versed in U.S. Customs Service procedures and have prevented the importation of goods bearing infringing marks. *Licensing:* Our attorneys also assist clients in developing their marketing strategies and prepare agreements relating to franchising and other distribution of their products.
- **Copyrights** *Copyright Registration, Licensing and Litigation:* We identify, register, license and protect copyrighted works for clients in a wide variety of areas — computer software, written and other artistic works, character rights, motion pictures, still photography, television, recordings, fashion, financial services, consumer products, web site design and new forms of property interests arising from advances in technology and communications. *Software Licensing:* We have extensive experience in the transfer and licensing of software technology, handling negotiations ranging from tens of thousands, to tens of millions, of dollars, and representing both licensors and licensees. We have negotiated licenses for technology as diverse as financial analytic software to be transmitted over the Internet; sports-related software; word processing software for the visually impaired; and telecommunications technology for a government telephone system.
- **E-commerce** Our attorneys keep pace with intellectual property in e-commerce, one of the most volatile areas of law today. We file and defend UDRP proceedings and anticybersquatting and other e-commerce related actions as an integral part of our clients' trade identity strategies, and have successfully shut down infringing web sites.
- **Litigation** We assert and defend our clients' intellectual property rights in state and federal courts and government agencies throughout the United States and provide the necessary support to our network of foreign associates in litigation overseas. To protect our clients' valuable trade identifiers, we review watch service notices and send cease and desist letters to police potential third party uses. We have extensive experience with the trial and settlement of U.S. Patent and Trademark Office and federal court actions, conducting discovery and defending or bringing temporary restraining order, preliminary injunction, summary judgment, and other motions. As an example, before joining Carter Ledyard, the Rogers & Killeen group represented the defendant in *Emergency One v. American FireEagle*, a trademark infringement action. The group overturned a jury verdict in favor of the plaintiff on the issue of whether the plaintiff had abandoned its trademark. This case has been remanded.

WASHINGTON OFFICE

The administrative and litigation practices of the firm's Washington Office continue to grow, serving more clients with more complex problems.

The Telecommunications Practice Group represented **Liberty Media** and its affiliates to address state and federal telecommunications issues arising from a tender offer for the shares of Ascent Entertainment Group, Inc. (\$385 million); the acquisitions of Four Media Company, Video Services Corporation (\$125 million), a 9.9% stake in IDT Corporation (\$128 million) and certain assets of Group W Network Services, a division of Viacom, Inc. (over \$100 million); and the restructuring of Telemundo Communications Group, Inc. Presently, the group is representing Liberty Media in connection with its spin-off from AT&T. Attorneys in the group acted as special counsel for **Liberty Digital, Inc.** in its acquisition of a 50% interest in Game Show Network, LLC. The firm also continued its representation of competitive local exchange carriers (CLECs) and long-distance resellers in state and federal regulatory matters.

Members of the firm's Media & Technology Practice Group continued their representation of domestic and international programmers in the acquisition and distribution of their programming services. During the past year, the firm has represented numerous programmers, including **BET, Fox Sports, Fox Family, MGM Networks Latin America, Odyssey, Starz Encore Group LLC, and Telemundo**, in negotiating and concluding distribution agreements with virtually every major cable operator in the United States, as well as DIRECTV and Echostar. Members of the group also represent **Digital Latin America**, which is developing a digital content and aggregation uplink and distribution system for cable operators throughout Latin America.

On behalf of **Allegiance Telecom, Inc.**, attorneys in the firm's Litigation Department initiated significant civil actions against AT&T and Sprint in the United States District Court for the District of Columbia. Allegiance seeks to recover millions of dollars in unpaid long-distance access charges, and it has successfully resolved its dispute with Sprint. The Insurance Practice Group assisted **Liberty Mutual Insurance Company** in substantially resolving a major asbestos coverage action which has been pending for more than a decade in the United States District Court for the District of Columbia.

The Food, Drug & Medical Device Practice Group has continued to advise clients on a wide range of issues before the Food & Drug Administration, including developmental drugs, medical devices, dietary supplements, indirect food additives, biologic products and new animal drugs. We obtained approvals of investigational new drug applications and pre-market approval supplements during 2000.

Finally, the Immigration Practice Group has resolved numerous immigration issues for employees of firm clients, their families, and others. The group has handled a wide variety of visa and employment applications and petitions.

INVESTMENT MANAGEMENT

Our investment management practice continued to grow in 2000. Examples of our activities included:

- Continued development of ETF products with the **American Stock Exchange**, including exploration of cross-listing opportunities on foreign stock exchanges.
- Obtained SEC exemptive relief and finalized registration in connection with the launch of **Barclays Global Investors'** new family of exchange-traded funds ("ETFs") known as **iSharesSM**.
- Finalized SEC relief concerning the creation of **VI-PERSTM**, an exchange-traded fund class of **Vanguard[®] Index Funds**.
- Filed SEC exemptive application for **ProFunds** in connection with the establishment of an ETF Share class. Many of these ProFunds seek a specified multiple of the performance of their targeted equity security indexes.
- Consulted in the development of two new ETF fund families for **Nuveen Investments**: an equity fund based on the Individual Investor America's Fastest Growing Companies IndexTM and a fixed-income product based on the U.S. Treasury indexes published by Ryan Labs Inc.
- Monitored closely the SEC comment process in connection with a new SEC rule regarding mutual fund independent directors and provided advice on corporate governance issues.
- Continued our representation of major financial institutions providing stable value products and mutual funds.
- Provided advice to non-U.S. issuers regarding their status under the Investment Company Act of 1940.
- Provided advice regarding domestic and off-shore hedge funds and on-going representation of foreign investment companies in connection with their offerings to sophisticated U.S. investors.
- Provided advice in connection with codes of ethics, compliance and operational issues for investment companies and co-mingled investment vehicles and the application of the Investment Advisors Act of 1940, and its rules.
- Continued significant representation of unit investment trusts ("UITs"), both as issuer's counsel to **UBS PaineWebber** and as counsel to **Chase Manhattan Bank** as trustee for many UIT issuers.



Elected partner in December, **Mary Joan Hoene's** practice focuses on investment management and securities law. She has extensive regulatory, corporate, registration and litigation experience with investment companies, investment advisors, and their affiliates. Before joining Carter, Ledyard in 1999 as Counsel, she had positions with AXX Financial, Inc., American International Group and Mitchell Hutchins Asset Management Inc. She was also Deputy Director of the Division of Investment Management at the Securities and Exchange Commission. Mary Joan received her J.D. in 1975 from the University of Notre Dame School of Law and her B.A. in 1970 from Seattle University.

M&A/SECURITIES

Despite difficult stock market conditions for much of the year, 2000 marked another very active period for our clients in the merger and securities markets. Transactions handled by the firm's Corporate Department included public and private mergers, tender offers (including several "going private" transactions), stock and asset purchases, leveraged buyouts, venture capital investments, joint ventures, strategic alliances, and equity, debt and investment fund offerings. Clients from around the globe sought out the transactional experience which represents Carter, Ledyard's core service offering to corporate clients. During 2000, we:

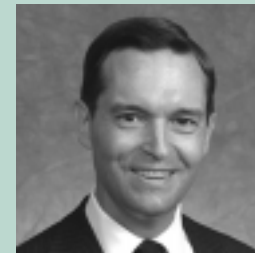
- Represented **Avnet, Inc.** (NYSE: AVT) in connection with its \$140 million stock-for-stock acquisition of NASDAQ-listed Savior Technology Group Inc.; its acquisition of European distributor Eurotronics B.V.; and \$935 million of public debt offerings to finance its growth.
- Represented **Bowater Incorporated** (NYSE: BOW) in connection with its \$380 million acquisition of Newsprint South, Inc.
- Represented **Pall Corporation** (NYSE: PLL) in connection with its \$200 million revolving bank credit facility; in connection with its \$100 million private placement of long-term debt securities; and in connection with its 15 million Euro acquisition of an Italian manufacturing facility from Instrumentation Laboratory SpA.
- Represented **United Business Media plc** (formerly United News & Media plc) (LSE: UNWS.L; NASDAQ: UNEWY) of the U.K. in connection with its \$520 million sale of consumer publishing subsidiary United Advertising Publications and in connection with its \$220 million sale of stock photography subsidiary Visual Communications Group.
- Represented Ireland's **Spectel Ltd.** in connection with its \$30 million acquisition of the Multilink teleconferencing systems subsidiary of PictureTel Corporation.
- Represented Israel's **Forsoft Ltd.** in connection with a \$43.6 million going private tender offer by Formula Systems (1985) Ltd. and Israel's **Home Centers (DIY) Ltd.** in connection with a \$9.8 million going private tender offer by Bilu Enterprises (H.C.) Ltd.
- Represented **SeraNova, Inc.** (NASDAQ: SERA) in connection with its \$125 million stock-for-stock merger with India's Silverline Technologies Limited (NYSE: SLT), the first acquisition of a U.S. publicly-traded IT services firm by an Indian IT company.
- Represented **Hampstead International Realty, S.A.** in connection with its \$32.5 million acquisition by Burberry's.
- Represented Israel's **Magic Software Enterprises Ltd.** in connection with its \$100 million follow-on public equity offering and its acquisition of CoreTech Inc.
- Represented Bermuda's **Orient-Express Hotels Ltd.** in connection with its \$218 million IPO (see sidebar for details).
- Represented **Priority Air Express, Inc.** in connection with its leveraged buyout by Berwind Financial Group arranged by investment bankers at Sperry Mitchell & Company, Inc.
- Represented shareholders of **Bridge 3 Corp.** in \$3.3 million sale of shares to Symbol Technologies Inc.

ORIENT-EXPRESS

One highlight of our securities practice in 2000 was the \$218.5 million primary and secondary initial public offering in the U.S. and overseas, and the New York Stock Exchange listing, of class A common shares of **Orient-Express Hotels Ltd.**, a Bermuda company which until the IPO had been a wholly-owned subsidiary of our client **Sea Containers Ltd.** Merrill Lynch and Lazard Frères & Co. were the joint lead managers of the offering, which closed in August.

Orient-Express Hotels Ltd. (NYSE: OEHL) is a hotel and leisure company focused on the luxury end of the leisure market. It currently owns and/or operates 28 highly individual deluxe hotels worldwide – including the Hotel Cipriani in Venice, the Hotel Splendido in Portofino harbor on the Italian Riviera, the Windsor Court in New Orleans and the Copacabana Palace Hotel in Rio de Janeiro. It also owns and/or operates six tourist trains including the historic Venice Simplon – Orient-Express, a river cruiseship called the Road to Mandalay in Burma, and two restaurants including the '21' Club, the famous former speak-easy in New York City.

The IPO was of particular interest because the resulting partial separation of Sea Containers and OEHL had to be structured in a manner consistent with the limitations imposed by the indentures relating to Sea Containers' high-yield public debt securities. Also in connection with this separation, we prepared agreements between OEHL and Sea Containers for separating OEHL's business operations from Sea Containers' other businesses and for transferring to OEHL all of Sea Containers' subsidiaries that related to Sea Containers' hotel and leisure business and that were not already subsidiaries of OEHL. Other agreements we prepared covered various post-IPO ongoing relationships between Sea Containers and OEHL, such as the provision by Sea Containers to OEHL of financial, legal and accounting services, office space, insurance coverages, pension programs and information technology.



Stephen V. Burger was elected partner in December. Steve's practice consists of a broad range of corporate and securities work, focusing on public offerings (including the Orient-Express IPO featured above), shelf registrations, private placements, mergers and acquisitions, public company reporting and U.S. securities law regulation of offshore securities transactions and foreign companies. Steve received his J.D. in 1980 from Rutgers University School of Law/Newark, and his A.B., with highest honors and Phi Beta Kappa, from Rutgers College in 1975 with a major in history.

GLOBAL TECHNOLOGY

In the year 2000, we continued to expand our work helping technology companies in key global technology centers grow their businesses in the United States.

Working with foreign technology companies in the U.S., coupled with our representation of domestic technology firms, has become a core element of our corporate and intellectual property practices.

Our Israeli technology practice forms the center of our global representation of technology companies. We currently represent more than 40 Israeli companies.

During the past year, we represented:

Israel

VI[Z]RT, Ltd. (formerly RT-Set Ltd.), a provider of broadcast graphic solutions, in its acquisition of the virtual studio business of Evans & Sutherland Computer Corp. and in the \$60 million acquisition of Peak Broadcast Systems Ltd.

Magic Software Enterprises, a publicly-traded provider of software development and deployment technology that enables enterprises to accelerate building and deploying applications that can be rapidly customized and integrated with existing systems, in a \$100 million follow-on public offering, and in the acquisition of CoreTech Inc., a provider of consulting services.

Two NASDAQ-listed Israeli companies, **ForSoft Ltd.** and **Home Centers (DIY) Ltd.**, in "going private" transactions.

Sense-It, Inc., a developer of digital scent technology, in its sale to Digiscents, Inc.

Attunity Ltd. in a \$13 million private placement financing.

ForSoft Ltd., a leading provider of large scale information technology solutions and services for growing vertical markets, in a \$43.6 million going private tender offer.

India

SeraNova, Inc., a global provider of eBusiness professional services, in an \$8 million institutional private placement financing.

SeraNova in a stock-for-stock merger with India's Silverline Technologies Ltd. valued at approximately \$100 million, creating one of the world's largest providers of IT services operating a global delivery model.

IndiaInfo.com Private Limited, a leading Indian web portal, in a number of acquisitions.

Ireland

Spectel Ltd., a leading provider of voice-data conferencing solutions, in its \$30 million acquisition of Massachusetts-based MultiLink Inc. from PictureTel Corporation.

Trinity Biotech plc, a publicly-traded medical diagnostic equipment company, in its \$9.3 million acquisition of Bartel's Inc. from Intracel Corporation, and in its \$4 million acquisition of MarDx, Inc., a leading manufacturer of diagnostic test kits for Lyme disease.

Dolmen Corporate Finance, a venture capital and investment banking firm, in the private placement financing of Apogean Technology Inc., which provides electronic alternative trading systems.

Sweden

Fanglobe.com, a leading operator of web sites and fan clubs for music/rock artists on the world wide web, in connection with a \$5 million private equity investment in Fanglobe by one of the world's largest record companies and in connection with a Strategic Marketing Agreement and a Digital Distribution Agreement with the same record company.

Telia Business Innovation, the venture capital company of Swedish Telecom (Telia), in connection with its investment in a telecom/software company in the U.S., as one of the major strategic investors.

IQ PAN; Pan Interactive Publishing, one of Europe's largest producers and distributors of interactive computer games, in connection with its joint venture agreement with a major U.S. game developer.

Domestic

Our domestic technology clients include large companies transitioning to the 21st century digital marketplace as well as numerous emerging companies. During 2000, we represented:

Sports Capsule, Inc., internet-based video and highlight production company, in its \$12 million private placement of preferred stock to an investor group led by Citicorp Investments and strategic arrangements for broadband distribution with Time Warner, Quest and Bell Atlantic.

Trade publisher **Miller Freeman** in a joint venture with Pegasus Advisors to form **Paperloop.com, Inc.**, an online business-to-business e-commerce site for the pulp and paper industry.

MediData Solutions, Inc., provider of software applications for the clinical research industry to streamline development solutions for the pharmaceutical and biotechnology industries, in connection with seed financing and development agreements with initial customers.

Internet solutions provider **SenseNet, Inc.** in the sale of its subsidiary YourDay.com Inc. in exchange for stock of publicly-traded DeltaThree, Inc.

Online catalogue content management company **WIZnet, Inc.** in an equity investment by a major business-to-business company and a reorganization.

Internet game producer **Bottle Rocket Inc.** in connection with its acquisition by NASDAQ-listed ACTV, Inc., a leading interactive media company.

Online apartment rental site **EasyRent.com** and its affiliate, **Easy Roommate.com; LiquidXS.com, Inc.**, an online business-to-business site for the liquidation of excess inventory; and **Gas Pedal Ventures, Inc.**, an accelerator for early stage internet companies, in connection with their general corporate and securities matters.

TheBeast.com, Inc. in a software development and application service provider agreement with EPrimus, Inc.

Content Directions Inc., a digital rights management company, in connection with securing early stage funding and strategic alliances.

BusinessDevelopment.com, Inc., a global technology accelerator, in connection with setting up an international equity incentive plan.

AVNET, INC.

Our representation of **Avnet, Inc.**, one of the world's largest distributors of electronics components, illustrates the depth and strength of our corporate, securities and technology practices in a number of ways.

In 2000, we helped Avnet complete more than \$935 million of public debt offerings, giving the company working capital and the ability to grow through acquisitions and strategic investments.

Also, during 2000, we represented Avnet in connection with its \$140 million acquisition of NASDAQ-listed Savoir Technology Group, the leading distributor of IBM mid-range server products in the Americas, and in connection with its acquisition of European distributor Eurotronics B.V.

Throughout 1999 and 2000 Avnet has actively been transforming its business through new Internet-based ventures. The goal of the transformation is to automate transactions and the delivery of information and to restructure the supply chain to better collaborate with suppliers and customers.

We represented Avnet in its venture financing and strategic alliance arrangements with each of the following:

- Viacore Inc., formed to create electronic hubs for managed business-to-business infrastructure of partner trading networks.
- SpinCircuit, Inc., an online design site for electronic engineers.
- ChipCenter LLC and QuestLink Technologies Inc., engineering web sites which recently merged to form EChips, Inc.
- China ECNet, an e-commerce venture sponsored by the government of the People's Republic of China to provide products, logistics and technical services.
- Buckaroo.com, Inc., a business-to-business e-commerce company formed to create an exchange for electronics components.
- eConnections Inc., a supply chain management site for bringing electronics components to market.



Raphael S. Grunfeld recently joined the firm as a partner. His practice focuses on corporate finance and mergers and acquisitions in the Internet and telecom industries, as well as general business counseling, cross-border acquisitions, and licensing and intellectual property matters. Prior to joining us, Raphael was a partner at Morrison & Foerster LLP. Raphael also practiced in Israel for ten years in the law firms of Yitzchak Tunik (the former State Controller and President of the Israel Bar Association) and Shibolet Roberts. He received his Masters of Laws in 1974 from University College at the University of London, and received his Bachelor of Laws, *cum laude*, in 1973 from Tel Aviv University.

REAL ESTATE

In 2000 we represented some of the oldest corporations in New York and some of the newest, doing leasing work for new economy companies such as **Net Quotient Consulting Group** and providing an array of real estate services for landowners of long standing such as **Trinity Church** and **Collegiate Church**. Sometimes our practice put us at the crossroads of the new and the old, as in the case of Trinity's lease dispute with boo.com, described elsewhere in this Review.

Trinity continued a repositioning effort that has included the conversion of 75 Varick Street, a former printing building, into a Class A office property known as One Hudson Square. The first large transaction in this repositioning effort – the 12-year lease to StarMedia Network – was described in our Year in Review publication for 1999. Trinity's investment in this property continued to pay off in 2000, as Trinity signed a 175,000 square foot lease at One Hudson Square to Getty Images, a photo and film archive company. This transaction could not have been consummated without the buy out and/or relocation of existing tenants in order to create a space large enough to meet Getty's needs. Other spaces are to be added to the Getty premises as they become available.

Trinity also signed an 84,000 square foot lease with TMP Worldwide at 205 Hudson Street, a 65,000 square foot lease with Novo Media Group, Inc. at 10 Hudson Square, and leases at 10 Hudson Square with Princeton Review and Eisnor Interactive Real Estate, among other significant leasing transactions.

Collegiate Church continued to upgrade and diversify its portfolio, raising funds through the sale of three properties in 2000. One of the challenges for Collegiate was to obtain full value for the properties even though they were all subject to long-term ground leases. In one case, the Church and the ground tenant simultaneously sold their interests to the same buyer. In another transaction, the Church exercised a right of first offer to buy its ground tenant's interest in the property, and then sold the fee interest and the ground tenant's interest to a developer in two non-simultaneous transactions. The third property was sold to the ground tenant.

Collegiate also had the opportunity to renegotiate the ground rent payable for one of its premier holdings, a process in which we have been actively involved.

We also represented a nationally recognized not-for-profit organization in a multi-million dollar purchase of a parcel of property adjacent to its current headquarters in Manhattan. The property is unique because it will allow the organization to expand its current facility in the future without having to relocate to a new site. Recognizing the scarcity of commercial space in the City, the organization purchased the property subject to an existing ground tenancy of potentially ten years. Negotiations were lengthy because the original owner died during the initial stages, there was an existing right of first refusal, and existing violations and encroachments had to be addressed. The transaction was consummated with a simultaneous contract and closing.

We also assisted another of the firm's non-profit clients, **Beth Abraham Health Services** and its affiliates, in a variety of real estate transactions during the year. We helped one affiliate, **Comprehensive Care Management Corporation**, evaluate (and eventually lease) several New York City sites for its adult day health centers, and we assisted another in locating a Westchester County site for housing for the elderly.

ENVIRONMENTAL PRACTICE

Our Environmental Practice Group (headed by Steve Kass, Cliff Case and Jean McCarroll) helped a variety of clients last year, both in and out of court.

Given California's recent electricity problems, assuring an adequate power supply for New York City and the downstate region in general has been much on the minds of state and local officials. Since mid-2000, we have been assisting in that endeavor, representing the **New York Power Authority** before New York State and New York City agencies in a high-profile effort to obtain the authority to install ten small natural gas turbine generators at various locations in the City by June 2001, an extremely accelerated schedule. As part of this assignment, we are defending NYPA in several lawsuits brought to challenge the siting of the turbines.

In a separate NYPA matter, we successfully defended NYPA against a court challenge to the sale of its nuclear power generating facility Indian Point 3, in the Village of Buchanan, New York, to a private power company, a subsidiary of Entergy Nuclear, Inc.

During the year we successfully concluded negotiations with the New York State Department of Environmental Conservation and obtained all permits required for the construction of the new Jack Nicklaus golf course at Ferry Point Park in the Bronx (which is being constructed on a former City landfill) for our client, **Ferry Point Partners, LLC**. We are currently defending a lawsuit that was brought to challenge construction after it had been commenced. In addition to our work on Ferry Point, we continued work on behalf of two Westchester County facilities, the extraordinary new Seven Springs golf course (for which the final environmental impact statement was just accepted) and the completely renovated Trump National golf course.

Following up on our favorable 1999 settlement of the **City of Newburgh, New York's** manufactured gas contamination lawsuit against Central Hudson Gas & Electric Corporation, we pressed the City's cause before the New York State Department of Environmental Conservation and the New York State Department of Health, the agencies responsible for determining exactly how Central Hudson's gas wastes are to be cleaned up. (Under our settlement, Central Hudson must carry out at its sole expense whatever remediation the State orders.) In response to our comments on behalf of the City, the State in mid-2000 threw out Central Hudson's draft risk analysis and clean-up proposals and ordered the utility to submit complete revisions. To educate State officials about new remediation techniques ignored by Central Hudson, we

In another transaction, we represented a client in the sale of prime retail space in Manhattan for nearly \$40 million. The deal was structured as sale of shares in an off-shore corporation by one overseas company to another. In addition to working with Luxembourg and Italian counsel and contemplating various tax considerations, we advised our client with respect to its negotiations with the existing tenant to surrender the space.

Client **Kaneka Texas** concluded the acquisition of a site in Jackson, Michigan and the construction and installation at the site of a chemical plant facility for production of Kaneka's product Eperan, used worldwide in the automotive and packaging industries and in outdoor weather-resistant products.

arranged through our environmental consultants to bring experts in these new techniques from California to meet with State officials and City representatives.

In other environmental litigation, we defeated two challenges — mainly on environmental grounds — to **Roosevelt Island Operating Corporation's** plans for the development of "Southtown," the area between the existing "Northtown" on Roosevelt Island and the Queensboro Bridge. We also successfully represented the owner of a beachfront house in Southampton who was concerned about a neighbor's proposal to build a major addition to her beach house, located on the crest of a fragile primary dune. After the Zoning Board of Appeals had granted permission for the addition and the lower court had upheld the decision, we were asked to take over the case from the client's original lawyer for purposes of an appeal. In November 2000, the Appellate Division, Second Department held for our client, reversing the lower court and annulling the approval that had been granted for the proposed addition.

Land use matters also kept our environmental lawyers busy in 2000. In one noteworthy proceeding before the New York City Landmarks Preservation Commission, the group, representing a community organization, **92nd Street Neighbors** (numbering among its members Woody Allen, who contributed a videotape to the effort), successfully blocked an application by a developer for a 17-story corner building in the Upper East Side Historic District.

The **Village of Larchmont** retained us in 2000 to voice its concerns regarding a highly controversial 300,000-square-foot IKEA furniture outlet proposed for a site in the City of New Rochelle along the Village's border with the City. Working closely with consultants on urban planning, air quality, traffic, noise, and hazardous waste, and in conjunction with other neighboring municipalities, citizens groups and individual residents, we argued before the New Rochelle City Council that the project was untenable and ill-advised due to the potential for tremendous impacts on traffic, air quality and community character. In January 2001, IKEA and the City of New Rochelle announced that the proposal would be withdrawn.

Among pro bono matters handled by the environmental group in 2000, we represented the **Natural Resources Defense Council** in an application for fees for NRDC's successful challenge to the U.S. Environmental Protection Agency's failure to set standards for New York City's water supply. More than \$220,000 was recently awarded to NRDC. We also submitted comments to EPA on behalf of the **National Recycling Coalition, Inc.** questioning EPA proposals to revise landfill regulations without adequately considering non-landfill alternatives.



Newly appointed counsel **Lee A. Ohliger's** real estate practice encompasses office leasing, purchases and sales of commercial real estate, ground leases, commercial mortgage loans, and all phases of the condemnation process. Lee

received his J.D. in 1981, from the University of Pennsylvania School of Law, and his B.S., *magna cum laude*, in 1978 from the University of Pennsylvania.

Our clients enjoyed excellent results in a number of court proceedings. **Central Research Laboratories, Ltd.**, a U.K.-based subsidiary of Scipher plc, obtained a jury verdict of nearly \$1 million after a trial in New York State Supreme Court. CRL, a research and development company, has a long and distinguished history, including the invention of stereophonic recording, the first public broadcast television system, airborne radar and the CAT scan. CRL turned to us for assistance in a contract dispute with Dimensional Media Associates, Inc. Both CRL and Dimensional Media were attempting to develop suspended image technology for three-dimensional imaging. When Dimensional Media refused to pay CRL a commission arising out of CRL's efforts to sell the technology, we commenced an action against Dimensional Media Associates. The case went to trial and the jury returned a verdict in favor of CRL. The court also dismissed all of Dimensional Media Associates' counterclaims against CRL.

We also obtained a \$3.2 million judgment on behalf of Singapore clients **Transtech Electronics** and **Nas-Transtech Technology** in an action for breach of a joint venture agreement in the U.S. District Court for the Southern District of New York. The joint venture involved the manufacture and sale of a wireless karaoke device.

Representing the **Official Committee of Unsecured Creditors of Cybergenics Corporation**, we persuaded the U.S. Court of Appeals for the Third Circuit to reverse the dismissal of the Committee's Complaint, which sought damages in excess of \$75 million for fraudulent transfers arising out of the leveraged buy-out of the business of Cybergenics, seller of nutritional supplements and body-building vitamins. The Court's opinion addressed the distinction between assets of the debtor and property of the bankruptcy estate, finding that fraudulent transfer claims were not assets of the debtor.

Mitsui Marine and Fire Insurance Company, Ltd. retained us to enforce a \$56 million judgment arising out of the financing of Mitsuwa Marketplace, Japanese-specialty shopping centers located in Edgewater, New Jersey and Los Angeles, California. The case is pending in the U.S. District Court for the District of New Jersey in Newark.

Our success was not limited to court proceedings. We also successfully concluded a lengthy arbitration for our client



Newly appointed counsel **John R. Casolaro's** litigation and real estate practices concentrate on condemnation and construction related matters, including arbitrations, trials and appeals. His practice also encompasses general commercial litigation, mechanic's lien filings, foreclosures and discharges, rent adjustment proceedings under long-term leases and preparation of construction contracts and design professional contracts. John has been an American Arbitration Association construction industry arbitrator since 1986 and has extensive experience in various appellate courts. He received his J.D., *cum laude*, in 1977 from Syracuse University College of Law, where he was an editor of the *Syracuse Law Review*. He received his B.C.E., *cum laude*, in 1974 from The Cooper Union.

Showa Boeki Co., Ltd. The arbitration involved claims against Showa, a Japanese trading company, by an American supplier of wall anchor products. The arbitrators dismissed all but one of the numerous claims against Showa. After 19 additional arbitration hearings addressing what, if any, damages had been incurred, the arbitrators adopted our arguments and ruled that Showa should pay only nominal damages of \$1.

Our litigators are also engaged in a unique eminent domain litigation practice on behalf of **New York State**. We successfully defended a New York State public benefit corporation in a case in which the plaintiff sought to recover damages alleging an unconstitutional deprivation of rights. The plaintiff was a rent stabilized tenant in a building taken by the public benefit corporation under its eminent domain power. The tenant sought to recover the market value of his right to occupy his unit at a rent stabilized rent for the rest of his life. We represented the public entity in the lower court, where the claim was dismissed, and in the appellate court, where the dismissal was affirmed. We successfully defended another New York state public benefit corporation in the Appellate Division in New York, defeating a claim by a property owner and others seeking to derail a development project in East Harlem. The plaintiff claimed that the project did not serve a public use and failed to comply with environmental and other laws. The appellate court dismissed the case.

We have a varied real estate litigation practice. We continued to act as litigation counsel for **Trinity Church**, one of the largest landlords in Manhattan, in a variety of real estate and landlord-tenant cases. We also litigated real estate matters for our client **Collegiate Church**.

We represented **Ingerop Participations S.A.**, a global engineering corporation based in France, in its action against Raytheon Company. By order to show cause, Ingerop sought a temporary restraining order and preliminary injunction in the Supreme Court of New York preventing Raytheon from selling its petroleum and chemical subsidiaries to Morrison Knudsen Corporation. Ingerop argued that it had a contractual right to participate in the sale of these subsidiaries. Justice Cahn of the Commercial Division of the Supreme Court set an expedited discovery schedule for Ingerop's application, ordering that several depositions and the production of documents be completed within approximately three weeks and scheduling a hearing to be held shortly after the end of discovery. During the expedited discovery, we participated in a court sponsored mediation on behalf of Ingerop in which the dispute was resolved to the satisfaction of Ingerop.

We also represented **North American Tea & Coffee, Inc.** and **All Trade Distributors Inc.**, distributors of food products within the United States and Canada, in an action they commenced against United Biscuits (Holdings) Ltd., a manufacturer of high-end cookies and crackers, and United Biscuits' New Jersey subsidiary. The dispute arose out of United Biscuits' termination of an exclusive distribution agreement with our clients. By order to show cause, we sought a preliminary injunction in the District Court in New Jersey preventing United Biscuits from selling its products with All Trade's name and from misappropriating All Trade's employees and confidential trade information. We also sought specific performance of the distribution agreement. We obtained an expedited schedule for discovery and briefing, which is ongoing, and the court also scheduled an early hearing date for the preliminary injunction application.

On behalf of our client **Kaneka Corporation**, we recently concluded the settlement of a patent infringement action brought in the U.S. District Court in Seattle. The case related

to Kaneka's Liposorber apheresis system for the extracorporeal removal of cholesterol from the blood.

During 2000, the Firm represented **Miller Freeman, Inc.** in an action brought by PaperExchange.com against Miller Freeman and its affiliated joint venture PaperLoop.com. PaperLoop is an e-commerce portal and marketplace for the pulp and paper industry, and PaperExchange is a well-financed competitor (with Internet Capital Group as a significant investor). The thrust of PaperExchange's complaint was that Miller Freeman had allegedly engaged in a fraudulent scheme to induce PaperExchange to rescind a non-compete agreement between PaperExchange and Miller Freeman so that Miller Freeman could form PaperLoop's competing business. PaperExchange asserted claims against Miller Freeman for declaratory judgment, breach of contract, theft of trade secrets, fraud and unfair trade practices. In addition to monetary damages, PaperExchange sought a preliminary and permanent injunction enjoining Miller Freeman from participating in PaperLoop and competing against PaperExchange. The Firm vigorously defended Miller Freeman against the claims asserted, and successfully defeated PaperExchange's preliminary attempt to enjoin Miller Freeman from participating in any transaction involving PaperLoop. On the eve of trial, after substantial discovery and motion practice, the case was settled on favorable terms which do not impede PaperLoop's business or Miller Freeman's investment.

EMPLOYMENT PRACTICE

The Employment Practice Group had a busy year in 2000.

U.S. Trust turned to us after virtually all of the members of its successful Campbell, Cowperthwaite asset management division defected to form a competing business. We commenced an action for U.S. Trust within days of the defendants' resignations in 1999, asserting claims that included breach of fiduciary duty, unfair competition, misappropriation of confidential information, tortious interference with employment relations and breach of U.S. Trust's Business Ethics Policy. In 1999, we obtained a temporary restraining order and preliminary injunction against the defendants. Our success continued in 2000 as we defeated the defendants' motion to dismiss U.S. Trust's claims for punitive damages. After the trial court denied their motion to dismiss the punitive damages claims, the defendants appealed to the Appellate Division. In December 2000, the Appellate Division unanimously affirmed the trial court's decision maintaining U.S. Trust's punitive damages claims. Pre-trial discovery in the case is now complete, and it is likely that the case will be tried this year.

In addition, we handled a number of other non-competition and non-solicitation matters for our media and technology and financial services clients. Some of these matters were settled at the prelitigation stage; others are in litigation now or were successfully resolved in the litigation or arbitration process. We also continued our representation of clients in a variety of wrongful termination and employment discrimination litigation.

Another focus of our employment group in 2000 was in the area of reductions-in-force. We counseled a number of our clients on the ins and outs of large and small employee terminations and layoffs.

TAX

Our Tax Department provides sophisticated planning in connection with the tax aspects of mergers and acquisitions, joint ventures, initial public offerings and other business transactions, including those described elsewhere in this Review.

As outside tax counsel to **GPU, Inc.** and its subsidiaries, we provided advice as to the tax aspects of a number of major transactions involving the GPU Companies during 2000:

- We advised as to tax issues and secured favorable IRS rulings relating to the sale of Jersey Central Power & Light Company's Oyster Creek nuclear power plant to AmerGen for \$10 million in cash and AmerGen's assumption of some \$430 million in plant decommissioning liabilities.
- We obtained a favorable IRS ruling for Jersey Central Power & Light Company's proposed \$400 million asset-backed securitization transaction to finance the recovery of a portion of the Company's "stranded costs" resulting from the deregulation of the electric generation business in New Jersey.
- We advised as to the tax structure for, and other tax issues relating to, the sale of GPU International's interest in six U.S. cogeneration power plants to Aquila Energy Corp., a subsidiary of Utilicorp United, for \$275 million.
- We advised as to the U.S. tax issues relating to GPU's sale of GPU PowerNet, GPU's Australian electric transmission subsidiary, to Singapore Power International for \$1.26 billion.
- We advised as to tax issues relating to GPU's proposed \$4.5 billion merger with FirstEnergy Corp., a transaction which, if approved by state and federal regulatory agencies, would create the sixth largest electric utility system in the U.S.
- We advised as to tax issues relating to the participation of GPU Telcom Services, Inc., GPU's telecommunications subsidiary, in Americas Fiber Network, a joint venture with five other utilities organized to create and operate a fiber optic cable network throughout the Mid-Atlantic region.
- We prepared a request for IRS rulings as to the "normalization" tax accounting treatment of some \$10.5 million of deferred taxes and investment tax credits associated with Jersey Central Power & Light Company's divested generation plants.

We counseled foreign investors who disposed of U.S. real estate by developing tax-efficient structures to avoid the U.S. FIRPTA tax regime.

Our Tax Department also provides advice outside of the transactional context. During the past year, we helped multinational financial institutions such as **UBS Warburg** develop innovative financial products.

We also advise high net worth individuals on tax-efficient asset diversification strategies. In this connection, Jerome Caulfield finished the Windows version of *Factors*, which continues to be regarded as the best software available for performing the actuarial calculations required for GRUTs, GRATs and other advanced estate planning vehicles. *Factors* is distributed through "Practical Drafting" magazine which is a joint venture between the firm and United States Trust Company of New York.

EMPLOYEE BENEFITS AND EXECUTIVE COMPENSATION

During 2000, we advised our clients regarding the tax and ERISA aspects of their qualified pension, 401(k) and welfare benefit programs. We amended their plan documents to reflect changes in the Internal Revenue Code, IRS and Department of Labor regulations and IRS rulings; we prepared requests for IRS rulings as to the qualified status of these plans; and we advised as to various issues relating to compliance with ERISA's fiduciary standards in connection with the administration of these plans and the investment of their assets.

In connection with GPU's \$215 million acquisition of **MYR Group, Inc.**, we advised as to the tax issues relating to the treatment of MYR Group executives' outstanding restricted stock and stock options and their cash-out or conversion to GPU shares and options, and prepared a new restricted stock and stock option plan covering these executives. We also advised as to, and prepared the documents for, the termination of a defined benefit pension plan maintained by one of the MYR Group's subsidiaries, the merger of four 401(k) and profit-sharing plans maintained by MYR Group and its subsidiaries into a single new consolidated plan, and the inclusion of the new plan in, and the transfer of its assets to, the GPU Companies' master trust with State Street Bank.

We prepared and submitted a safe harbor 401(k) plan to the IRS on behalf of **Westburne Supply, Inc.** and submitted the **Gelman Sciences (Pall Corporation)** ESOP for a determination letter upon termination of the plan. We completed the termination and liquidation of the **Whitney Estate's** pension plan in 2000. We counseled **The Rockefeller University, The Arnold P. Gold Foundation** and **The Isaac H. Tuttle Fund** on matters concerning their 403(b) plans and other employee benefits and compensation matters. We worked with **Collegiate Church** on revisions to its pension plan in connection with the redesign of its employee benefits structure. We also assisted **Thoroughbred Racing Association** in the termination and liquidation of its voluntary employees' beneficiary association.

In connection with the GPU Companies' generation asset divestiture program, we assisted GPU in negotiating the benefit and compensation programs to be provided to the employees transferring to the buyers, and advised

as to the impact of the transactions on the employees' rights with respect to their accrued benefits under the GPU Companies plans, including "partial termination" issues, "same desk" rule restrictions on plan distributions, treatment of outstanding plan loans, and protection of early retirement pension entitlements. We also advised as to the tax, ERISA and ADEA issues involved in staff reductions undertaken by the GPU Companies in connection with their asset divestiture program and other corporate restructurings, and assisted in structuring and preparing the documentation for the severance programs, early retirement windows and enhanced pension and other retirement benefit protections offered to terminating employees.

In connection with GPU's proposed merger with FirstEnergy, we advised GPU as to the benefit and compensation issues affecting GPU's directors, executives and employees, and assisted in drafting the provisions of the merger agreement dealing with these matters. We advised GPU as to the potential Code section 280G "golden parachute" issues in connection with the GPU executives' stock options, incentive compensation awards and severance agreements. We also prepared amendments to all of the non-qualified deferred compensation and supplemental retirement programs covering GPU's directors and executives to add additional "change in control" protections for their benefits.

We also prepared the documentation for, and advised as to the tax aspects of, various other compensation and benefit arrangements for our clients' executives, including:

- a stock option plan and other equity-based compensation programs for employees of **West 175 Enterprises, Inc., INIRU Wireless, RADVision Ltd.,** and **Sunny Bates Associates.**
- a supplemental pension agreement for **GPU Energy's** new President.
- split-dollar insurance arrangements for senior officers of **GPU, Inc.**
- changes in the "cashless" exercise procedures for GPU's stock option plan, and outsourcing of the plan's administration to ChaseMellon.

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 2000 included:

- representing a major industrial company in connection with the refinancing of its Great Lakes ore carrying fleet.
- representing **Seastreak America Inc.** in connection with construction and a long term lease financing of new ferries for its New Jersey to New York service.
- representing one of several investors making an equity investment in INTTRA, an electronic trading portal system to the container shipping industry.
- as special counsel on Liberian law matters, representing corporate directors in a Liberian ship owning corporation

accused of violating the English fraudulent trading statutes in an action commenced by an English liquidator.

- acting as special maritime counsel to a major telecommunications company in connection with its proposed acquisition of a fleet of cable laying ships.
- representing Protection and Indemnity (P&I) Clubs and Freight, Demurrage & Defense (FD&D) Clubs in both arbitrations and litigations arising out of charter parties, contracts of affreightment, and other commercial relationships among shipowners, charterers, and cargo interests.
- advising shipowners on antitrust, contractual and regulatory issues relating to joint ventures, service agreements, pooling arrangements, joint bidding, B2B ventures, and exclusive dealing arrangements.

LENDING AND BANKRUPTCY

The year 2000 saw an exponential increase in the activity of the Bankruptcy Practice Group. Despite the generally solid economy during most of the year, there were a large number of chapter 11 filings by companies that defaulted on high yield bond issues and other financial obligations. Among the high profile cases in which the group was active were:

boo.com. After running through all of its venture capital funds, boo suspended operations, filed a chapter 11 bankruptcy case in New York and sold its lease at a \$350,000 profit. We represented boo's landlord, **Trinity Church**, in its appeal of the bankruptcy court's order permitting boo to retain the profit contrary to the terms of the lease.

Grand Union. When this supermarket operator in the northeast filed for chapter 11 for the third time, its creditors insisted that it sell off its assets. We represented **Whole Foods Market** in its efforts to purchase several of Grand Union's stores, including its Bleecker Street location near New York University.

Singer Company. We represented the bank that financed the purchase of Singer's Portuguese subsidiary from the bankruptcy estate as part of Singer's plan of reorganization.

AmeriServe Food Distribution. After buying up local distribution companies which, collectively, delivered food and non-food products to 36,000 fast food restaurants nationwide, AmeriServe filed a bankruptcy case with close to \$2 billion in secured and unsecured debt. We represented the trustee for notes issued by a non-debtor affiliate that loaned the proceeds to the debtor. We foreclosed out the issuer's position and succeeded to the rights of the affiliate as lender, paving the way for a substantial recovery to the noteholders.

We also represent the banks that act as indenture trustee for the bonds issued by Owens Corning, Cambridge Industries, GST Telecommunications, Pathmark Stores, Safety-Kleen Corporation, and others. The high volume of activity has continued into 2001: we were retained to represent **The Bank of New York** in connection with litigation arising out of defaults by Southern California Edison caused by the California power crisis.

Commercial Lending – IBJ Whitehall Bank & Trust Company continued its leading role as provider of cash flow financing to the private equity community. Representative transactions included credit facilities in favor of Accountec, a leading company in the temporary staffing industry, and Nonni's Food Company, Inc., which makes biscotti and other premium baked goods. IBJ Whitehall is also active in the media and communications field, and closed numerous transactions with companies in that industry during the year.

TRUSTS AND ESTATES

Our trusts and estates department had an excellent year in 2000. In addition to the estate planning services that we regularly provide to our clients, the year was marked by some important litigation successes, the most significant of which, *Walton v. Commissioner*, is reported on the first page of this Review.

In another matter, Mike Frankel represented the executors of one of the owners of a closely held corporation. The company had a form of "buy-sell" agreement to acquire the decedent's shares, and the agreement was funded with a life insurance program insuring the client's life. On audit of the decedent's federal estate tax return, the IRS agent raised a novel argument seeking to include a substantial portion of insurance proceeds in the decedent's taxable estate, resulting in a tax deficiency in excess of \$5 million.

Mike and Ted Behan attempted to convince the agent of the error of his ways, but were rebuffed. They then sought technical advice from the Internal Revenue Service in Washington, but were told that the IRS was convinced of the correctness of the agent's position. Finally, they petitioned the Tax Court for relief. Shortly before trial, the IRS completely withdrew, resulting in no tax deficiency for the client. Due to the clarity of Mike and Ted's analysis and the force of their arguments in presenting the matter for technical advice, a fresh look was given to the

matter by the IRS. After almost four years of contentious disagreement, the IRS then backed down entirely, withdrew the deficiency assessment, and accepted the estate tax return as filed. This was a substantial victory for the client.

On the planning front, we wound up the administration of a large estate which, in its planning, had presented a novel problem. The client was a very wealthy individual, and he wanted to make substantial gifts to his grandchildren. Unfortunately, he was faced with the generation-skipping tax. This tax subjects transfers to grandchildren or more remote descendants in excess of \$1 million in total with a separate, additional, tax at a flat 55% rate.

Dick Covey devised a plan in which the decedent's widow, two children and five grandchildren all were named as executors, along with a corporate fiduciary. The fees of the corporate fiduciary were negotiated and the will declared that the widow and two children received no commissions. The five grandchildren then split the balance of two statutory executors' commissions in New York.

Because of the size of the estate, each grandchild received more than \$4.6 million as his or her share of the commissions. No generation-skipping tax was imposed on the amount, and it was entirely deductible for estate tax purposes. Although it was taxable to the grandchildren, as income, the income tax rates are significantly lower than the combined estate tax and generation-skipping tax rates and the plan resulted in a tax savings in excess of \$5 million.

Questions or Comments

If you have any questions or comments about any article, kindly contact Cully Irving at 212-238-8714 or irving@clm.com, Jim Abbott at 212-238-8720 or abbott@clm.com, Tom Davis at 212-238-8850 or davis@clm.com, or Maria D. Velazquez at 212-238-8670 or velazquez@clm.com.

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TAX-EXEMPT ORGANIZATIONS

The Tax-Exempt Organizations Group helped several organizations further their objectives in complex transactions or changing circumstances. In each case, we were able to increase our client's opportunities to accomplish its objectives and add value to its transaction.

A medical research organization client that maintains a databank for its research desired to partner with private sources to make the data available to healthcare providers, patients and their families online or by wireless sources, and to collect additional data through the same media. We helped the client structure a subsidiary entity to accomplish these goals, while satisfying the IRS requirements imposed on joint enterprises. We also advised on patient privacy, intellectual property rights and other issues arising from the plan.

We provided guidance to a prominent foundation for the visual arts concerning a number of issues involving its intangible assets. We negotiated a complex contract for the publication of a *catalogue raisonné* of an artist's work, taking care to reserve image rights. We also provided on-going review of tax and exemption questions arising from licensing activities and contracts.

We have two clients undergoing major transitions that we have been able to counsel to maximize their opportunities. In one case, a very large bequest to an organization would have resulted in its becoming a private foundation for tax purposes at the very time it was planning to initiate new public fundraising and other programs to carry out its goals. We assisted in creating a new public charity to carry out its fundraising and programs and converting the existing organization, which holds the bequests, into a supporting organization. As a result, the taxes and other strictures on private foundations can be avoided.

The second organization, with a large endowment and two supporting trusts, decided to become a private foundation, forego fundraising, and significantly expand its programs. This change involved legal and tax issues with the supporting trusts (and their other beneficiaries) and substantial organizational changes. The legal issues with the trusts were all favorably resolved, avoiding conflict. In addition, we assisted in the organizational changes that followed from the expanded programs or change in tax status: the hiring of an executive director, a new qualified pension plan, an employee manual and grant-making procedures.

We also participated in the firm's representation of a nationally recognized not-for-profit organization in a multi-million dollar purchase of real property in Manhattan, described in detail in the real estate portion of this Review.



Newly appointed counsel **Lisa Factor Fox's** trusts and estates practice focuses on estate planning, charitable giving, complex estate and trust administration, and property guardianships. Her tax-exempt organizations practice includes the for-

mation and dissolution of private foundations, regulatory compliance, and advice on administration and grant-making activities. Prenuptial agreements, split-dollar insurance arrangements, and purchase and sale agreements for shareholders of closely-held corporations are also part of Lisa's experience. Lisa received her J.D., *cum laude*, in 1991 from the University of Pennsylvania School of Law, where she was an associate editor of the *Penn Law Review*. She received her B.A., *magna cum laude* in 1988 from Brandeis University, and was Phi Beta Kappa.