

Disputes and Litigation

January 24, 2023

Looking Ahead: What to Expect in 2023

With courts finally emerging from protective measures enacted to prevent the spread of Covid-19, and the continued challenges of severe understaffing in some courts, litigants faced delays and hurdles well into 2022 across the United States. Finally, courts in New York are for the most part back to pre-pandemic operations, though significant backlogs remain in some areas and courts. However, courts and litigants have embraced some of the technological changes instigated by pandemic lockdowns and are continuing to handle some routine court conferences and other appearances remotely, resulting in significant efficiencies for the parties. We expect these changes to continue as courts and individual parties assess whether an appearance must be in person or is a more routine matter which can be handled more efficiently over remote videoconference platforms.

Post-pandemic fallout continues to be seen in the courtroom as well, with a notable increase in cases associated with government mandates and the cascading effects of working from home on employees, companies, and contract law. In 2020 and 2021 force majeure provisions dominated legal arguments in a range of cases and contract disputes, but a shift in 2022 saw far more supply-chain related lawsuits involving legal impracticability of performance and other contract-related disputes. The crypto crash and NFT market collapse are ushering in shareholder derivative claims and other cases across a large segment of the financial services and technology industry with a likely longer tail effect yet to be seen among investors, lenders, and shareholders. In New York, these uncertainties across the financial services and technology industries might be compounded by the recently enacted ban on some crypto-mining operations. We expect this to continue with the uncertain economic outlook.

Carter Ledyard's litigators represent a wide variety of clients across a range of industry sectors and expect to see an uptick in litigation as the economy tightens. While in economic booms, companies might be more willing to absorb the costs from an unfavorable contract, or extend payment or other contractual terms, in times of stress, there is less flexibility as whichever party views the contract more favorably will seek to strictly enforce its terms. Similarly, if today's low unemployment levels begin to rise, we would expect to see additional employment claims as it becomes more challenging for laid off employees to find alternative employment, thus making claims for wrongful termination more attractive. If the economic environment and inflation rates continue to darken the outlook, Carter Ledyard expects even more disputes in court involving distressed entities, ownership structures or failed businesses, with stakeholder lawsuits creating even more challenges for corporate boards and management.

We also expect to see continued employment litigation as states modify governing statutes. For instance, we expect to see continued litigation in the area of non-compete agreements as many state legislatures pass non-compete laws with tightened provisions for disclosure and as the federal government considers a rule that purports to ban both existing and future non-competes nationwide. New York has also recently created a private remedy and significant liquidated damages for certain employees who must be paid weekly, resulting in employers facing litigation from individual employees who claim they were paid less frequently than required. An additional change to New York's employment law requiring employers to disclose salary ranges for open positions is likely lead to increased litigation as companies fail to comply or present unrealistically broad salary ranges.

In New York, several bills have passed the legislature (but, as of the date of this publication have not yet been signed by the Governor) that create a certain level of controversy and which we would expect to lead to litigation and compounding effects on business. Cannabis related disputes and the friction of federal restrictions continues to plague business owners in the space, and you can read more about Carter Ledyard's insights in our Cannabis section [here](#).

Thought Leadership and Advisories

- [Colorado Adds New Limitations to Non-Compete and Non-Solicit Agreements](#)
In recent years, a number of states have adopted legislation restricting the ability of employers to enter into non-compete agreements with employees who are not "highly compensated," including, now, Colorado.
- [Washington, D.C. Revises New Non-Compete Statute to Avoid Total Ban](#)
Advising on Washington, D.C.'s scaled back its anticipated ban on non-competes, a welcome move for employers.
- [New Developments in Enforcing Non-solicit of Employees Provisions in New York](#)
New York state court considerations of post-employment covenants including non-solicitation of employees' clauses.
- [New Salary Disclosure Law: NYC Council Delays Effective Date](#)
A salient update on the implications of the new salary disclosure law on businesses throughout New York City.

Case Highlights

- [Carter Ledyard & Milburn LLP Defeats Appeal from Order Dismissing Usury Claim on Statute of Limitations Grounds](#)
The Appellate Division, Fourth Department, recently denied the plaintiffs' appeal from a lower court order granting summary judgment to Carter Ledyard's client and dismissing usury claims against merchant cash advance funder C6 Capital Funding LLC on statute of limitations grounds.
- [Commercial Division Enforces On-The-Record Settlement Agreement of Carter Ledyard Merchant Cash Advance Client](#)
A decision by the Westchester County Commercial Division enforced an on-the-record settlement agreement entered by Carter Ledyard's merchant cash advance (MCA) client.
- [Carter Ledyard Wins Summary Judgment Enforcing Merchant Cash Advance Agreement, Overruling Usury Defense](#)
*Spin Capital LLC, a Carter Ledyard client, is entitled to summary judgment granting two breach of contract claims against merchant cash advance (MCA) customers for almost \$1.4 million in damages, ruled Commercial Division Justice J. Scott Odorisi in a recent decision, *Spin Capital v. Texas Medical Center Supply LLC*.*
- [Complete Litigation Victory on Summary Judgment for Museum of Dream Space LLC and Dahooo American in Copyright Dispute](#)
After a three-year legal battle involving highly technical discovery, Carter Ledyard secured a complete victory on summary judgment for client, Museum of Dream Space.
- [Agreeing with Carter Ledyard, Appellate Division Holds that New York's 'Anti-SLAPP' Statute May Not Be Applied Retroactively](#)
The Firm's motion to file an amicus brief, which that court then considered, together with the briefs of the named parties. In its decision, the Appellate Division agreed with the Firm and favorably decided the case on our client's behalf.

- [Carter Ledyard Achieves Appellate Victory in Delaware Supreme Court in Shareholder Dispute](#)
Carter Ledyard's appellate litigation team achieved a significant appellate victory in the Supreme Court of the State of Delaware for client Dengrong Zhou.
- [Carter Ledyard Obtains Dismissal of All Claims Asserted Against Its Clients Xueyuan Han and Related Corporate Entities](#)
United States District Judge Gregory H. Woods issued a decision dismissing all claims brought against Carter Ledyard's clients Xueyuan Han and several foreign entities in which Mr. Han has an indirect or direct interest.

First Amendment Highlights

Carter Ledyard's Alan Lewis was retained to bring defamation cases on behalf of three clients as a result of the dissemination of a report that was a part of the Steele Dossier, in which the clients were accused of delivering bags of illicit cash to Vladimir Putin in the 1990s. In the lawsuit brought against Glen Simpson and Fusion GPS, the firm was successful in defeating the defendants' motion to dismiss the complaint. In the lawsuit he brought against Christopher Steele, we are litigating the reach and interpretation of Washington DC's Anti-Slapp statute as it relates to this lawsuit. Mr. Lewis argued in the DC Court of Appeals in that connection on September 14 and we are awaiting a decision.

Mr. Lewis was retained by one of the world's most successful investors in the securities of biotechnology and other healthcare companies, who was the subject of an article in the media which accused Carter Ledyard's client of having sent sexually inappropriate content by email to his staff.

Mr. Lewis also was retained by world-renowned author and celebrity, to interact with a mainstream publication which had republished salacious allegations against the client. We persuaded the publication to remove the article from their website.

- [Alan Lewis Quoted in Bolts Magazine on Criminal Defense Lawyers Largely Missing from State Supreme Courts](#)
Alan told Bolts Magazine, "The high courts of every state and the U.S. Supreme Court are regularly confronted with novel questions about the interpretation of criminal statutes and procedure" ... "It is very much regrettable if the only kind of experience that all of the judges bring to the bench from their previous career as advocates is for one side—the prosecution—with no experience on the other, representing accused persons."
- [Alan Lewis Quoted in Law360 on Filling the New York Court of Appeals Vacancy With a Criminal Defense Lawyer](#)
Alan, told Law360 the NYSACDL hopes Gov. Hochul will pick a candidate with criminal defense experience, which will help correct a crucial imbalance in the court's composition.

New Partner Announcements

Carter Ledyard is pleased to announce the promotion of [Jacob Nemon](#) and [Leonardo "Len" Trivigno](#), from counsel to partner, effective January 1, 2023.

[Jacob Nemon](#) represents corporations and individuals in a broad range of complex commercial and civil litigations. He aggressively litigates sophisticated and fast-paced commercial cases on behalf of both plaintiffs and defendants in state and federal courts, in multiple jurisdictions, at the trial level, in bankruptcy court, and on appeal. Jacob has multiple recent successes representing merchant cash advance (MCA) companies and small business lenders in contentious litigations involving usury claims. He was an associate from 2015-2021 and counsel in 2022.

[Leonardo "Len" Trivigno](#) represents a diverse client base in general commercial disputes, including claims for breach of contract, unjust enrichment, quantum meruit, trademark infringement, civil RICO violations, and commercial mortgage foreclosures. He has successfully litigated matters in state and federal trial and appellate courts across the country, including the Second and Third Circuit Courts of Appeal, and has

arbitrated matters before the AAA, JAMS FINRA and the ICC. Len frequently advises clients in bankruptcy related matters, representing indenture trustees, investors holding claims against debtors arising from the issuance of residential mortgage-backed securities, and defendants in adversary proceedings.

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