

To Our Clients and Other Friends:

This is a special issue of our Year in Review, because the year itself was so special. Already faced with the challenges of a struggling economy in 2001, the country had also suddenly to deal with what would previously have been almost unthinkable: ruthlessly effective terrorism that destroyed an important part of New York City (not to mention events in Washington and Pennsylvania) and took thousands of lives.

These events and their consequences of course had a major impact on our clients and on us, described elsewhere in this Review. We cannot ignore these events and will never forget them or the many true heroes of September 11. But we will also continue – representing our clients, helping our community and practicing law: providing the one thing – open, tolerant democratic government under the law – that distinguishes our society from the kinds of societies that the terrorists who attacked us would establish.

Thus this Year in Review is a record of continuity, describing how, this year as in prior years, we helped our clients achieve their goals in a difficult time. And while the overall impression of the year must be somber, our clients nevertheless enjoyed many successes and achievements, chronicled here. As always, we are grateful for the confidence and support we enjoy from our clients, and look forward to being able to continue to justify both.

—Carter, Ledyard & Milburn

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How CL&M Helped NYPA Keep City Lights On

Firm's Environmental Practice Group Maintained Its Cool In Confronting Summer Heat Wave

While our memories of 2001 will be shaped by the recollection of that brilliantly blue and tragic morning of September 11 and its aftermath, it is worth recalling that the City had, a month earlier, narrowly averted an electrical power crisis that threatened brownouts, rolling blackouts and sharp price spikes in an urban environment dependent on electricity for its most basic services. CL&M's Environmental Practice Group helped our client **New York Power Authority** (NYPA) provide the power needed to keep New York functioning in the summer of 2001, when New York City and State both experienced record-breaking electrical demand.

Our work began in the fall of 2000, when NYPA (which CL&M had represented in connection with the environmental review of its sale of the Indian Point 3 and Fitzpatrick nuclear plants) called with a question — could CL&M, beginning that day, provide the legal resources required to assist in the overall strategy, environmental review, site selection, air quality permitting, agency approval and, if necessary, litigation defense of an emergency State-sponsored program to construct up to 11 natural gas turbine generators in New York City in order to produce 450 megawatts (MW) of urgently needed power by June 1, 2001?

We could and we did. Thanks to the truly heroic efforts of NYPA's professional staff, which worked virtually around the clock for much of the time, NYPA was able to complete its highly controversial Power Now! Project in 10 months, just in time to provide the additional power required to keep City homes lighted and cooled, businesses open, subways running and hospitals and other institutions functioning when the summer's first heat wave pushed temperatures into the 90s in June. By August 7-9, when both City and State power demands broke records on three consecutive days, NYPA's in-city turbines provided approximately 300 MW to enable the City power grid to continue functioning safely.

Along the way, CL&M's Environmental Practice Group (with associates Chris Fazio, Mark Sullivan, Noah Sachs, counsel Jean McCarroll and partner Steve Kass participating) worked closely with NYPA's superb legal and technical staffs and with a team of environmental and architectural consultants to (1) assess nearly 60 potential sites throughout the City and identify the seven industrial sites (two in the Bronx, two in Brooklyn, one in Queens, one in Staten Island and one in Suffolk County) best suited for

the new generators; (2) prepare a comprehensive Environmental Assessment for the entire Project; (3) secure a declaratory ruling from New York's electric generation siting board that the turbines were not subject to lengthy "Article X" licensing requirements for large-scale power plants; (4) secure air quality permits (after rousing public hearings in the Bronx, Queens, Brooklyn, Staten Island and Suffolk County) from the New York State Department of Environmental Conservation for all of the new facilities; (5) participate in daily briefings with NYPA officers and staff throughout the construction process; (6) explain the rationale for and benefits of the Project at hearings held by New York State Assembly committees; and (7) vigorously defend the Project against separate legal challenges in the New York Supreme Court in Brooklyn, Queens and Staten Island and then again in New York's Appellate Division.

NYPA completed construction and secured judicial approval for the operation of all 11 turbine generators, subject to further environmental review of the Project's fine particulate (PM2.5) emissions and the potential neighborhood impacts of the Project's Vernon Boulevard facility in Queens. (NYPA has since completed, with CL&M's assistance, both such reviews within the time periods prescribed by the courts.) Not only did NYPA succeed in averting power outages during the highest electrical demand in the City's history, but it did so by completing the \$600 million Project in less than a year and utilizing the most energy-efficient and least-polluting simple-cycle gas turbines available anywhere in the country. Moreover, NYPA was careful to distribute its new facilities among industrial areas throughout the City, complete the State's first PM2.5 air quality analysis (and the first voluntary "Environmental Justice" analysis) for the Project, and voluntarily commit to a new community offset program to reduce pollutants from existing sources (such as old boilers, school buses and sewage treatment plants) in the communities where its new clean-burning turbines are located.

As 2001 drew to a close, the Environmental Practice Group was deeply engaged in a new environmental review under Article X of a 500 MW combined-cycle plant that NYPA has proposed to meet the region's long-term power needs. And, as a follow-up to its assistance to NYPA in meeting the City's urgent short-term power needs last summer, the Environmental Practice Group has been asked to assist the **Long Island Power Authority** (LIPA) in a similar project, to address a projected power shortfall for the summer of 2002 on Long Island. We hope to be able to report a success for LIPA and Long Island this year similar to last year's success for NYPA and New York City!

Investment Management and Financial Services

Despite declining markets and challenging volatility, the firm's investment industry clients continued to develop new products and expand their markets. Reflecting the growth of client needs, CL&M added another partner (noted below) to the investment management practice area, which is coordinated by partners Mary Joan Hoene and Kathleen Moriarty.

Our acknowledged experience in exchange-traded funds (ETFs) was instrumental in helping clients achieve new milestones. In 2001, the first U.S. ETFs (SPDRs® and DIAMONDSSM) were cross-listed overseas, in Singapore, pursuant to a joint venture between our client **The American Stock Exchange** and the Singapore Exchange. We continue to represent clients seeking exemptive relief to establish ETFs, including **Nuveen Investments**, **ProFunds** and **The Vanguard® Group**. Kathleen spoke at conferences around the globe. She was also featured in *Crain's New York Business* and honored by *Exchange-Traded Funds Report* for her role in developing ETFs.

Investment advisers and broker-dealers were active on many fronts. Numerous clients sought broker-dealer registrations, and BD applications, including one for **J.F. Mackie & Company**



Andris Vizbaras was elected partner in December. He advises and represents broker-dealers on their initial applications and ongoing compliance issues, buyers and sellers in mergers, acquisitions and tender offers, and issuers on their private placements and public

offerings. Andris also counsels hedge fund managers on all aspects of launching hedge funds and forming and building their investment management businesses. He received his J.D. from New York University School of Law and his B.A. from Washington University. Andris practices in the firm's New York office.

Maritime

Shipping industry clients continued to retain CL&M, one of the few New York firms that offers full maritime legal services. Transactions in 2001 included:

- Representing **Seastreak America Inc.** in connection with construction and long-term lease financing of new ferries for its New Jersey to New York service.
- Acting as special corporate counsel for the directors of a Liberian ship-owning corporation in connection with claims relating to trading while insolvent in an English insolvency proceeding.
- Representing lenders in connection with loans to be made as start-up financing for a new cruise shipping company acquiring Regal Cruise and Renaissance Cruise passenger vessels.
- Representing the mortgagee of the Adriatic Shipping vessels in connection with a lender liability claim brought in New York Supreme Court by that group's owner, a Greek individual.
- Representing the security holder and mortgagee of gambling casino vessels in connection with the restructuring of the indebtedness of President Casinos.

U.S.A., were substantially completed. We also represented several British and Canadian financial services firms on structuring securities offerings to U.S. investors to take advantage of exemptions from U.S. broker-dealer registration requirements. We advised domestic and offshore hedge funds, investment advisers and foreign investment companies on offerings of interests to sophisticated U.S. investors. We helped a domestic investment advisory firm prepare for an SEC examination.

Financial services clients sought advice on new privacy requirements and other implications of the Gramm-Leach-Bliley Act of 2000, which broke down historic regulatory barriers between the banking, securities and insurance industries. Institutional and foreign clients sought advice on structures intended to avoid regulation under the Invest-

M&A/Securities

While global markets experienced reduced activity in 2001, the firm's clients continued to seek growth and capital. Joint ventures and strategic alliances were more actively pursued, in addition to the traditional range of merger, acquisition, venture capital, private equity, and public capital markets transactions. The broad international spread of the firm's client base continued to be evident. Our Corporate Department worked to complete transactions for the following clients, among others:

- **Avnet, Inc.** (NYSE: AVT) acquired Kent Electronics Corporation (NASDAQ: KNT), a Texas-based distributor of electronic components and enterprise network integration equipment and services in a \$550 million stock-for-stock merger. Avnet also issued \$400 million of debt securities in an underwritten public offering and raised \$350 million in an asset securitization transaction.
- **Bowater Incorporated** (NYSE: BOW) acquired Canadian newsprint manufacturer Alliance Forest Products Inc. for US\$759 million of cash and stock. Domestically, Bowater sold roughly 265,000 acres of timberland in North Carolina, South Carolina, Georgia and Tennessee for \$230 million to investors represented by Wachovia National Bank and Hancock Life Insurance Company. To finance the Alliance acquisition, a Bowater subsidiary issued and Bowater guaranteed \$600 million of senior ten-year notes.
- In a transaction scheduled to close in early 2002, **Pall Corporation** (NYSE: PLL) agreed to purchase the Filtration and Separations Group of USFilter Corporation, an indirect wholly owned subsidiary of Vivendi Universal, S.A., for \$360 million. FSG manufactures and sells products for the filtration, separation and purification of liquids and gases at sites in the United States, Europe and elsewhere around the world.
- India's **Silverline Technologies Limited** (NYSE: SLT) acquired internet consultant SeraNova, Inc. (NASDAQ: SERA) in a \$125 million stock-for-stock merger.
- Canada's **Wireless Matrix Corp.** acquired U.S.-based wireless data services provider Norcom Networks Corp. for CAN\$155 million from Norway's Telenor Mobile Communications AS.
- United Kingdom's **United Business Media plc** (LSE: UNWS.L; NASDAQ: UNEWY) expanded its NOP World

ment Company Act. We counseled the boards of two closed-ended funds on interpretation of new SEC corporate governance rules for independent directors.

The firm continues to represent **JP Morgan Chase** as a fund custodian and also advises other clients on custodial and trust account issues, including indenture trustee transactions for industry leader **The Bank of New York**. Major global financial institutions which offer stable value mutual funds and products consistently tap the firm's unmatched experience in this specialized product area.

Increasingly, our financial industry clients require intellectual property, employment, tax and business structure advice, which we seek to provide through the team approach, drawing on the firm's various departments and practice groups.

market research group through the \$45 million acquisition of automotive research firm Allison-Fisher International Inc. and the \$10.5 million acquisition of online healthcare research firm Cozint Interactive Inc.

- Medical consultant **AAC Consulting Group, Inc.** was sold to Kendle International Inc. (NASDAQ: KNDL).
- Canada's **Startech Energy Inc.** was acquired in a CAN\$485 million takeover bid by ARC Energy Trust.
- Publisher **India Abroad Publications, Inc.** was sold to India's Rediff.com India Ltd. (NASDAQ: REDF).
- Sweden's **AB Electrolux** registered with the SEC its offering to U.S. employees of options to purchase the company's American Depositary Shares.
- United Kingdom's **ICAP plc** (LSE: IAP.L) made a minority equity investment in online derivatives trading platform operator Blackbird Holdings, Inc.
- The firm's Canadian clients were especially busy during 2001. In addition to an unusually large number of cross border financings, we assisted Canadian clients with a number of merger and acquisition transactions, several involving the acquisition by royalty trusts of operating oil and gas companies, including **ARC Energy Trust/Startech Energy Inc.**, **Provident Energy Trust/Maxx Petroleum Ltd.**, **Advantage Energy Income Fund/Search Energy Corp.**, **NCE Energy Trust/Forte Energy Ltd.** and **Shiningbank Energy Income Fund/Ionic Energy Inc.** We also assisted **Boardwalk Equities Inc.** in connection with the adoption of a "poison pill" rights plan.



Newly appointed counsel **H. Bertil Nordin**'s corporate practice includes domestic and cross border mergers and acquisitions, asset securitization, project financing, leverage leasing, and general corporate representation. Bertil has practiced law in New York for more than 20 years.

Prior to moving to the U.S., he worked for three years in corporate and commercial law practice in Sweden and served as a Junior Judge in Sweden. Bertil received his L.L.B. from the University of Stockholm School of Law and his L.L.M. from the University of Pennsylvania School of Law. He is fluent in Swedish. Bertil practices in the firm's New York office.

Real Estate

Our representation of a variety of property owners, operators and governmental and quasi-governmental entities in 2001 led to our participation in a number of development and redevelopment initiatives, including some that promise to change and enhance the urban landscape of Manhattan in the new millennium.

Condemnation

Our firm is condemnation counsel for the **Empire State Development Corporation** on the two largest condemnation matters in the City of New York: the proposed new home for the New York Stock Exchange, consisting of the entire block bordered by Exchange Place, Wall, William and Broad Streets; and the proposed new home for *The New York Times*, a planned 52-story building along 8th Avenue between 40th and 41st Streets. Both are complex, intricate and exciting projects involving considerable cooperation and coordination with various public and private entities.

Leasing

In a transaction described in the September 11 section of this *Review* in more detail, we helped firm client **Garban LLC** lease new space on an accelerated basis to replace offices destroyed on September 11.

Our firm continued its long-standing representation of **Trinity Church** in its leasing matters, including a series of leasing transactions with The Bank of New York and Morgan Stanley DW, Inc. As reported in a recent edition of *Crain's New York Business*, these transactions involved an aggregate of approximately 350,000 square feet at Trinity's flagship property at One Hudson Square, New York, New York.

For one of our governmental clients, we negotiated the ground leasing and ground subleasing of a site in Harlem for retail development. The project, expected to be completed this year, consists of a three-story building of approximately 100,000 square feet, with tenants such as Marshalls and CVS, plus a free-standing 25,000 square-foot GAP store. At the end of 2001, negotiations began for a second phase of the development, a seven-story office building above the retail development.

Firm client **Comprehensive Care Management Corporation**, an affiliate of Beth Abraham Health Services, negotiated 10-year leases for two new adult day and health care facilities, in Manhattan and Brooklyn.

Firm client **Lord Securities Corporation** signed a 10-year lease to relocate its New York office to 48 Wall Street, a newly renovated building in the downtown area. We also assisted Lord in its application for property tax exemption benefits under the City's Industrial and Commercial Incentive Program.

Sales & Purchases

Collegiate Church Corporation continued to be an active participant in the marketplace. Collegiate sold a 51% joint-venture interest in a downtown office property to its developer partner, completing a disposition process that was commenced in 1999, and also disposed of one of its larger holdings – another office property in lower Manhattan – that was subject to a long-term ground lease. Among other things, these transac-

Environmental

Our Environmental Practice Group (headed by Stephen Kass, Clifford Case and Jean McCarroll) had a very busy and successful year, helping the firm's clients handle a wide array of permitting, environmental review, corporate due diligence and litigation matters.

Since mid-2000, the firm has represented the **New York Power Authority** in its efforts to expand electric generating capacity in New York City, as described in the front-page feature article.

The City of Newburgh, with the firm's assistance, continues to press state environmental and health regulators to order Central Hudson Gas & Electric to clean up residual coal tar contamination which has migrated into Hudson River sediments and soils along the waterfront from a former manufactured gas plant owned by Central Hudson. Under a 1999 settlement agreement successfully negotiated by the firm after a federal court trial, Central Hudson is obligated to clean up its wastes in accordance with the directives of the Departments of Environmental Conservation and Health. Most recently, the firm successfully pressed the Departments of Environmental Conservation and Health to reject the conclusions of Central Hudson's ecological and human health risk assessments, which attempted to establish a low threshold for cleanup of contaminated areas.

The Environmental Practice Group also enjoyed much success in court in 2001. The firm represents **United Water New Rochelle**, which supplies 130,000 Westchester County residents with drinking water, in its efforts to construct a pump station that will enable UWNR to tie into New York City's Delaware Aqueduct and thereby provide improved quality water to its customers. The Town of Eastchester has thus far blocked UWNR's efforts to build this pump station, forcing UWNR to file two actions against the Planning Board in an effort to obtain site plan approval. Motions to dismiss in both cases were denied by the court in November, 2001 and the Town has been ordered to answer the complaints.

tions raised issues relating to the tax treatment of joint ventures between for-profit and not-for-profit entities (in the first case), and rights of first refusal held by ground tenants (in the second case).

Collegiate also successfully realized the value of a parcel of land in Brooklyn that was ground leased, at below-market rents, to the operator of a Key Foods supermarket. The property was sold to the ground tenant at a price consistent with appraised value, and well above that which would be obtained by capitalizing the lease payments.

We represented the Church in its renegotiation of the ground rent payable for one of its premier holdings, resulting in what the Church's appraiser characterized as the highest fair market rent that had been agreed upon, up to that time, for a renewal term of a Manhattan ground lease.

Our client, **John Herzog**, purchased a seven-story neo-Tudor building located in the Stone Street Historic District in

The firm also secured a major victory for the **Roosevelt Island Operating Corporation** in its efforts to construct nearly 2,000 new residential units in the area on Roosevelt Island known as "Southtown." We successfully defended RIOC against two challenges – largely on environmental grounds – to its approval of the project, and obtained a unanimous decision from the Appellate Division affirming the Supreme Court's dismissal of both. The project, which includes the creation of over 15 acres of open space and a new recreational facility for Island residents, is underway.

A new Jack Nicklaus-designed golf course, a 7-acre community park, and a 20-acre public waterfront park are also underway at Ferry Point Park in the Bronx. The project, which is being constructed on top of a municipal landfill by **Ferry Point Partners, LLC**, was challenged on environmental grounds in State Supreme Court in 2000. That challenge was dismissed last year, and on January 17, 2002, a unanimous decision of the Appellate Division affirmed the dismissal in its entirety.

Other land-use matters also kept our environmental attorneys busy in 2001. The firm continued its representation of the **Trump Organization** in its effort to construct the extraordinary Seven Springs golf course, following approval for the renovated Trump National golf course, both in Westchester County. The firm was also retained by the Westchester Board of Legislators to protect Long Island Sound and tidal wetland areas from a development proposed for the City of New Rochelle. The firm sued to block the subdivision proposal, then negotiated a settlement that ensured the protection of water quality.

In another matter of public importance, the firm assisted the **Metropolitan Transit Authority**, with the New York City Planning Commission, in the environmental review for the proposed extension of the No. 7 subway line to Manhattan's far west side, the most significant expansion of the subway system since the 1930s.

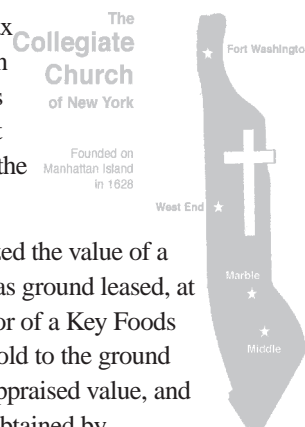
lower Manhattan. The building is the former home of the Midday Club and is being renovated to provide state-of-the-art office space within the existing 1929 structure. We represented Mr. Herzog in acquiring title and negotiating contracts with contractors, architects and other consultants.

Danish-based **Danisco Cultor America, Inc.** acquired from Pfizer Inc 107.5 acres of industrial property in Vigo County, Indiana, including numerous buildings and manufacturing facilities. This transaction involved the release of restrictive covenants imposed on portions of the property previously contaminated but subsequently remediated by Pfizer.

Financing

We represented **Sea Containers Ltd.** in a financing consisting of two loans aggregating \$35,000,000, secured by mortgages on the '21' Club in New York City, The Inn at Perry Cabin in Maryland and Keswick Hall Hotel in Virginia.

We also represented **MVP Housing**, an affiliate of Beth Abraham Health Services, in its final closing of a \$6.4 million capital advance from the U.S. Department of Housing and Urban Development for a housing project for the elderly.



Intellectual Property

The intellectual property group had an active year on both the litigation and transactional fronts.



On the litigation side, we represented plaintiff **TT Sounds Good AB** in its suit in federal court to protect its valuable “Methods of Mayhem” trademark against defendants former Mötley Crüe drummer Tommy Lee, MCA Records, Inc., and Universal Music & Video Distribution, Inc. The biggest challenge to our client Sounds Good was the defendants’ great commercial strength. Because trademark rights are based on the use of a mark to brand goods in the marketplace, a larger commercial presence – such as that of MCA Records and Universal – generally leads to greater rights. In this case, Tommy Lee had sold millions of “Methods of Mayhem” CDs in one year, while Sounds Good had sold far fewer. We showed that Sounds Good was a victim of “reverse confusion” – that its reputation in the name “Methods of Mayhem” would be erased by Mr. Lee’s market power, causing consumers to associate that name exclusively with Tommy Lee. After a week-long trial, the case was amicably resolved.

We continued to encounter cutting-edge trademark issues in defending fashion companies **Sixteen, Inc.** and **Seize S.A.** against claims that the design of a watch they were selling infringed and “diluted” TechnoMarine’s TechnoDiamond watch design. We attacked TechnoMarine’s case by moving to dismiss. In response, TechnoMarine first withdrew its dilution claim, then voluntarily dismissed its entire lawsuit, with prejudice.

We won a Uniform Domain Name Resolution Proceeding (UDRP), obtaining an order from the World Intellectual Property Organization that the “cosmos.com” internet domain name be transferred to our client **Cosmos European Travels AG**, and we are now representing Cosmos in the appeal of that decision. Our opponent, the holder of the “cosmos.com” domain name, defended the UDRP vigorously, but unsuccessfully.

At year’s end, we were immersed in preparing summary judgment papers in the battle of two German beer giants: Brauerei Beck GmbH & Co. and our client **Warsteiner Brauerei, Haus Cramer, GmbH & Co., KG**. Like the TechnoMarine watch case, this case poses complex trademark dilution issues – including not only the requirement of inherent distinctiveness at issue in TechnoMarine, but also actual dilution versus likely dilution, and the retroactive reach of the federal dilution law.

Washington Office Developments

The administrative and litigation practices focused in the firm’s Washington Office continued to flourish. The Telecommunications, Media & Technology, Insurance, Food, Drug & Medical Device and Immigration Practice Groups were particularly active.

The Telecommunications Practice Group acted as Special Communications Counsel to **Liberty Media Corporation** and its affiliates in connection with Liberty Media’s multibillion dollar split-off from AT&T Corp. As a prerequisite to the split-off, the Group obtained Federal Communications Commission approval of the transfer of control from AT&T to Liberty Media, as an independent, publicly-traded company, of approximately 300 FCC licenses held by various Liberty Media subsidiaries. The Group also provided FCC advice to Liberty Media in connection with the restructuring of Liberty Media’s interest in USA Networks, the merger of Telemundo Communications Group into NBC, and several investments by Liberty Media in communications or media companies. The Group also assisted **Triumph Communications, Inc.** in developing a nationwide network for a Direct Broadcast Satellite operator to provide “local-into-local” television service in 40 major markets throughout the United States.

The firm also continued its representation of competitive local exchange carriers and long-distance resellers before state and federal regulatory agencies. Attorneys in the Litigation Department are continuing to pursue on behalf of **Allegiance Telecom, Inc.**, a significant civil action in the United States District Court against AT&T for unpaid long-distance access charges and are representing Allegiance in a related appellate proceeding before the United States Court of Appeals.

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 the **Fox Cable Networks Group, Fox Family, The Hallmark Channel, MGM Networks Latin America, The Outdoor Channel, Starz Encore**, 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 successfully launched a digital content and aggregation uplink and distribution system for Latin America, in negotiating agreements with content providers and numerous cable operators.

The Insurance Practice Group obtained a favorable ruling on the allocation of multi-million dollar defense costs on behalf of **Liberty Mutual Insurance Company** in a major asbestos coverage action which has been pending in the United States District Court for the District of Columbia for more than a decade. This decision should have significant precedential value. The firm also is representing Liberty Mutual in several other major coverage disputes.

The Food, Drug & Medical Device Practice Group has continued to advise clients before the Food & Drug Administration on a wide range of issues and applications, including developmental drugs and biologic products, medical devices, dietary supplements, and indirect food additives. The firm assisted clients in filing investigational new drug applications for potentially groundbreaking treatments of cancer and diabetes and obtained approvals of pre-market approval supplements for a device used to lower LDL-cholesterol.

Finally, the Immigration Practice Group resolved numerous immigration issues for employees of firm clients, their families, and others. The firm handled a wide variety of visa and employment applications and petitions, particularly in the E, H-1B and L nonimmigrant categories.

It was an equally active year on the transactional side. Early in the year, we helped a major record label avoid emergency litigation, resolving a potential dispute by quickly negotiating a license covering use of “A Walk Down Abbey Road” for a rock music tour. We also negotiated a variety of other trademark licenses, for items from cell phone accessories to software to dinnerware.

We advised our inter-dealer broker clients in the active and growing business of licensing their transactional data in foreign currency and derivative financial instruments. In the latter part of the year this business increased significantly, due to the bankruptcy of Bridge Information Systems and Telerate and the reversal of fortune of Cantor Fitzgerald. We helped our client **Tullett & Tokyo Liberty plc** adapt to that changed environment in negotiating several very substantial, multi-year agreements to license their data.



Rose Auslander, elected partner in December, 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 and has negotiated numerous copyright and trademark transactions. Rose received her J.D., *magna cum laude*, from New York University School of Law, where she was articles editor of *New York University Law Review*, and her B.A., *magna cum laude*, from City University of New York. She is a member of the Association of the Bar of the City of New York and a member of the Committee on Intellectual Property at the American Bar Association. Rose practices in our New York office.

Media & Technology and Silicon Alley

It is hardly a secret that the media and technology industry had a difficult year in 2001. However, we remain very committed to this important part of the world's economy. Some of our clients found opportunity in difficult times, and we helped them with several significant transactions:



For example, we represented **Avnet, Inc.** (NYSE:AVT) in connection with its acquisition

of Kent Electronics Corporation (NASDAQ:KNT), a leading specialty electronics distributor, in an agreed stock-for-stock merger transaction valued at approximately \$550 million, and in its follow-on investments and strategic alliances for restructuring its supply chain in Viacore, Inc. (electronic hubs for trading networks), SpinCircuit, Inc. (online design site for engineers), ChinaEC Net (e-commerce venture sponsored by the government of the Peoples Republic of China), and Develop OnLine, Inc. (online portal for microprocessor design).

Our client UK-based **United Business Media plc** (Nasdaq: UNEWY) acquired Cozint Interactive, Inc. for cash consideration of \$10.5 million. Cozint will be integrated with Market Measures Interactive (MMI), a



United Business Media

division of NOP World, the number one provider of primary healthcare market research globally. A leading supplier of web-based research solutions to the pharmaceutical and biotechnology industries, Cozint complements and strengthens MMI's online capability to support customer's sales and marketing effectiveness.

We negotiated a license by **TheBEAST.COM, Inc.**, a technology solutions provider for the financial services industry, of its flagship products, TheBEAST Framework™ and TheBEAST Transact™ bundle, to the BRUT ECN, L.L.C. to support BRUT's services for broker/dealers and financial institutions. We also negotiated a significant license between our client **Netformx Ltd.**, SBC and Webex, Inc.



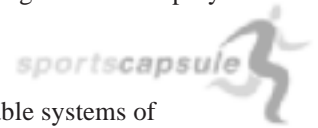
We assisted several technology companies to raise money, including **Medidata Solutions, Inc.**, a provider of software applications for the clinical research industry, in a venture capital financing led by Milestone Venture Partners; **Attunity Ltd.** in a \$5 million private placement; **Cytomation, Inc.**, a maker of flow cytometry equipment

for the biotechnology industry, in a financing led by strategic partner Dako A/S; and **Content Directions, Inc.**, a digital rights management company, in angel financing and an agreement to register selected content for Random House.

As described below in the Israeli Practice Update, some of our clients grew their marketing reach, including **Airsphere Inc.**'s marketing and joint venture agreement with Sabre Inc., and **HarmonyCOM, Inc.**'s distribution agreement with Cisco Systems Inc.

Other clients restructured, such as **RightAnswers.com LLC**'s management buyout of the online content division of ServiceWare, Inc., a publicly-traded software company, and the corporate reorganization and management restructuring of **Blackwood, Inc.**, a financial trading software company.

Our client **Sports Capsule** set up video content distribution arrangements with the local cable systems of Time Warner and Comcast, and with the Bell Atlantics and Quests of the world for DSL distribution, the ultimate goal being the provision of fresh localized content not available elsewhere. Many of these arrangements required distribution to be accomplished through broadband provider networks.



Israeli Practice Update

The firm's Israeli practice area is vibrant. Not only do we provide expert legal advice; we also facilitate introductions to venture capital investors and strategic alliance partners, often through conferences that we sponsor in collaboration with the Israel government, investment banks and top accounting firms. In 2001:

For **AirSphere, Inc.**, a leading provider of web-enabled aviation applications, we negotiated a Strategic Marketing Agreement with Sabre Inc., a leading software licensor in the travel and transportation industry, for production of a software integrating AirSphere's technology platform with Sabre's airport resource management products.

We helped **HarmonyCOM, Inc.**, a leader in innovative software solutions for the telecommunications industry, to reach an agreement pursuant to which Cisco Systems Inc. will distribute HarmonyCOM's software with Cisco's routers, and to negotiate a variety of license agreements with Oracle Software Systems Israel Ltd.

We represented **Zarom Holding Limited**, a British Virgin Islands company, in establishing **Decima Ventures Inc.**, an affiliated venture capital fund.

We represented **Zarom Holding Limited** and **Tirosh Holdings Limited** in their sale of **Comverse Technologies Inc.** securities received in connection with the \$500 million acquisition of Exalink Ltd. by Comverse, an

industry leader in the development and delivery of a broad range of multimedia network-based infrastructure, systems, applications and services.

We also represented **Celvibe, Inc.**, a company engaged in the business of streaming video over handsets, in its reincorporation in the U.S. and the negotiation of stock option plans and employment agreements for its U.S. executives; **Mashov Computers Ltd.** in its acquisition of the minority interests in Mashov – Gruss Investments Inc.; **Iniru Wireless Inc.** in connection with the exercise of a warrant to purchase one million shares of its Common Stock by Partner Future Communication 2000 Ltd.; **Exalto Ventures, Inc.** in connection with various investments, including one in Passave Inc., a U.S. company founded on Israeli technology which regulates bandwidth traffic; and **Orsus Solutions USA, Inc.** in drafting stock option plans, restricted stock plans and distribution agreements.

Private placement activity during the year included \$8 million of **m-Wise, Inc.** Series B Preferred Shares and warrants; \$36 million of **InterWise Ltd.** Series C Convertible Preferred Shares; and \$5 million of **Attunity Ltd.** Ordinary Shares and warrants.

Our sponsorship or co-sponsorship of conferences focused this year on high technology companies.

In March, CL&M, with the Government of Israel Economic Mission, the Israel Export Institute, Argoquest,

Lehman Brothers, Bank Leumi, KPMG and the California Israel Chamber of Commerce, co-sponsored the *Investment in Israel Technology, Preview of Sizzling Start-Ups!! Conference* in Santa Clara, California. Prime Minister Ariel Sharon opened the conference with a review of the Israel high technology industry and his government's efforts to create tax incentives for foreign investment in Israeli start-ups.

In June, we hosted the first in a series of breakfasts at our Wall Street offices to introduce our Israeli client companies to prominent venture capitalists and strategic partners. Two companies that attended this breakfast have since received funding.

In October, CL&M, with Deloitte & Touche, Bank Hapoalim and several leading Israeli venture capital firms, such as AIG Orion, Formula Ventures, Giza Venture Capital and Vertex, co-sponsored the *Israel Hi-Tech Summit – People and Technology Conference* in Tel Aviv, Israel. The conference showcased Israeli companies involved in wireless, optics and physical and cyber security, as well as bio-technology. Prime Minister Ariel Sharon attended the conference opening and addressed a private session on the progress of his government's tax reforms in attracting foreign investors.

We regularly write columns for the *Israel High-Tech Investor*, Israel's leading technology periodical covering cross-border transactions.

Our diverse litigation practice obtained successful results for our clients in many areas of litigation in 2001.

We obtained a unanimous jury verdict in favor of our client **Dan Rotta** in a case involving a former business associate's conversion of Mr. Rotta's funds. The trial was held in Supreme Court, Nassau County, and the jury awarded Mr. Rotta the entire amount of damages sought by CL&M – more than \$600,000.

As described in more detail in the Intellectual Property section of this *Review*, we successfully negotiated a settlement for our client **TT Sounds Good AB** while the jury was deliberating in our suit in the U.S. District Court for the Southern District of New York against the rock star Tommy Lee and his record label.

We are assisting **Mitsui Sumitomo Insurance Company, Ltd.** 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.

We continue to represent **U.S. Trust Company** in connection with the *en masse* resignations of virtually all of the members of its Campbell, Cowperthwait asset management group to form a competing business. U.S. Trust asserted claims against the defendants including breach of fiduciary duty, misappropriation of confidential information, unfair competition, tortious interference with business relations, and breach of the implied duty to preserve good will sold. At the conclusion of 2000, the Appellate Division unanimously affirmed the trial court's refusal to dismiss U.S. Trust's claims for punitive damages against the defendants. Discovery on U.S. Trust's claims concluded in 2001 and the court has scheduled a jury trial commencing in April 2002.

Goldman, Sachs & Co. turns to our litigation team to protect its trade secrets and enforce its confidentiality agreements with its employees. In 2001, we achieved successful results for Goldman Sachs in a number of arbitrations and disputes involving the actual or threatened use of confidential information and trade secrets by former

Goldman Sachs employees. We successfully represented Goldman Sachs in matters involving former employees based in jurisdictions throughout the United States, including New York, Texas, California, Florida and Maryland.

CL&M represents a number of other clients in the financial industry on matters involving the protection of confidential information and the enforceability of non-competition and non-solicitation agreements. For example, we represent **Natsource LLC** – a New York-based inter-dealer broker that provides brokerage services for transactions involving natural gas and its derivative financial products (swaps and options) and is a leading broker in the relatively new field of environmental products such as federal and state emissions reduction allowance and credit programs – in a litigation arising out of the defection of several Natsource employees to form a competing business. The allegations against the defendants include breach of contract, breach of fiduciary duty, unfair competition and misappropriation of trade secrets. The Supreme Court, New York County recently rejected the defendants' attempt to have the case dismissed on summary judgment.

Our litigation practice is not limited to representing plaintiffs. We successfully defended two cases against CL&M client **Sea Containers Ltd.** arising out of a potential spin-off to Sea Containers' shareholders of Sea Containers' stock in its **Orient-Express Hotels Ltd.** subsidiary. Both cases were brought by groups claiming to be beneficial owners of Sea Containers' notes. The cases included claims that the potential spin-off violated the terms of the indentures governing the notes, violated the federal Trust Indenture Act and constituted a fraudulent conveyance. The Supreme Court of the State of New York granted Sea Containers' motions to dismiss both complaints.

Group Voyagers, Inc., one of the nation's largest escorted tour operators and wholesalers, relies on CL&M's litigators in a number of related cases, including a class action, arising out of the compensation and benefits paid to its tour directors. The cases raise issues involving the applicability of the federal Fair Labor Standards Act and ERISA to the company's tour directors and the interpretation of the company's 401(k) and pension plans. The main class action is pending in the U.S. District Court for the Northern District of California in San Francisco.

We also represent **Gerling Global Reinsurance Company** in a number of arbitrations arising out of reinsurance disputes. The arbitrations deal with the allocation of risk among insurers and reinsurers after the initial insurance coverage has been conceded.

Our litigators continue to be engaged in a unique eminent domain litigation practice on behalf of New York State. We, together with the State Attorney General, defended the **Empire State Development Corporation** against a challenge to the fundamental structure of the statute under which all eminent domain proceedings are conducted in the State. Initially we defeated a motion to enjoin the condemnation while the suit was pending. Later we obtained the dismissal of the suit in a summary fashion,

avoiding the delay and expense of a trial. We are now defending the matter in an appeal to the federal Circuit Court. We also defended ESDC in four challenges to its project to develop a new stock exchange in lower Manhattan in conjunction with the City of New York. We obtained the dismissal of each of those challenges, some summarily and one after full briefing. Our condemnation group also defended ESDC in another action alleging a conspiracy to violate state eminent domain statutes and constitutional protections and to take property without payment of just compensation. Based upon our motion to dismiss, the affected property owner withdrew its action. Our condemnation group has also been active in preparing for a taking of certain easements needed by the **National Railroad Passenger Corporation**, commonly known as Amtrak, on a complex and crowded site in Manhattan affecting a major teaching hospital.

CL&M's litigation practice also extends to commercial real estate litigation. We continue to act as litigation counsel for **Trinity Church**, one of the largest landlords in Manhattan, in a variety of real estate and landlord-tenant litigations. We have also litigated real estate matters for our client **Collegiate Church Corporation**.

Employment Practices

For every downturn in the economy there seems to be a corresponding increase in the need for employment law advice and related litigation help. Thus 2001 was a busy year for the Employment Practices Group. Navigating the labyrinth of laws, rules, and regulations that govern the employment relationship, and particularly the termination of employment, is complicated. We helped many of our clients through difficult corporate reorganizations and reductions in force, and provided advice concerning severance, separation agreements, releases and waivers of employment claims, the WARN Act and other employment termination issues. We also continued to advise clients with respect to their benefit plans, including ERISA, health and pension plans. Employees who are terminated or laid off in connection with a reduction in force frequently raise claims of wrongful termination, employment discrimination, and even defamation. We continued to represent our clients in a variety of such cases before agencies and courts.

Also, as discussed in more detail elsewhere in this *Review*, we continued our representation in the contractual infringement or employee "poaching" area. In addition to advising our traditional broker-dealer clients in the financial industry, employers in other industries, particularly the media and information technology fields, have been seeking our advice concerning non-competition, non-solicitation, confidentiality and proprietary rights agreements. In November we sponsored the Third Annual *Raiding on Wall Street Conference* in conjunction with *Securities Week* and the Institute for International Research.



Newly appointed counsel **Peter K. Killough** received his B.A. from New York University and his J.D. from the University of Virginia. Prior to joining CL&M's New York office in 1989, Peter served in the United

States Army as an Infantry Officer. He is a member of the firm's Complex Commercial Litigation and Intellectual Property Practice Groups. His trial and arbitration experience includes cases involving trademark infringement and dilution, misappropriation of trade secrets, breach of distributorship agreements, insurance coverage, and breach of employment agreements. Peter is proficient in German and has represented a number of German clients. He now practices in our Washington, DC office.

During 2001, we continued to advise our clients regarding tax and ERISA aspects of their qualified pension, profit-sharing and 401(k) plans and welfare benefit programs. Our work included:

- Amending clients' plans (including those of the **GPU Companies, Pall Corporation, Sea Containers America, Inc., Thoroughbred Racing Association, Westburne Supply Inc., Eastern Air Devices, Inc., and Isaac H. Tuttle Fund**) to reflect the "GUST" amendments to the Internal Revenue Code and other recent changes in IRS and DOL regulations, and preparing requests for IRS determination letters regarding these amendments.
- Advising as to the impact of the newly enacted EGTRRA amendments to the Code, and counseling as to various plan design opportunities presented by the new Tax Act.
- Providing advice as to, and preparing requests for IRS determination letters for, the termination of a profit-sharing plan maintained by **ACC Consulting Group Inc.** and a pension plan maintained by **Great Southwestern Construction Company**, a subsidiary of MYR Group Inc., and counseling as to various issues in connection with the termination of plans maintained by a number of clients, including **Elinco, Inc.**, a subsidiary of Eastern Air Devices.
- Advising on various issues relating to the continued tax-qualified status of clients' plans, including advice to **Group Voyagers, Inc.** on pension eligibility rules in connection with litigation involving certain of its four directors, and to **Sea Containers Ltd.** as to controlled group issues arising from the public offering of **Orient-Express Hotels Ltd.**
- Preparing a welfare benefit plan for **Playtex Products, Inc.**

We advised regarding application of ERISA's "plan asset" rules to investments by pension plans in mutual funds sponsored by a number of our investment company clients including Eden Transformer Ltd., Aelius Transformer Ltd., Horizon Fund, Polar Capital Funds plc, Polar Capital Japan Absolute Return Fund Ltd., Polar Capital Technology Absolute Return Fund Ltd., Polar Capital Global Technology Fund Ltd., and Polar Capital Market Neutral Absolute Return Fund, Ltd.

In connection with the **GPU Companies'** generation asset divestiture program, we amended the Companies' pension plans to add "bridged" early retirement and enhanced pension provisions for the employees who transferred to the buyers, as well as to add retirement benefit protection provisions for employees otherwise terminating under the Companies' severance programs. We also advised as to a variety of other issues relating to the impact of these transac-

tions on the employees' rights with respect to their accrued benefits under the GPU Companies' plans.

It was a busy year for corporate transactions, and we advised on numerous benefits matters related to those transactions, including the acquisitions by **United Business Media plc** of Allison-Fisher International, Inc. and Cozint Interactive, Inc.; the acquisition of Kent Electronics Corporation by **Avnet, Inc.**; the sale of AAC Consulting Group, Inc. to **Kendle International, Inc.**; and the acquisition of Intelitek by **RoboGroup T.E.K. Ltd.**

In connection with GPU's merger with FirstEnergy, we advised GPU as to potential Code section 280G "golden parachute" issues in connection with the GPU executives' stock options, cash and stock-based incentive compensation awards and severance agreements, and as to other benefit and compensation issues affecting GPU's directors, executives and employees. We also prepared amendments to all of the GPU Companies' qualified pension and 401(k) plans, and to all of the nonqualified deferred compensation and supplemental retirement programs covering GPU's directors and executives, to reflect the merger. In connection with the GPU Companies' 401(k) plans, we developed procedures for converting the GPU stock held in participants' accounts to shares of FirstEnergy stock.

During the year, we also advised our clients on the tax and ERISA aspects of executive compensation. Our work in this area included:

- Setting up incentive and equity-based compensation arrangements for employees of **Lims Ltd., Orsus Solutions Ltd., Decima Ventures, Inc., Celvibe Ltd., Zarom Holding Ltd.** and **Garban America Inc.**
- Preparing a restricted stock and stock option plan covering **MYR Group, Inc.** executives.
- Advising on the eligibility of deferral elections under **Pall Corporation's** Management Stock Purchase Plan for the "top hat" plan exemption from ERISA.
- Restructuring Pall Corporation's annual executive bonus program to permit the bonuses to qualify for the performance-based exemption from Code section 162(m)'s \$1 million compensation deduction limit.
- Advising **U.S. Trust Company** and GPU on the tax treatment of split-dollar life insurance agreements with their executives and directors under new IRS rules.
- Advising on bonus issues under employment agreements between U.S. Trust's senior officers and Schwab.

Our Tax Department provides sophisticated planning regarding 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, CL&M's Tax Department advised on a number of major transactions during 2001:

- We continued to provide Federal income tax advice on **Jersey Central Power & Light Company's** proposed \$320 million asset-backed securitization to finance the recovery of "stranded costs" resulting from the deregulation of electric generation in New Jersey, and on the treatment of interest rate swaps and other hedging transactions that may be entered into in connection with this financing.
- We advised on the availability of extended carryback provisions for the consolidated net operating loss the GPU Companies sustained in 2000 as a result of the sale of Jersey Central Power & Light Company's Oyster Creek nuclear power plant, and assisted in preparing refund claims based on those loss carrybacks that resulted in the tentative allowance to the Companies of \$196 million in tax refunds. We also developed legal positions to support claims for some \$200 million in refunds on taxes paid on gains realized by **Pennsylvania Electric Company** on the 1999 sale of its generation plants.
- We provided continuing tax advice on **GPU International's** \$275 million sale of its interest in six U.S. cogeneration power plants to Aquila Energy Corp., a subsidiary of Utilicorp United, and on GPU's proposed sale of its electric transmission and distribution subsidiaries in Australia and the U.K.
- We advised on the tax consequences of transactions between Jersey Central Power & Light Company and New Jersey Natural Gas Co. involving the reciprocal transfer of an estimated \$20 million of each party's remediation liabilities under orders of the N.J. Dept. of Environmental Protection, and the reciprocal transfer of certain of the parties' contaminated properties.
- We prepared a request to the IRS for rulings on the tax treatment of payments to be made by a resort developer to Jersey Central Power & Light Company to reimburse it for relocating and undergrounding an overhead transmission line near the developer's project, and on a proposed exchange of rights of way by the parties.
- We advised on tax issues relating to GPU's \$11 billion merger with and into FirstEnergy Corp. The merger, which closed on November 7, 2001, created the sixth largest investor-owned electric utility system in the U.S.

We counseled foreign investors in US real estate and U.S. real estate investment trusts (or "REITs").

Our Tax Department also provides advice outside of the transactional context. Last year, we helped multinational financial institutions such as **UBS Warburg** develop innovative financial products, and reviewed numerous "tax shelter" offerings on behalf of our individual and corporate clients.

We also advise high net worth individuals on tax-efficient asset diversification strategies.

Lending & Bankruptcy

Structured Finance

The firm's clients continued to be active in securitization and structured finance transactions in 2001, reducing borrowing costs by isolating income-producing assets in specially organized, bankruptcy-remote subsidiaries.

Transactions this year included restructuring **Sea Containers Ltd.**'s \$200 million shipping container facility; closing a \$100 million shipping container securitization for **GE SeaCo Finance SRL**, a joint venture of Sea Containers Ltd. and a General Electric Capital Corporation subsidiary; the sale by **Avnet, Inc.** of accounts receivable to a special purpose finance company to secure a \$300 million loan; and two transactions in which **Bowater Incorporated** "securitized" notes received in earlier timberland sales.

We also represented **Orient-Express Hotels Ltd.** in the structured refinancing of New Orleans' Windsor Court Hotel, and an American subsidiary of a Japanese leasing company in connection with the sale and leaseback of rail equipment to Bombardier.

Commercial Lending

We represented **IBJ Whitehall Bank & Trust Company** in a syndicated loan to Nonni's Food Company, Inc., a leading manufacturer of premium baked goods, and in restructuring its syndicated loan to SCP Communications, Inc. We also represented IBJW in loans to La Brea Bakery, Inc. and Metro Door, Inc., and in loan participation transactions, including acquisition of full rights assignments in syndicated loans to the McCormick & Schmick and Il Fornaio restaurant chains, Westward Communications and Jobson Publishing.

Bankruptcy

With the economy in recession, the Bankruptcy Practice Group saw dramatic increases in business bankruptcy cases.

We represent a consortium of Texas-based oil and gas producers in enforcing their claims against Enron Corp. and its energy-trading subsidiary, Enron North America. We also represent Texas creditors seeking to transfer venue of the Enron bankruptcy cases from Manhattan to Houston. Other clients have included **Cisco Systems** in claims against Rhythms NetConnections, and debt trustees in the Southern California Edison, GST Telecom, Winstar, Advanced Radio Telecom, Arch Wireless, Exodus Communications, Elot, PSINet, Crouse Health Hospital, Alterra Healthcare, Owens Corning, G-I Holdings, Dyersburg, Steel Heddle and Durango Apparel cases.

We were also involved in bankruptcies or defaults of the Planet Hollywood restaurant chain, Golden Northwest Aluminum Company, Washington Group International (formerly Morrison Knudsen Corporation) and the Epic Resorts time-share business.

Questions or Comments

If you have any questions or comments about any article, kindly contact Cliff Case at 212-238-8798 or case@clm.com, Jim Abbott at 212-238-8720 or abbott@clm.com, Tom Davis at 212-238-8850 or davis@clm.com, Cully Irving at 212-238-8714 or irving@clm.com, or Maria D. Velazquez at 212-238-8670 or velazquez@clm.com.

Trusts & Estates

Our victory last year in *Walton v. Commissioner* was confirmed when the IRS declined to appeal a strong Tax Court opinion in favor of our client, Wal-Mart founder Sam Walton's sister-in-law. This much-noted opinion allowed GRATs (an important estate planning tool) to be truly "zeroed out" – created with no gift tax cost.

We represented the executors of an estate in complex Surrogate's Court litigation involving the ownership of estate assets, requiring the combined skills of our trusts and estates and litigation departments. We were able to narrow the scope of the litigation through discovery and court motions, and to craft a very favorable and creative settlement, making effective use of tax planning and a well-negotiated contract for the sale of estate property with generous guarantees for the estate, satisfying all parties.

We continued to deal with important developments concerning split-dollar life insurance. The split-dollar rules have been largely based on revenue rulings issued by the IRS in the 1960s, and subsequent case law and private letter rulings. Last year the IRS issued Notice 2001-10, revising and restating those rules. We analyzed the Notice, which generated a fire storm of criticism, and advised our clients how to proceed in the uncertain atmosphere it created. Early this year the IRS issued Notice 2002-8, which revoked the prior Notice and contained important grandfathering provisions that will benefit our clients.

Another important development last year was the adoption by New York of a new Uniform Principal and Income Act. The new Act was partly a result of New York's earlier adoption of the Uniform Prudent Investor Act, based upon "total return" concepts requiring a trustee to develop an investment strategy enabling it to make present and future distributions in accordance with objectives reasonably suited to the entire portfolio, thus encouraging investment for growth.

The new Principal and Income Act changes the definition of "income" to assure that income beneficiaries receive adequate distributions in this new investment environment, creating two distinct opportunities for a trustee to provide fair treatment for income beneficiaries and remaindermen. The first is a power, granted to all trustees unless specifically prohibited by the trust instrument, to adjust between income and principal. The alternative is to convert to a four percent unitrust, thus making distinctions between income and principal meaningless.

As counsel to the **American Bankers Association**, we submitted detailed comments as the legislation was taking shape, helping to direct the debate. After enactment, we revised the trust and will provisions published by our client **U.S. Trust Company** to reflect the new rules. We continue to follow this legislation in other states, and to develop new planning strategies for our clients in light of the changes in the law.

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Tax-Exempt Organizations

The spontaneous and enormous outpouring of public financial support for victims following September 11 tragedy created a pressing need for organizational advice and expertise. As is detailed elsewhere in this Review, the Tax-Exempt Organizations Practice Group responded immediately by volunteering to establish the **Twin Towers Fund** and advise it on legal and tax issues. Practice Group head Toni Thomas, who also chairs the City Bar's Committee on Non-Profit Organizations, testified before the New York State Assembly on legal issues for charities arising from the tragedy.

The Group was also very busy this year on a variety of non-September 11 matters. We assisted the **Bronxville Historical Conservancy** to sell an historical home in Bronxville subject to conservation restrictions, thereby promoting the Conservancy's purposes of furthering the Village's historical preservation while raising funds for its other projects. We also advised the Conservancy on ways to encourage Bronxville homeowners to consider related transactions.

During 2001, we began assisting two organizations to reorganize. In one case, the reorganizing entities offer counseling to individuals and train counselors, and the reorganization will require approval of the New York State Attorney General's office, Department of Health, and Education Department. The other matter involves transferring publishing and research functions from a smaller organization to a much larger professional society. In both cases, the entities require advice on the regulatory requirements of reorganization in New York and assistance as to their corporate, financial and legal duties.

For another client, a New York City church, we advised on the creation of a new non-profit subsidiary to handle the financial aspects of the church's functions, including investing church funds, managing its endowment, fundraising and planned giving.

We also set up a number of new organizations this year, including the **Museum of Comic and Cartoon Art**, to be located in New York City, and created several "friends" organizations to fund projects abroad. These organizations are subject to special requirements under IRS rules for deductible contributions. We advised the **Andy Warhol Foundation for the Visual Arts** and the **United Way of America** on their fund-raising efforts.

As always, we continue to provide advice to our non-profit clients in many areas of the law other than purely exempt-organization issues. For example, several clients required advice concerning the pension law changes enacted by Congress last year. We also provided employment and real estate advice.



Ronald D. Spencer joined the firm as counsel in December. Practicing in the New York office, he will continue his work with numerous art foundations, art authentication boards and committees as well as artists and their estates, art galleries and art scholars. Ron

represents the Pollock-Krasner Foundation, which aids needy and worthy visual artists. He received his L.L.B. from Yale Law School and attended the London School of Economics, London, England, the University of Paris School of Law, Paris, France, and received a B.A., *cum laude*, from Brown University.

Loss, and Perseverance

Loss

Much has been written about the horrible loss of life and property on September 11. Many of our clients suffered indirect effects from the attack, and these indirect effects are still continuing. Some clients and friends suffered directly.

Three of our clients had offices in the World Trade Center. Though many hundreds of employees of **Garban Intercapital**, **Euro Brokers** and **TheBEAST.COM** walked down the emergency stairs to safety that morning, one employee at Garban and sixty employees at Euro Brokers died when the Towers collapsed. Our Firm also lost many friends and business colleagues including Doug Cherry, our insurance broker at Aon Insurance who had met with us just the day before, and Brendan Lang, a construction supervisor with StructureTone, who supervised the build-out of some of our offices at 2 Wall Street last year and who was working on a job at the Center that day. As noted elsewhere, the cousin of a CL&M employee also died.

In addition to the loss of life and the psychological damage to the survivors, three large businesses suddenly found their normal offices and important business records destroyed. Our other clients in the immediate neighborhood were also hurt. All buildings west of Broadway and north to Chambers Street were shut down for several weeks to facilitate emergency rescue work at the World Trade Center site. All buildings east of Broadway, including Wall Street and the financial district immediately surrounding the New York Stock Exchange, were shut down for the week of September 11, and were only reopened on the following Monday. For weeks thereafter, the streets were blocked with concrete barriers and monitored by soldiers, police, and emergency workers. Telephone and internet service was knocked out because the Verizon switching station for the financial district was destroyed by fire and water damage. The air stank from the fires at ground zero.

Months later, we still mourn these losses to our friends.

Perseverance

Our clients moved quickly to resume business after the September 11 tragedy, and we are proud to have helped them.

Part of our work has been in assisting victims. Within days of the attack, we volunteered to provide advice in

establishing the **Twin Towers Fund**. We assisted in the Fund's organization and tax exemption, and continue to provide legal and tax advice on the many operational and organizational issues of a new charity. We also advised clients concerning the creation of corporate-related entities for victims of the tragedy and their families. Not only was the September 11 work urgent, but the legal issues, particularly with respect to the IRS requirements, were uncertain and changed significantly as a result of the tragedy.

Toni Thomas, the Head of the Exempt Organizations Practice Group, also became Chair of the Committee on Non-Profit Organizations of the Association of the Bar of the City of New York last year. In this capacity, Toni has been involved in many issues that arose out of the September 11 tragedy. She prepared testimony on the legal issues arising for charities as a result of the tragedy, and with Evan Davis, the President of the City Bar Association, presented that testimony at hearings of the New York Assembly dealing with September 11 issues.

Many clients had significant real property issues. Some were forced to find new offices. In December, **Garban LLC** signed a new lease for 111,000 square feet to replace its office space that was destroyed on September 11. The company plans a state-of-the-art initial installation, including the placement of an emergency power system on the mechanical floor of the building and communications equipment on the roof. Garban has rights to take additional space in its new building. The lease was negotiated and signed within two weeks after the initial draft was received in our office. We also represented Garban in negotiating contracts with its architect, engineers and other consultants. We assisted our client **TheBEAST.COM** to lease temporary space in midtown Manhattan, and then to lease permanent space on Fifth Avenue.

Other clients in the neighborhood had other real property questions:

- A commercial landlord sought our advice concerning the impact of ambient air conditions on its buildings and tenants. We assisted the client in its dealings with tenants and environmental experts concerning this issue.
- A client which owns commercial property in the "red zone" was prevented from returning to its building until

mid-January. Its building was declared safe much earlier, but the prohibition of pedestrian and vehicular traffic on nearby streets prevented use of the building.

- A public agency client has sought our advice on real estate values downtown. We worked closely with appraisal experts evaluating this issue, which has few legal or factual analogies.
- Physical security has become more of a concern. A project on which we are working required building redesign and replanning of security. We have assisted the client in evaluating the legal and transactional/business aspects of these revisions.

We also helped some of our clients to restore their important business records. In some cases, our files contained the only copies of signed agreements and other legal documents, and were thus essential in restoring "institutional memory." For example, a law firm in the World Trade Center was deal counsel in restructuring the **Sea Containers Ltd.** securitization that closed in the summer. The executed deal documents had been left with that firm to prepare closing files, and these documents were lost with all other papers. The only available copies of the executed documents were the ones that our associate Anna Maria Vistica insisted on taking with her from the closing room.

Intellectual property was important to clients who lost their offices on September 11. Within days, clients were contacting us to take steps to protect their trademarks and copyrights – these intangible properties were often among the main assets to survive the terrorist attack. Our intellectual property group closed out the year by assisting one such client in a major trademark search undertaken as part of its disaster recovery effort.

Our partner Steve Kass serves as Chair of a new Task Force on Rebuilding Lower Manhattan established by the Association of the Bar of the City of New York. The Task Force includes representatives from civic and environmental groups, employers, and many of the public authorities responsible for the rebuilding effort, and hopes to play an important part in shaping the plan and review process essential to revitalizing this area.

CL&M – Restoring Service

The firm still opens for business at 9:30 a.m. but there are usually many people here before the official opening. And that was the case at 8:45 a.m. on September 11, 2001 when those here heard the first dull boom and quickly noticed that the air was filled with miscellaneous pieces of flying paper, not too different from the scene out our windows during a ticker tape parade. Without TV news to help us, though, no one really knew anything at that point – maybe it was “only” an explosion in an equipment room. But then phone calls came from friends and family with the news that a plane had gone into the building. We saw soon enough the second plane go into Two World Trade Center and it became all too obvious that terrorism was involved.

A decision to close the office for the day was made immediately and our telephone operators started to spread that word as staff members began to call in. But the subways were still running and employees who had been in transit continued to arrive. It seems odd now, but at the time we did not realize the significance of what seemed to be just a fire in buildings several blocks away.

Our view changed quickly when Two World Trade Center collapsed at about 10:00 a.m. The noise was deafening and the smoke cloud rolling across Trinity Churchyard was a terrible sight. There was no panic and everyone began an orderly march down 15 (on average) flights of stairs. Once we reached the lobby there was something of a dilemma – no one really knew if the terrorist acts were finished (we had heard of the Pentagon crash by this time). And of course, no one forgot that we are across the street from the New York Stock Exchange, another prime terrorist target. Although some decided to make their way out through the smoke and dust, the majority of the staff proceeded down to the basement to wait things out. When Tower One fell a few minutes later (only the noise told us) everyone was safely in the basement. Although it took a few minutes to realize it, the collapse of Tower One destroyed some key Verizon hubs and eliminated our ability to communicate electronically with the outside world for a very long time.

The next hour or so passed listening to the confused radio reports. By 11:30 a.m. no new acts of terror had been reported, the smoke cloud was getting neither better nor worse and outside rescue workers encouraged us to evacuate. So everyone walked out, either towards midtown or over the Brooklyn or Manhattan Bridges to get home as best they could.

By 5:00 p.m. that afternoon, the recovery effort was in full swing. The first job was to be sure that no one at the firm

had been hurt. That was confirmed fairly quickly for most people although it did take a few days before we were able to contact absolutely everyone. (As noted elsewhere, some of our clients, friends and business associates were not as lucky as we were.) The next order of business was to establish a communications “tree” to spread news about the office’s status to everyone; this was accomplished by the afternoon of Wednesday, September 12. Two major problems remained: how to regain access to the office and how to restore our communications systems. Lower Manhattan was sealed off from the rest of the world and even 2 Wall Street management knew nothing of the state of the building. That situation continued through Thursday and Friday. Our midtown Manhattan and Washington, DC offices were largely unaffected and were able to provide support to lawyers who had matters that could not wait, although the inability to reach our 2 Wall Street computer network made things difficult.

Finally on Saturday, September 15, the authorities allowed 2 Wall Street management and our recovery team (partners Jerome Caulfield, Steve Glusband and Jim Rayhill, Office Manager Diane Koday-McBurnie and computer experts Matt Ruzich, Nomi Qureshi and Hamid Mukhtar) access to the building. The building had never lost its electricity and our internal computer network was working. The building itself was structurally sound. We had one broken window and a heavy deposit of grit in another office whose window had been left open a crack. And of course there were no outside telephone, email or fax services because of the destruction of Verizon’s facilities, no mail deliveries and limited access for messengers. But as long as people could get to the office there was no reason not to reopen.

We did in fact reopen on Monday, September 17. Almost everyone reported for work. Those who did not own a cell phone soon purchased one. The midtown office was transformed into a communications center with messengers constantly shuttling back and forth on the subway with faxes, phone messages, courier deliveries and, eventually, even some hard copies of incoming email. Many of us contacted clients and friends by email from home or by fax from midtown to let as many people know as soon as possible how to reach us.

By September 20, many of our incoming phone calls had been re-routed to the midtown office. On September 28, our internet and email services were restored, using a rooftop satellite connection rather than Verizon’s wires. On October 4 some of our phones started to work at 2 Wall Street and within a week all of our incoming phone

calls were coming to 2 Wall Street, although it took another few weeks for the direct dial numbers to work as true direct dials again. Mail delivery and messenger access was restored (although mail delivery was disrupted later in the fall by the anthrax scare).

In the end, we managed to get up and running after September 11 quickly and with generally little impact on service to our clients, apart from some lost email and undelivered letters. We were even able to proceed on schedule with our hosting in late October of the annual meeting of Legalink, a network of approximately 60 law firms from around the world. In a strong show of solidarity, almost everyone who had signed up earlier in the year to come to New York for the meeting did so. A proclamation by Mayor Giuliani thanked Legalink for its support “during this time of recovery for New York City,” and proclaimed October 26, 2001 as “Legalink Day.”

Of course, conditions in Lower Manhattan are not “normal” now, if that word is taken to mean “the way it was before September 11.” In that sense, conditions will probably never be “normal” again. But we were able to resume operations relatively quickly, and are able to function effectively now. We thank all of our clients and friends for their patience and understanding while we worked to restore our services.

Pro Bono

As the firm recovered from the effects of the September 11 attacks, staff members were active in helping its victims.

Within 24 hours of the attacks, a team led by Toni Thomas worked at the request of Mayor Giuliani to form a charitable organization to provide relief to the uniformed services personnel of New York City and the Port Authority. The firm continues to represent this organization, the **Twin Towers Fund**, on a *pro bono* basis. This representation and Toni’s other activities on legal issues for charities arising out of the September 11 attacks are described elsewhere in this *Review*.

Members of the Trusts and Estates Department including Steve Lappert, Margaret Drohan, Adriane Kyropoulos, Kim Arestad and Alice Davenport volunteered at the Family Victims Assistance Center at Pier 94, helping to provide estate planning and administration services to the families of World Trade Center victims. Mike Frankel and others gave estate planning advice through a special group organized by the Association of the Bar of the City of New York.

Many other staff members helped office clients in forming or contributing to relief organizations on a *pro bono* basis and many members of the CL&M staff contributed to a scholarship set up to honor Robert F. Tipaldi, who died at the World Trade Center September 11. Mr. Tipaldi was a cousin of CL&M employee Steve Tacopino.

Questions or Comments

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