

2011 Year in Review

CARTER LEDYARD & MILBURN LLP

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CARTER LEDYARD & MILBURN LLP

Partners for Your Business®

To Our Clients and Other Friends

Our firm has been on Wall Street since 1854. In 2011, despite the continuing drama in the European debt markets and the daily commotion outside our front door (including ticker tape parades and demonstrators who wish to “occupy Wall Street”), we helped our clients in some interesting matters.

Disputes abounded. Our lawyers drafted employment contracts and successfully defended them, making important new law in the trade secrets area. Other clients had interesting art law disputes and transactions. Offshore clients were busy, and we provided them with a Gateway to America® in such diverse transactions as sales of securities in the U.S. for clients in Canada, sales of U.S. subsidiaries for clients in the U.K., securities offerings in Israel, an arbitration in Singapore for a client in Japan, and a sale of a \$2.5 billion Barbadian company to a purchaser in China. Our banking clients continued to grow their corporate trust businesses, and we helped document their transactions and defended them in the occasional default situation. New York government agencies expanded their footprint despite the economic downturn, and we helped them with real estate condemnation, purchase and leasing transactions. Clients came to us with thorny income tax and estate tax planning issues, as they have been doing for a long time.

In 2010 The National Law Journal recognized CL&M as the sole New York City firm on its “Midsize Hot List” of the top 20 midsize law firms in the country, because we “demonstrated what it takes to get ahead as a midsize law firm in a legal services market increasingly dominated by large-firm competition.” In 2011 we made the Hot List for the second year in a row. We were pleased that their commentary this year saluted our flexible billing practices and careful attention to costs, but we were even more pleased that they recognized our successes helping clients in litigation, international corporate transactions and environmental law in particular.

We salute our clients for their perseverance in this recovering economy, and we look forward to helping them again in 2012.

Carter Ledyard & Milburn LLP

Winning Strategies



Restrictive Covenants

Carter Ledyard continued to crystalize New York law on the enforceability of non-compete clauses. We obtained a preliminary injunction enforcing noncompetition provisions in employment agreements of California employees of New York-based financial services company **The Ayco Company, L.P.** In its ruling, the court enforced contracts Carter Ledyard had drafted for the company. The former employees appealed to the Second Circuit Court of Appeals, which affirmed the lower court and preserved the preliminary injunction enforcing the non-competition agreements. The case is noteworthy because the court followed choice of forum and choice of law provisions in the contracts we drafted and applied New York over California law despite the facts that the employees lived in California and that California outlaws non-compete agreements in most circumstances.

Privilege

In an ongoing discovery dispute, we helped our client, the **California Franchise Tax Board**, gain access to crucial materials held by a third party in New York. The out-of-state defendant argued that communications related to his licensing agreements with the third-party were privileged under the common interest doctrine. We argued, and the Court agreed, that business communications between licensing partners are not privileged legal communications, and that New York law does not recognize a common interest privilege outside the context of joint litigation.

Bankruptcy

Carter Ledyard successfully represented **U.S. Bank N.A.** in its capacity as indenture trustee and collateral agent in a bankruptcy dispute involving whether liens on the economic value of Federal Communications Commission licenses attached at the time the bankrupt debtor entered into an agreement to issue \$500 million in senior secured notes. An unsecured creditor sought to void the liens that U.S. Bank and other creditors had placed on FCC licenses held by the debtors claiming that there was no transfer of assets prior to the bankruptcy petition. The court rejected the unsecured creditor's argument and ruled in U.S. Bank's favor. This and other bankruptcy litigation is also discussed on page 20.

Securities

In 2011, CL&M remained on the cutting edge of securities and financial services industry litigation involving complex financial instruments and capital markets transactions. We advised domestic and international investors, investment advisers, and financial institutions in connection with litigation, regulatory inquiries, and related matters arising out of transactions associated with the crash of the financial markets, including CDOs, RMBS, credit-default swaps, and other structured financial products. Our attorneys provided strategic advice and represented clients in litigation in state and federal courts, including bankruptcy court, involving fraud, contract, and securities-based claims arising out of investments and transactions worth billions of dollars.



Antitrust

With Carter Ledyard's assistance, Peruvian railway operators **Ferrocarril Transandino S.A.** and **Perurail S.A.** (affiliates of firm client **Orient-Express Hotels Ltd.**) were cleared of antitrust violations in the operation of the railroad to Machu Picchu, Peru's foremost tourist attraction. The Technical Secretariat of INDECOPI (the Peruvian Competition Commission), citing U.S. antitrust precedents, found that Ferrocarril and Perurail had illegally suppressed competition by filing a series of complaints against competing railway operators. Working with Peruvian counsel in an appeal from that decision, we prepared an expert report on the interpretation and application of the "sham litigation" exception to the Noerr-Pennington doctrine under U.S. antitrust law (which immunizes private parties from antitrust liability for attempting to influence governmental action). Our report concluded that the Technical Secretariat incorrectly interpreted U.S. law, noting that it is necessary to demonstrate that the challenged legal proceedings are objectively baseless in order to fall within the sham litigation exception to the Noerr-Pennington doctrine and successful litigation, by definition, cannot be sham litigation. INDECOPI decided in favor of Ferrocarril and Perurail, holding that the legal and administrative actions they had filed did not constitute sham litigation but were a legitimate exercise of their rights. In its 102 page decision, INDECOPI specifically referred to our analysis in explaining that successful litigation cannot be baseless.

Employment

In 2011, we helped our clients deal with an increasing number of federal and state wage and hour claims relating to the misclassification of employees as independent contractors. We continued to advise on severance, separation agreements, releases and waivers of employment claims, COBRA benefits and other employment termination issues. We provided general employment advice concerning manuals, policies and procedures, and wage and hour laws. We also provided workplace behavior training for our clients.

Our practice in the area of restrictive covenants and protection of trade secrets continues to grow and make new law. We counseled numerous clients on best practices for protecting themselves from the loss of employees and information to competitors and drafted appropriately tailored contracts and employment policies. We were routinely in court litigating claims concerning trade secrets and noncompete agreements.

Claims of wrongful termination and employment discrimination continued, and we represented our clients in a variety of such cases before agencies including the EEOC and the NYSDHR and in state and federal courts. We also continued to use mediation to resolve employment claims at the pre-litigation stage, saving our clients both the time and expense of full litigation.



Winning Strategies



Art Law

Our client **Robert Indiana**, the renowned artist who created the iconic "LOVE" painting and sculpture, prevailed in a federal lawsuit by a collector relating to sculptures that are not Mr. Indiana's work. The court dismissed the complaint for lack of subject matter jurisdiction, recognizing that it could not hear a litigation between the plaintiff, a citizen of Monaco, and one of the co-defendants, a permanent resident alien of the U.S. and a British citizen.

CL&M secured the return of artwork to its true owner, collector **David Mirvish**, with a unanimous decision from New York's highest court. CL&M obtained discretionary leave to appeal to the Court of Appeals, which is granted to only about six percent of civil cases. The Court of Appeals then unanimously held that Jacques Lipchitz's widow, Yulla Lipchitz, made a valid gift of a sculpture entitled *The Cry* by Jacques Lipchitz (cast 3 of 7) to Mr. Mirvish's predecessor-in-interest by delivering a handwritten, signed deed of gift attached to a photograph of the sculpture, that the donee's possession of that deed of gift after Mrs. Lipchitz's death created a presumption that it had actually been delivered and the gift thereby effected; and that summary judgment by the Surrogate's Court for Mr. Mirvish had been appropriate.

CL&M handled disputes for **Corbis**, a global visual media company providing a comprehensive selection of contemporary creative, editorial, entertainment, and historical photography.

Real Estate

Carter Ledyard prevailed on an appeal for client **Collegiate Asset Management Corp.** in a commercial real estate dispute. As part of the purchase price for our client's sale of a property, the developer agreed to either transfer two units in the renovated building to our client or pay an agreed upon amount of cash to our client. The developer then refused to transfer the units or pay the cash. A lower court initially dismissed our client's claims, finding that the execution of sales agreements for the two units was a condition precedent to the developer's obligation to convey the units or pay the cash alternative. The appellate court unanimously reversed and held that the developer had to pay the cash alternative whether or not the sales agreements for the units were executed. Rather than sending the case back to the lower court, the appellate court granted summary judgment in our client's favor for the full amount claimed.





International Arbitration

We obtained a multi-million dollar arbitration award for client **Oakley Fertilizer, Inc.**, a U.S.-based international commodity trading company, against an Egyptian commodity trading company after an arbitration before the AAA's International Centre for Dispute Resolution. This dispute related to monies owed arising out of multiple transactions with the Egyptian company involving bulk commodity products (sourced primarily from Egypt, Russia, and Ukraine). The arbitrability of the dispute was strongly contested by the Egyptian company, which commenced a federal court proceeding in New York to stay the arbitration. We prevailed in federal court on the arbitrability issue and prevailed in the arbitration on the merits.

Corporate Trust

We represented **The Bank of New York Mellon Corporation** in successfully opposing a temporary restraining order in a federal litigation involving about \$130 million in principal amount of defeased municipal bonds. A bondholder objected to the obligor's plan to redeem the bonds at par while offering holders the option of tendering their bonds for purchase by the obligor at 101% of the principal amount. The court agreed with us and denied injunctive relief because of the bondholder's failure to post security in an amount sufficient to pay the defendants' damages in the event that the defendants were wrongfully enjoined, as well as the bondholder's delay in seeking injunctive relief until three business days before the scheduled closing.



Gerald W. Griffin, who was named a partner, focuses on complex commercial litigation frequently arising out of corporate insolvencies and alleged violations of the federal and state securities

laws. These matters often involve the investigation of alleged fraudulent activity within domestic and foreign corporations. He regularly appears on behalf of his clients in bankruptcy court and federal and state courts, and in domestic and international arbitrations and mediations, with substantial experience in the ICC International Court of Arbitration. Gerry graduated from Skidmore College with a B.A. in 1991. He received his J.D. from Brooklyn Law School in 1998.



Stephen M. Plotnick, who joined us as a partner, is a business litigator with extensive experience representing clients in matters involving complex capital markets transactions and financial instruments.

He advises domestic and international investors and financial institutions in litigation and related matters arising out of transactions associated with the deterioration of the financial markets, including structured financial products such as CDOs, RMBS, and derivatives. He obtained a B.A. from the University of Maryland in 1996 and a J.D. *cum laude* from Seton Hall University School of Law in 1999.



Matthew D. Dunn, who was promoted to counsel, represents clients in complex litigation matters, including general commercial litigation, breach of contract and commercial tort litigation, employment disputes and

restrictive covenant litigation, maritime litigation, bankruptcy litigation, trust and estates litigation, and eminent domain/condemnation litigation. He has extensive experience advising on electronic discovery issues. Matt received his B.A. from the University of Notre Dame in 1995 and his J.D. from Rutgers University School of Law-Newark in 2003.

Art Law

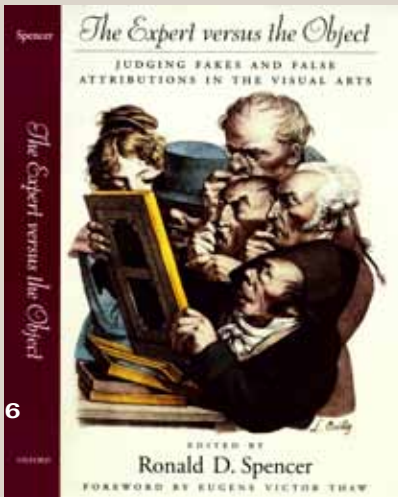
Art law (an amalgam of personal property law, contract, estate, intellectual property and tax law) supports the acquisition, retention and disposition of fine art. This legal structure provides guidance and stability for owners of visual art despite the archaic custom and practice of the 21st century art market. CL&M represents collectors, foundations, galleries and estates which own art and concern themselves with these questions, as well as questions of title and authenticity.

CL&M helps artists and collectors to establish tax-exempt foundations as part of an estate plan and to protect the artistic legacy of the artist (as well as the collector's art). For example, we have done so for the artist [Alex Katz](#).

We represent the [Estate of Piet Mondrian](#), whose art was declared "degenerate art" by the Nazis, concerning rights to certain of his works.

We advise collectors on their loans and gifts to museums such as the Smithsonian, obtaining commitments from the museum for long-term display under optimum conditions for the owner's loan/gift.

A decision by the New York State Court of Appeals, the highest court in the state, held that CL&M client, the art collector [David Mirvish](#), is the true owner of a monumental bronze sculpture by Jacques Lipchitz entitled *The Cry* (cast 3 of 7). Our art law litigation on behalf of David Mirvish and the artist [Robert Indiana](#) is described in more detail on page 4.



Intellectual Property



Trademark, Certification Mark, Domain Name, and Copyright

On behalf of client [Playtex Products, LLC](#), we policed the unauthorized use of the BINKY trademark on eBay, obtained transfer of the infringing domain names [binkybuddyusa.com](#), [binkyfairandmore.com](#) and [binkystory.com](#), and successfully stopped publication of the infringing Binky Story book by Dog Ear Publishing. We also opposed registration of the mark GENTLE DAY and Design and obtained withdrawal of that application.

On behalf of client [Tanning Research Laboratories, LLC](#), owner of the famous HAWAIIAN TROPIC mark, we obtained the transfers to our client of the infringing domain names [misshawaiiantropic.com](#) and [hawaiiantropics.com](#).

We advised a number of clients with certification mark issues, including [Woolmark Americas, Inc.](#) and [American Standards Institute \(ANSI\)](#). On behalf of ANSI and in cooperation with the German Institute for Standardization, we obtained the cancellation of a Russian registration for DINANSI. We also successfully assisted [International Organization for Standardization \(ISO\)](#) in stopping infringement of ISO copyrights by EverLasting Coatings & Paints and by Anco Products, Inc.

On behalf of client [The Grandoe Corporation](#), we obtained transfer of the infringing domain name [smartdogsslippers.com](#); on behalf of client [Orbis Real Estate Investments](#), we obtained transfer of the infringing domain name [orbisrec.com](#); and on behalf of client [Lane Capital Management, Inc.](#), we successfully stopped a third-party use of Lane Capital Management, LLC.



On behalf of client **RJ Softwares**, we obtained removal of the following infringing apps from the Apple Store: LEXULOUS WORD FINDER, LEXULOUS HELPER, AND LEXULOUS WORD SEARCH, and obtained transfers to our client of the following infringing domain names: lexulouswordfinder.com, lexuloushelper.com, lexuloushelp.com, lexulouswordbuilder.com, and lexulouscheat.com.

We successfully blocked registration of certain domain names at the .XXX registration for clients **Awkward Family Photos LLC** and **Squabblor LLC**, and assisted both companies with their trademark portfolios.

We continue to assist a wide variety of clients in copyright and trademark matters, including **World Gold Trust Services LLC** and **Big Brothers Big Sisters of New York City**.

We also counsel clients including **Corbis** on a variety of right of publicity/privacy matters and related media law issues.

Licensing, Technology Transfer and Franchising

We continued to advise a European high performance car manufacturer on its franchising efforts in the United States and assisted our fashion client **Sixty** in several contract matters.

We negotiated copyright licenses for images for a major exchange-traded fund, user agreements for a financial services website, and user agreements for proprietary foreign exchange information. We defended an off-shore client which had been charged with unauthorized use of software down-loaded from the internet.

We assisted **Solar-Tectic LLC** in commercializing a pending thin-film photovoltaic patent, including soliciting potential licensees with an evaluation license for the technology and know-how.

Patents, Patent Litigation and Counseling

We defended an Israeli company and its U.S. subsidiary against a claim of patent infringement brought by a U.S. company in the Western District of Tennessee.

We represented a pharmaceutical company in analyzing a possible patent challenge from a generic drug manufacturer and preparing for a possible Hatch-Waxman patent litigation.

We represented a financial services firm accused of copyright infringement for making unauthorized copies of a financial publication, and a glove manufacturer accused of patent infringement for making touch screen compatible gloves.

We successfully prosecuted a patent for digitizing images to scale to provide 2D/3D viewing of the image and to permit to-scale route calculation using the images.

We successfully obtained a reexamination certification for a patent concerning order execution in a trading system.

We obtained design patent coverage for hunting decoys and storage containers for personal products.

We obtained patent protection for a device used to better grip smartphone devices.

We handled patent due diligence for corporate transactions involving medical devices concerning women's health for a U.S. medical device company, communications technology for an Israeli company and cargo containers for a U.K. company.



Condemnation



CL&M represents **The City of New York** and the **Hudson Yards Development Corporation** as Special Condemnation Counsel in connection with the No. 7 Subway Line Extension – Hudson Yards Rezoning and Development Project. We worked with the Office of the Corporation Counsel to defend the City at a trial to determine the zoning to be applied in valuing properties acquired by eminent domain for the project. The court ruled that the properties must be valued based on their zoning classification in effect prior to the rezoning of the project area. It is the first decision in New York to fully address the impact of an area-wide rezoning, undertaken years before property acquisition, on valuation of property acquired via eminent domain as part of a large public redevelopment project.

CL&M represented the City in the acquisition of easements necessary to construct a 5-story ventilation building and deep subsurface ventilation shaft as part of the No. 7 Subway Line Extension. This acquisition creatively combined the City's acquisition of easements necessary to construct facilities with the preservation of the owner's right to develop the remainder of the site with a new residential building adjacent to the ventilation building. These easements, in Stage 8 of the project, follow acquisition of dozens of other easements and properties for the project.

We represent the **New York City Economic Development Corporation** in connection with the Willets Point Development Project, which seeks to revitalize the Willets Point area of Queens adjacent to the Citi Field stadium complex. CL&M assisted with the public hearing and the preparation and adoption of a determination and findings that empower the City to acquire property through eminent domain in furtherance of the Willets Point Project. We are now defending the City in an eminent domain challenge to the project brought by property owners.

CL&M represented the City in a trade fixture claim filed by an entity related to the entity which owned a fee interest in the acquired property. In granting the City's motion to dismiss, the New York Supreme Court found that when real estate and fixtures are beneficially owned by the same person, and the highest and best use of the property is for redevelopment, no separate claim for trade fixtures will be permitted.

We represent the **Empire State Development Corporation** in connection with the Columbia University land use improvement and civic project, which will transform a 17-acre site in West Harlem into a state-of-the-art educational facility with considerable open space and additional public benefits. The project also involves acquisition of properties within the site – including subsurface portions of city streets – through the exercise of ESDC's power of eminent domain. The completion of these real estate documents will permit Columbia to move forward with its project.

CL&M represented the **Metropolitan Transportation Authority** in a trial concerning the valuation of 51.5 acres of vacant land, largely wetlands and wetlands adjacent areas, acquired to permit the expansion of the Metro-North Railroad Harlem Line parking lot located in the Town of Southeast in Putnam County.

Real Estate

CL&M represented client **Roosevelt Island Operating Corporation (RIOC)** in a master sublease of 34 separate retail spaces located on Roosevelt Island to a venture operated by The Hudson Companies and The Related Companies. The subtenant will renovate and upgrade these retail spaces, develop a marketing plan to attract a diverse mix of retail tenants to Roosevelt Island, and manage the retail spaces during the lease term. RIOC is a public benefit corporation and a political subdivision of the State of New York created to develop and operate the 147 acres comprising the former Welfare Island, located in New York City's East River.

CL&M represented the owner in a sale of a leading commercial property in Manhattan for more than \$150 million.

Carter Ledyard represented **The Passionist Fathers of Riverdale** in the sale of its 14 acre property in the Riverdale section of the Bronx to the Hebrew Home for the Aged. Located in a Special Natural Area District along the Hudson River, the property was home to the Cardinal Spellman Retreat House, which closed its doors in January 2011. As part of the transaction, Carter Ledyard secured approval from the Bronx Supreme Court for the sale of the property.



CL&M's client **CenterLight Healthcare**, formerly known as Comprehensive Care Management Corporation, recently added to its space at a newly constructed office park in the Bronx when it concluded a 15-year lease for the 10th floor at the Hutchinson Metro Center, 1250 Waters Place, a 280,000-square-foot, nine-story tower with four levels of underground parking located near the Hutchinson River Parkway and Interstate 95. CenterLight, which now leases two entire floors at 1250 Waters Place, was featured with other tenants including Montefiore Medical Center and the Bronx campus of Mercy College in a June 15, 2011 *New York Times* article "Thriving Corporate Park Spurs Growth in the Bronx."

CL&M also represented CenterLight in acquiring and leasing additional facilities in the five boroughs of New York City and on Long Island, and continues to advise CenterLight in the design, construction and development of these facilities.

We represented clients **Lance Capital LLC** and **CGA Capital Corporation** in facilitating a \$45 million tenant improvement loan in connection with the New York City Human Resources Administration's 20-year lease of 400,000 square feet at 470 Vanderbilt Avenue in Brooklyn. The unique, credit-based tenant improvement loan was key to the transaction.



Environment: Land Use, Energy and Climate Change



State and regional efforts to combat climate change continued in 2011, and CL&M continued to assist those efforts.

The Western Climate Initiative formed a new non-profit corporation to provide administrative and technical services to support the implementation of state and provincial greenhouse gas emissions trading programs. The initial Board of Directors for WCI includes officials from the provinces of Quebec and British Columbia and the state of California. By forming WCI, the participating jurisdictions are furthering their commitment to link their respective greenhouse gas emissions trading programs. The services provided by WCI can be expanded to support jurisdictions that join in the future.

The firm also continues to represent the **Regional Greenhouse Gas Initiative, Inc.**, which provides similar services to New York and other northeastern states taking part in the Regional Greenhouse Gas Initiative. RGGI's quarterly auctions of emission allowances continue.

The New Jersey-New York Expansion Project of Texas Eastern Transmission, LP and Algonquin Gas Transmission, LLC, affiliates of CL&M client **Spectra Energy Corp.**, passed a major milestone in September 2011 when the Federal Energy Regulatory Commission issued its draft Environmental Impact Statement for the Project. Scheduled for completion in the latter part of 2013, the project will permit the transportation of up to 800 million cubic feet per day of new natural gas supplies to the New Jersey and New York metropolitan area. It will include approximately 20 miles of multi-diameter pipeline, associated pipeline support facilities and new metering and regulating stations.

CL&M helped clients commission environmental investigations, evaluate potential risks, structure purchase agreements to limit corporate liability and secure liability protections under the Comprehensive Environmental Response Compensation and Liability Act and the Resource Conservation and Recovery Act – the two leading federal laws governing management of hazardous materials. In EPA Region 7, we advised clients regarding the U.S. Environmental Protection Agency's "2020 Vision" national enforcement program to identify and remediate thousands of moderately contaminated sites. We also advised clients on the impact and significance of recent Superfund designations, including the EPA's 2010 designation of Newtown Creek, bordering the New York City Boroughs of Brooklyn and Queens, as a federal Superfund site.



The Long Island Solar Farm, the largest solar energy project in New York State and the largest photovoltaic array in the eastern United States, came on-line in November 2011. The 32-megawatt solar farm, owned by BP Solar and Met Life, is located at the U.S. Department of Energy's Brookhaven National Laboratory and provides electricity to the **Long Island Power Authority** power grid. CL&M handled the environmental review for this renewable energy project, and continues to work with LIPA on a broad range of clean energy projects.

We continue to advise the **Lower Manhattan Development Corporation** in connection with the build-out at the World Trade Center site and the funding of more than 30 community enhancement projects in lower Manhattan. We also advise the **Roosevelt Island Operating Corporation** on its development of new and improved public open spaces at the southern end of Roosevelt Island, including the new Four Freedoms Memorial to Franklin Delano Roosevelt. In Queens, the firm is assisting the **J.M. Kaplan Fund** to explore ways to help New York City acquire new parkland in underserved neighborhoods. We are assisting the **Bronx River Alliance** *pro bono* in its work to complete a greenway and related parkland along the Bronx River. We continue to act as *pro bono* counsel to **New Yorkers for Parks**, New York City's leading parks advocacy and research organization.

CL&M advised numerous purchasers and prospective purchasers on the nuances of New York City's complicated land use laws. We have worked with buyers interested in acquiring properties within the Soho area



of Manhattan, which is both a New York City Landmark District as well as a special manufacturing district that limits residences to joint live-work spaces for artists.

CL&M represented homeowners and community organizations in numerous land-use disputes that involved permit hearings, administrative proceedings and litigation. These disputes have involved proposed developments within the Mamaroneck Marine Conservation District, the Town of Greenburgh, the Fieldston Historic District, the Upper East Side Historic District, the Carnegie Hill Historic District and wetland buffers protected by the N.J. Freshwater Wetlands Act. We have also negotiated agreements that protect property values, community character and the environment, while permitting development to proceed.

We continue to represent **Collegiate Church** in its use and development of properties throughout New York City, including compliance with the New York City Landmarks Law and the new East Village/Lower East Side Rezoning.

In the past year, the firm advised the **Fuller Road Management Corporation** on its environmental review of the expansion of the State University of New York nanotechnology campus in Albany, New York. And the firm advised the **Battery Park City Corporation** on its environmental review of the renovation and adaptive re-use of Pier A -- the only historic pier remaining along Manhattan's west side.



Gateway to America®

DESTINATION	TIME	STATUS
NEW YORK	1200	LAST CALL
CHICAGO	1205	LAST CALL
WASHINGTON	1210	BOARDING
LOS ANGELES	1210	BOARDING
BOSTON	1215	DELAYED
SAN FRANCISCO	1220	BOARDING
ORLANDO	1325	DELAYED

Canada

CL&M has been representing a wide range of corporations, financial institutions and governmental entities throughout Canada in their cross-border matters for over 60 years. As in prior years, in 2011 CL&M assisted its clients in scores of public offerings, private placements, mergers, acquisitions, other business combinations and a wide range of other matters.

Securities

CL&M assisted **National Bank of Canada** in the pending increase of its U.S. commercial paper program to US\$5 billion.

We assisted **Baytex Energy Corp.** in establishing its shelf registration for up to CDN\$500 million of debt securities.

We assisted **Crescent Point Energy Corp.** in its offering of CDN\$375 million of Common Shares.

CL&M assisted **Progress Energy Resources Corp.** in its offering of CDN\$200,160,000 of Common Shares and \$200 million of Debentures.

We also assisted **Manitok Energy Inc.** and many others in various financings throughout the year.

Tax

We acted as special U.S. counsel to large Canadian multinationals counseling on crucial tax issues in cross-border transactions including mergers, reorganizations, investments, and restructurings.

Mergers and Acquisitions

We represented **Global Partners Fund** and **The Gates Group** in their sale of Imperial Parking Corporation (Impark) to the Ontario Teachers' Pension Plan Board. Impark is the largest parking operator in Canada and is number three in North America.

CL&M was counsel to **Spartan Exploration Ltd.** in its sale to Penn West Petroleum.

CL&M was counsel to **Anatolia Energy Inc.** in its acquisition of Bolivar Energy Corp.

We assisted a number of U.S. companies listed on the TSX in their conversion to non-U.S. companies, including **Shona Energy, Inc.** and **Greenfields Petroleum Corporation.**

CL&M also assisted a number of Canadian companies in various restructurings.

Financial Services

CL&M counseled various brokerage firms, investment advisers and hedge funds in Canada on their structuring, formation, significant activities and regulatory issues.

Environmental

CL&M assisted the Canadian provinces of British Columbia, Ontario and Quebec, which are participating with the State of California in the **Western Climate Initiative**, to form a new non-profit corporation, Western Climate Initiative, Inc., to provide administrative and technical services to support state and provincial greenhouse gas emissions trading programs.





Germany

CL&M continued its representation of **JAB Anstoetz**, a Germany based producer and worldwide distributor of high end home decoration products, **Ichthyol**, a German pharmaceutical company, **Sauer Compressors USA, Inc.**, the U.S. subsidiary of a German manufacturer of high-pressure air and gas compressors for industrial and naval applications, **Schuler SMG GmbH & Co.**, a German manufacturer of metalforming products, systems and services, and **Symrise Inc.**, a German-based flavors and nutrition company. We also represented German shareholders in connection with the \$216 million initial public offering of Homeaway.com.

India

CL&M advised **Mahanagar Telephone Nigam Limited** with its continuing SEC and NYSE listing requirements and filings.

We represented **Big Block**, a U.S. subsidiary of SLK Software Services, in connection with patent, trademark and copyright matters.

CL&M also continued to represent **RJ Softwares** of Kolkata in trademark, copyright and domain-name issues.

United Kingdom

CL&M represented **Sword Group SE** in the sale of Sword Insurance, a provider of software and services to the insurance industry, to Thomas H. Lee Partners. We also counseled Sword Group SE in the sale of CT Space, one of its U.S. document management businesses, to Idox Plc, a UK public company.

We represented **Lupus Capital PLC** in the U.S. aspects of its credit facility with a syndicate of banks, including Barclays Bank PLC, HSBC Bank PLC, Lloyds TSB Bank PLC and the Royal Bank of Scotland PLC. We also assisted the client in restructuring its debt and U.S. corporate structure.

CL&M advised London-based **City Index Limited** on the integration of its U.S. and U.K. foreign exchange dealer operations.

We represented **Western Coal Corp.** in U.S. aspects of its sale to Walter Energy, Inc., a U.S. public company, for \$3.3 billion.

CL&M represented **Litre Meter**, a manufacturer of flow meters for the oil industry, in the sale of its business to the Tasi Group of companies in the U.S.

Russia

CL&M assisted **UC RUSAL**, the world's largest aluminium producer, in its acquisition of a 35% stake in Alumina Partners of Jamaica (Alpart) from Norway's Norsk Hydro ASA for \$46 million, resulting in UC RUSAL holding 100% of Alpart. Alpart is a large production complex in Jamaica, which uses its own bauxite mines to supply its alumina production.



Gateway to America®



Israel

CL&M assisted **Magal Security Systems, Ltd.** (NASDAQ: MAGS) in a \$16 million rights offering to its shareholders. Magal is a leading international provider of security, safety and site management solutions and products and offers a broad portfolio of products to protect sensitive installations in some of the world's most demanding locations and harshest climates.

We assisted **Internet-Gold Golden Lines Ltd.** (NASDAQ and TASE: IGLD) in connection with a public offering of NIS 121.5 million of its debentures in Israel and in connection with two private placements of debentures in Israel totaling NIS 195 million. Internet-Gold's principal subsidiary, B Communications Ltd., is the controlling shareholder of Bezeq - The Israel Telecommunications Corp., Ltd., Israel's largest telecommunications provider.

CL&M assisted **Matrix IT Ltd.** (Tel Aviv: MTRX), the leading information technology company in Israel, in purchasing 60% of Exzac LLC, a company engaged in the field of risk management for financial institutions.

Denmark

CL&M represented our client **Danisco A/S**, a world leader in food ingredients, enzymes and brio-based solutions, with the U.S. aspects of its \$6.4 billion sale to DuPont.

France

We represented **SCOR SE**, a French company, in U.S. aspects of its purchase of all of the shares of 5 Avenue Kleber SAS, from Kleber Luxembourg Sarl and Beacon-Viveris.

Japan

We conducted a major arbitration hearing in Singapore under the law of Japan between our Japanese client and its U.S. licensee. The arbitration involved contract, antitrust and intellectual property issues.

We prepared and negotiated an extensive patent license agreement between our Japanese client and a major U.S. hospital group involving technology for the treatment of pre-eclampsia, a potentially fatal condition developed during pregnancy.

Australia

CL&M assisted **Prana Biotechnology Limited** in filing a \$50 million shelf registration statement for its "at-the-market" offering program.

Prana is a developer of therapeutic drugs designed to treat the underlying causes of degeneration of the brain as the aging process progresses, focusing on Alzheimer's disease and Huntington's disease.

Barbados

GE SeaCo, the world's fifth largest marine container leasing company, was acquired by HNA Group Company Limited of China, a leading diversified services and integrated operations company, and Bravia Capital of Hong Kong. GE SeaCo has been rebranded as "**Seaco**" and will own and manage over 870,000 20-foot equivalent units of containers. The total enterprise value of the transaction is approximately US\$2.5 billion. CL&M handled all aspects of the sale of the transaction, including the new term loan and note issuance by a new special purpose vehicle securitization.





Offshore Funds

CL&M represented a number of offshore investment funds during the year, notably the **Polar Capital Group** and **Fleming Family & Partners**. A typical transaction involved a U.S. private placement to sophisticated investors contemporaneous with a listed retail distribution offshore. We also helped domestic and offshore private investment funds and their investment managers to develop strategies to comply with major new regulations under the Dodd-Frank Act.

United States

Lime Brokerage Holdings LLC sold its broker-dealer subsidiary Lime Brokerage LLC, a leading provider of electronic market access and information for high-frequency algorithmic trading, to Wedbush, Inc. We represented Lime in the corporate aspects of the transaction and provided advice on the regulatory issues that arise in connection with the sale of a broker-dealer, including preparation of a FINRA Continuing Membership Application.

We continued our representation of **Victaulic Company**, the world's leading manufacturer of mechanical pipe joining and fire protection systems, in corporate and other matters. We also continued to assist **Thoroughbred Racing Associations of North America, Inc.** and **Thoroughbred Racing Protective Bureau, Inc.**, which preserves the integrity and security of racing, with various issues involving the U.S. thoroughbred racing industry.

CL&M represented **CooperSurgical, Inc.** in its acquisition of Summit Doppler Systems, Inc., a manufacturer of Doppler ultrasound and other equipment used by medical professionals for fetal monitoring and to diagnose peripheral arterial disease, and in its acquisition of Apple Medical Corporation, a distributor of surgical devices and related items used by obstetricians and gynecologists.

We also represented CooperSurgical in connection with manufacturing, supply and license agreements. CooperSurgical develops, manufactures and markets medical devices, diagnostic products and surgical instruments and accessories used primarily by obstetricians and gynecologists.

CL&M represented **Stone Source LLC** in general corporate matters, including advising on environmental issues, renegotiation to expand covenant flexibility under its bank loan, employment of its new chief executive and adapting a new unit appreciation rights plan. Stone Source provides carefully-selected materials to the top architecture and design firms in the world.



Money Matters



Exchange-Traded Products

In response to continued strong interest in gold investments, CL&M assisted **SPDR® Gold Trust** (NYSE Arca: GLD) in exceeding \$70 billion in assets for the first time. The Trust, the first exchange traded fund to track a commodity, is the world's second largest exchange-traded fund.

We also represented **The Bank of New York Mellon** in its capacity as trustee for various commodity based ETFs, including the ETFS Silver, Gold, Platinum, Palladium, Precious Metals Basket and White Metals Basket Trusts and the iShares® Gold Trust.

Secondary Fund Managers

CL&M represented a coalition of secondary fund managers in presenting to the SEC and members of Congress unique legal issues resulting from the Dodd-Frank Act. Secondary funds purchase interests in venture capital and private equity funds from existing investors. We obtained an important interpretation from the SEC's Division of Investment Management relating to custody requirements, and continue to assist the coalition on legislative, interpretative, registration and compliance issues pertaining to secondary fund managers.

Broker-Dealer

We represented numerous broker-dealers in their formation and preparation of the FINRA New Membership Application and general regulatory consulting services, including **Kapitall Generation, LLC**, **Bendigo Securities LLC**, **FixCenter, LLC**, and **PALAZZO Securities LLC**. We represented established broker-dealers in preparation of FINRA Continuing Membership Applications, including **HKC Securities, Inc.** (now named **ACGM, Inc.**), which also expanded its business activities, and **Lime Brokerage Holdings LLC** in the sale of Lime Brokerage LLC to Wedbush, Inc. We advised **Pareto Securities Inc.** on the policies and procedures required for its secondary market loan trading business. CL&M prepared compliance policies and procedures for broker-dealer clients and advised on various securities offerings, advertising materials, service agreements, securities activities permitted without registration as a broker-dealer, compensation arrangements, FCPA compliance and new rules and requirements emanating from the Dodd-Frank Act.



Funds and Investment Companies

CL&M assisted clients in the formation of U.S. and offshore hedge funds, including master-feeder, side-by-side, funds of funds and Delaware series limited liability company structures. We helped domestic and offshore private investment funds and their investment managers to develop strategies to comply with major new regulations under the Dodd-Frank Act. CL&M advised **The PSG Fund, LLC**, a fund of funds, and its offshore feeder fund, regarding ongoing compliance matters under the securities laws of the U.S. and British Virgin Islands, and **GCA Credit Opportunities Master Fund, Ltd.** and its U.S. and offshore feeder funds regarding compliance matters and successfully negotiated side letter agreements with fund investors. CL&M also provided advice to hedge fund clients regarding side pocket arrangements.

We represented a private equity fund investor on regulatory matters related to the fund's general partner and the ultimate dissolution of the fund.

Distressed Debt/Secondary Loan Market Transactions

CL&M represented hedge funds, actively managed CLOs, broker-dealers, special purpose vehicles and other financial institutions in hundreds of transactions involving distressed and par and nearpar bank loans, trade claims and securities. We negotiated and prepared confidentiality agreements, "big boy" letters, trade confirmations, purchase and sale agreements, participation agreements, sub-participation agreements, netting letters and proceeds letters. Our clients achieved success across asset classes in the U.S. and European markets. We routinely perform due diligence analysis on the underlying credit agreements and provide tax, bankruptcy and ERISA advice in these areas. Our attorneys are actively involved in establishing market practice and developing standards by serving on committees and working groups for the Loan Syndications & Trading Association, including the Trade Practices and Forms Committee. In 2011, the firm also became a member of the Loan Market Association.

Investment Advisers

We represented numerous investment advisers in their formation process, advised on complex structuring issues and prepared comprehensive written policies and procedures. We provided ongoing regulatory and compliance advice, including advice about reporting requirements for private fund advisers, commodity pool operators and commodity pool advisers, reporting of long-term holdings of securities on Treasury International Capital System ("TIC") Form SLT, large trader reporting requirements on Form 13H, and FINRA Rule 5131 regarding New Issue Allocations and Distributions, and marketing materials. CL&M represented numerous advisers in the preparation of Form ADV Part 1 and new Parts 2A and 2B, including **The Portfolio Strategy Group, Inc.**, **Global Credit Advisers, LLC**, **Anchin Wealth Management, LLC**, **Levy, Harkins & Company, Incorporated** and **Alpern NGS Advisers, LLC**.

We continue to advise an international financial conglomerate regarding complex organizational restructuring issues related to the Dodd-Frank Act, state and SEC investment adviser registration, segregation and possible integration of U.S. and offshore investment advisory affiliates, and research operations.



Ethan L. Silver, who was named a partner, advises financial institution clients, particularly broker-dealers and investment advisers, on regulatory, compliance, enforcement, and examination issues related

to federal and state securities laws and the rules of various self-regulatory organizations, including FINRA. Ethan received his B.A. from The University of Maryland, College Park, in 1998. He received his J.D. from New York Law School in 2002. Prior to joining CL&M, Ethan was Senior Counsel in the Division of Enforcement at the New York Stock Exchange.

Corporate Trust



CL&M regularly represented three of the largest municipal corporate trust banks in the United States, **The Bank of New York Mellon**, **U.S. Bank National Association** and **Wells Fargo Bank, N.A.**, in connection with their corporate and municipal bond transactions. A majority of these representations involved transactions based in New York State, but the scope of representation extended coast-to-coast and internationally. As the municipal bond trustee, our clients captured a majority of the market share this year.

CL&M's clients were involved with an extensive array of municipal and collateralized debt products, including issuances for military housing, hospitals, sports venues, pooled trusts and the rebuilding of Ground Zero in Lower Manhattan.

Our clients continually work with many agencies issuing debt under both stand-alone Resolutions and Indentures, or under programmatic Master Resolutions or Master Indentures with Series or Supplemental Indentures for later bond issuances. For example, the New York City Municipal Water Finance Authority's Water and Sewer System Second General Revenue Bond program began in 1994. **The Bank of New York Mellon** has served as bond trustee on 84 series of bonds in this program.

As a result of the expiration of the Industrial Development Agency enabling legislation in New York, our clients worked with new issuers (such as the New York Liberty Development Corporation) in addressing the new issuance, refunding and remarketing of previously issued New York-based Industrial Development Bonds.

Occasionally our clients encounter transactions which go into default. If a default occurs, CL&M actively assists our clients with the workout. For example, CL&M successfully represented U.S. Bank National Association as creditor of a steel corporation that filed for bankruptcy, obtaining recovery for our client and working out a number of disputes and ownership issues with the purchaser of substantially all the assets of the bankrupt steel corporation. We also served as counsel to U.S. Bank National Association in its capacity as Distribution Trustee in a novel case involving the intersection of bankruptcy law and insurance coverage in the 6th U.S. Circuit Court of Appeals.



Maritime



CL&M continued to represent and advise shipowners, charterers, other maritime industry clients, and banks in a variety of maritime-related transactions and legislative matters. We advised a leading operator of sightseeing yachts and tour boats, **Circle-Line Sightseeing Yachts, Inc.** and its affiliates, in connection with corporate and commercial contract matters, vessel financing, general financing matters, joint venture arrangements, charters, real estate transactions and leases, commercial litigation matters and marketing events. We advised a client concerning the scope of the antitrust exemption in the Shipping Act and the jurisdiction of the Federal Maritime Commission over chassis pools and related agreements. CL&M also provided advice to shipping industry clients concerning compliance with the Iranian sanctions legislation.

As in previous years, we represented and counseled maritime industry clients in a variety of litigation matters. CL&M counseled clients in disputes arising out of dredging contracts, ship construction contracts, barging contracts and contracts of affreightment. We represented a bunker supplier in defending a trustee's preference claim in a shipping company bankruptcy proceeding. We obtained a temporary restraining order in New York in aid of a London arbitration, restraining a New York-based bank from transferring over \$65 million held in an account at the London branch of the bank. CL&M was also successful in securing the dismissal of a naval architecture and engineering firm as a defendant in a lawsuit involving personal injury on a luxury yacht.

White-Collar Defense

We successfully petitioned the United States Court of Appeals for the Second Circuit in working to secure a writ of habeas corpus for the former CEO of Tyco International, Ltd. **Dennis Kozlowski**. Mr. Kozlowski's petition is one of the approximate 2% to be granted. Argument before the Second Circuit is likely later in 2012.

CL&M continues to represent another former high-ranking executive of a publicly-traded company in a federal prosecution alleging securities fraud and other criminal offenses. We have obtained rarely-granted subpoena powers and bills of particulars. The case is likely to proceed to trial in 2012.

We established the non-complicity of our client, a prominent Manhattan art dealer, in federal court in an investigation concerning counterfeit paintings attributed to Jasper Johns, Robert Motherwell and Jackson Pollock.

CL&M assisted clients in successfully navigating the IRS's 2011 Overseas Voluntary Disclosure Initiative relating to hidden off-shore assets. None of our clients have been criminally prosecuted and our settlements with the government have been favorable. For example, on behalf of a Moroccan-based U.S. citizen, we negotiated a settlement with the IRS for approximately one-third of what had originally been sought.

In state court, we obtained a favorable resolution for a recent law school graduate who, while intoxicated, set fire to a building. He received a non-custodial sentence and reduced restitution.

We recently secured bail for a client who traveled to Hong Kong shortly before his likely arrest. The client was extradited from Hong Kong and the prosecution opposed our client's release on bail. After a three day hearing, our client was granted bail and allowed to return home to his family.



Insolvency and Creditors' Rights

We represented **The Bank of New York Mellon** as indenture trustee for debt issues in a number of chapter 11 bankruptcy cases in New York and Delaware involving companies in a variety of industries, including Ambac Financial Group, the parent of Ambac Assurance Corporation, Majestic Capital, Ltd, an insurance holding company, Nebraska Book Company, which operates college book stores, Majestic Star Casino, Inc., a gaming company and Raser Technologies, which confirmed a plan of reorganization in late 2011.

CL&M continued to represent the **Lachaise Foundation**, established to oversee the legacy of French sculptor Gaston Lachaise, in connection with the notorious bankruptcy case of the Salander-O'Reilly Gallery, whose principal Lawrence Salander was convicted of numerous counts of theft from artists and art owners. We reached a settlement with the Gallery's Liquidating Trustee for the return of the bulk of the works which had been consigned to the Gallery, and have also resolved the foundation's claims against the bankruptcy estate. CL&M settled the foundation's claims against Mr. Salander in his personal bankruptcy case, which settlement excepted the Gallery's claim from Mr. Salander's bankruptcy discharge.



We represented **U.S. Bank, National Association**, in its capacity as indenture trustee, on behalf of the holders of various 10½ % Senior Notes issued by Wolverine Tube, Inc., in a chapter 11 reorganization pending in Delaware. In another representation of U.S. Bank in litigation brought against it in the TerreStar Networks, Inc. bankruptcy case, the Bankruptcy Court for the Southern District of New York established a significant rule of law with respect to the right of secured creditors to take a valid security interest in the economic benefits derived from an FCC license.

We have represented and are continuing to represent a number of diverse clients in the Lehman Brothers bankruptcy. Although Lehman's plan of liquidation was confirmed by the bankruptcy court in December 2011, we continue to litigate claims objections, defend preference and fraudulent transfer actions, and prosecute customer claims against the brokerage entity, Lehman Brothers, Inc.

We have represented a number of clients, principally landlords, in the bankruptcy cases of Blockbuster, Inc., the video retailer, and Borders Group, Inc., the large national bookstore chain.

CL&M continued to serve as counsel to the Liquidating Trustee of **Bethlehem Steel Corporation Liquidating Trust** and to the **Distribution Trustee of VP Buildings Distribution Trust**, in ongoing efforts to maximize the recovery of the unsecured creditors of those companies.



Compensation and Benefits

CL&M's ERISA and executive compensation practice is multidisciplinary, utilizing the resources and experiences of the firm's ERISA, tax and corporate attorneys.

We assisted, among others, **Victaulic, Inc.**, **Union Benefits Planners, Inc.**, **SOS International Ltd.**, and **Stone Source LLC** in the design of employee incentive compensation arrangements, and advised on provisions of employment and severance agreements that raise issues under Section 409A of the Internal Revenue Code.

CL&M advised on the disposition of employee benefits, the funded status of multiemployer pensions, as well as obligations under multiple employer benefit plans in many corporate transactions, including the sale of **Danisco A/S**, the sale of Imperial Parking Corporation by **Babcock & Brown Global Partners**, the acquisition of MedErgy HealthGroup, Inc. by **Cello Group plc** and the sale of Lime Brokerage LLC by **Lime Brokerage Holdings LLC.**, as well as a credit facilities agreement for **Lupus Capital plc**.

Our clients **The Bank of New York Mellon**, **Fleming Family & Partners**, **Global Credit Advisers, LLC** and **GE SeaCo Finance SRL** raised challenging issues in structuring investments that comply with the complex "plan asset" requirements of ERISA. In addition, we addressed ERISA considerations in private equity offerings by the **Grafton Energy Growth Fund**, **Invico Energy III (Int) LP**. and **GCA Credit Opportunities Offshore Fund, Ltd.**

The disposition of insurance proceeds arising after the termination of one of the Bethlehem Steel Corporation profit sharing plans continued to present our client, the bankruptcy trustee of **Bethlehem Steel Corporation Liquidating Trust**, with interesting ERISA and tax questions. We also assisted a client in preparing a Voluntary Correction Program application to resolve a tax-qualified plan eligibility error under the IRS's remedial program. In addition, we counseled an offshore client on certain matters arising under a profit sharing plan maintained by a U.S. affiliate.

Tax

Over the past three years, CL&M has advised and represented numerous clients considering entering the IRS's voluntary disclosure program. The great majority have been individuals with interests in Swiss or other overseas financial accounts which had not previously been reported. The IRS announced limited duration, fixed-penalty programs for such persons in 2009 and again in 2011. Early in 2012, the IRS announced an open-ended program. The primary benefit of any voluntary disclosure is the assurance that participants will not be criminally prosecuted, although they remained liable for fixed civil penalties. The firm has handled cases that have run the gamut from relatively innocent to those in which knowledge could be inferred. In some of the former cases our clients have "opted out" of the standard penalties, on the basis that a court would not be likely to find willfulness. In others, we have negotiated for the payment of the taxes and penalties over time.

Each case is truly unique and requires a fresh analysis. Voluntary disclosure continues to be an important option that is available to all taxpayers that have substantial previously undisclosed tax issues, whether foreign, domestic or both.



Tax-Exempt Organizations

Form 990		Return of Organization Exempt	
Department of the Treasury Internal Revenue Service		Under section 501(c), 527, or 4947(a)(1) of the Internal F benefit trust or private found	
		► The organization may have to use a copy of this return to	
A For the 2011 calendar year, or tax year beginning , 20			
B Check if applicable:		C Name of organization	
<input type="checkbox"/> Address change			
<input type="checkbox"/> Name change		Number and street (or P.O. box if mail is not delivered to street address)	
<input type="checkbox"/> Initial return			
<input type="checkbox"/> Terminated		City or town, state or country, and ZIP + 4	
<input type="checkbox"/> Amended return			
<input type="checkbox"/> Application pending		F Name and address of principal officer:	
I Tax-exempt status:		<input type="checkbox"/> 501(c)(3) <input type="checkbox"/> 501(c) () ◀ (insert no.) <input type="checkbox"/> 4947(a)(1)	

New York adopted the New York Prudent Management of Institutional Funds Act in 2010. We helped our clients adopt policies to bring them into compliance with NYPMIFA and to review their overall investment management policies and procedures.

We are advising **Exapno New Music Community Center, Inc.**, a New York not-for-profit corporation that provides rehearsal and performance space for New York City musicians, in obtaining tax-exempt status.

We also helped our client the **Japan Society** negotiate a series of agreements that enable it to receive donations of cash and artwork. It plans to use the artwork and some of the proceeds to assist in constructing and establishing the collection of a new museum in Japan. On the other side of the spectrum, but the same side of the world, we helped our client the **New York Foundation for the Arts** seek sources of support throughout the country, and as far away as China.

Over recent years, a number of tax-exempt organizations have asked us to help them explore alternative investments in hedge funds and private equity. Many do not have the resources to manage complex investment portfolios while focusing on their charitable activities. Others seek significantly higher returns than they have been able to generate through traditional investment opportunities.

Investing in hedge funds can present significant tax challenges. Tax-exempt organizations are taxable on some forms of income. In many cases, a tax-exempt organization can directly invest in conventional securities—stocks and bonds, for instance—without generating taxable income. However, if a tax-exempt organization invests in an entity classified as a U.S. federal partnership (e.g., hedge funds), much of the income generated will be fully taxable, at up to a 35% rate, even if the partnership's only activity is investing in the kinds of stocks and bonds the organization could hold directly. We have helped tax-exempt clients find ways to structure investments in hedge funds so that they will be able to benefit from the funds' (possibly) outsize returns without any tax risk. We have also helped organize hedge funds with an eye towards creating structures which will make the funds as attractive as possible to tax-exempt investors.



Trusts and Estates

This was a good year for our clients to make gifts and to take advantage of favorable rules in transferring wealth to successive generations. The window of opportunity to make wealth transfers at a reduced cost is scheduled to close at the end of 2012. Further, historically low interest rates and the depressed value of many asset classes are expected to continue to make lifetime transfers attractive. This motivated, and continues to motivate, many of our clients to complete their estate and gift planning.

For 2011, the estate, gift and GST tax was 35% and the exemption was \$5 million (\$10 million per married couple). Starting January 1, 2012 the gift and estate tax exemption will be indexed for inflation to \$5.12 million (\$10.24 million per married couple). However, unless Congress acts before year end, on January 1, 2013 the estate, gift and GST tax rate will return to 55% with an exemption of \$1 million (\$2 million per married couple). No one can be sure that the favorable rates and exemption will remain after this year.

We counseled our clients on the most efficient ways to make use of the increased exemptions and favorable rates, using many of the available planning techniques including grantor retained annuity trusts, low-interest intrafamily loans, sales to grantor trusts and charitable lead trusts. We also helped families of clients who passed away in 2010 navigate the complex rules applying to these estates in order to position these families in the most favorable way going forward.



Portrait of John Marshall from CL&M's collection.

We worked frequently with foreign counsel to coordinate advice on a number of intricate international matters, including structuring tax-efficient trusts with foreign and domestic grantors and beneficiaries to hold interests in closely held businesses, making charitable gifts of property located in third party jurisdictions, and advising on domiciliary issues with respect to the taxation of trust beneficiaries and estates.

Our clients, domestic and international, prevailed in a number of significant litigation matters. We represented corporate and individual executors, trustees, personal representatives and other fiduciaries and beneficiaries in litigations arising out of tax disputes, will contests, trust accountings, partnerships and closely held businesses. Our representation took us to state and federal courts, surrogate and probate courts, and various regulatory agencies. We helped to resolve a longstanding dispute over the ownership of a valuable painting.

We coordinated with bar associations to improve legislation enabling families to restructure irrevocable trusts by "decanting" them. We facilitated clients' use of this law to improve pre-existing trusts. In many cases, our clients were able to alter otherwise irrevocable trusts to change trustees, improve trust governance or confer greater tax benefits.



Civic Priorities



Our attorneys and staff are committed to helping our community through volunteering time, teaching and serving on the boards of charitable organizations.

Bhavna Agnihotri serves on the board of **Microfinance Club of New York** and assists with **Boy Scouts of America** activities...**Bryce C. Bernards** raised \$10,375 for the **Leukemia and Lymphoma Society** by running the New York City Marathon...**Alan J. Bernstein** serves as trustee for **Archive of Contemporary Music**...**Elizabeth C. Black** serves on the board of the **Northeast Organic Farming Association of New York**...**Aaron R. Cahn** serves on the board of the **Concert Artists Guild**...**Chloé D. Caraballo** provides pro bono advice at **Civil Legal Advice and Resource Office**...

Clifford P. Case serves on the board of the **Institute for Music and Neurologic Function** and is treasurer and finance committee chair for the **NAACP Legal Defense and Educational Fund**...**Franklin Ciaccio** serves on the board and is a past president of the **New England Society in the City of Brooklyn**...**H. Thomas Davis** is the Clerk of Session of **Scarborough Presbyterian Church**...**Rosemarie Deptula** is a Lector and Eucharistic Minister at **Queen of Angels Roman Catholic Church**...**Denise Dixon** is president of the **Hands Across Trelawny** and is Treasurer of **The Donald Van Blake Tennis & Education Foundation**...**Christine A. Fazio** serves on the board of **Friends of the High School for Environmental Studies** and is an adjunct professor at **Fordham Law School**...**David J. Fernández** serves as a firefighter and EMT for the **Floral Park Volunteer Fire Department**, is head varsity soccer coach at the **Dominican Academy High School**, and assistant coach with the **Floral Park Indians Athletic Club**...**Michael I. Frankel** is secretary of the board of **The Andy Warhol Foundation for the Visual Arts**...**Kelly M. Frisch** provides estate planning advice at **Legal Services NYC-Bronx**...**Victor J. Gallo** participates in the **New York City Bar Association's minority fellowship and mentorship program**...**Nora Gardner** volunteers at the **Sacred Heart of Jesus Food Pantry**...**Gerald W. Griffin** serves on the board of the **Emerald Association of Long Island**...**Gino F. Herard** is a board member of **Junior Tennis Clinic** in Brooklyn...**Alison Powers Herman** provides estate planning advice at **Legal Services NYC-Bronx**...**Mary Joan Hoene** serves on the board of the **Rhode Island Zoning Board of Review**...**Macculloch M. Irving** serves on the board of the **Blanton-Peale Institute**...**David I. Karabell** serves on the advisory board for the **College of Liberal Arts at Temple University**, is a director, vice president and counsel for **Friends of the Upper East Side Historic Districts**, and leads tours for the **Central Park Conservancy**...**Stephen L. Kass** serves on the board of the **National Center for Law and Economic Justice**, is an emeritus member of the board at **Human Rights Watch** and is an adjunct professor at **Brooklyn Law School**...**Jeffrey L. Loop** is outside general counsel to **American Printing History Association**...**Theodore Y. McDonough** provides IP and corporate advice to **Daytime Moon Creations, Inc.**...**Daniel J. McSwiggan** serves on the board of the **Big Brothers Big Sisters of New York City**...**Karen E. Meara** serves on the board of the **Northeast Organic Farming Association of New York** and provided IP advice to **GrowNYC**...**Andriy R. Pazuniak** provides estate planning advice at **Legal Services NYC-Bronx** and coordinated the firm's contributions to the **Toys for Tots** program...**Christopher Rizzo** serves on the boards of **New Yorkers for Parks** and the **Friends of Van Cortlandt Park** and is an adjunct professor at **Pace Law School**...**Jinsoo J. Ro** provides estate planning advice at **Legal Services NYC-Bronx**...**Scott M. Sisun** provides IP advice to **Daytime Moon Creations, Inc.** and **Volunteer Lawyers for the Arts** and serves on the planning committee of the **American Cancer Society's Taste of Hope**...**William F. Sondericker** serves as a mediator for the **U.S. District Court for the Southern District of New York**...**Ronald D. Spencer** serves on the boards of the **Fund for Park Avenue** and **Carnegie Hall Neighbors**...**Ethan I. Strell** is assisting the **Bronx River Alliance** on their work on the Bronx River Greenway...**Leonardo Trivigno** volunteers at **Queens Volunteer Lawyers Project, Inc.**...**Theodore R. Wagner** serves on the board of **The New 42nd Street**...**Natalie F. Wilson** provides estate planning advice at **Legal Services NYC-Bronx**, advised **Corona Youth Music Project, Inc.**, and coordinated the firm's contributions to the **Toys for Tots** program...**Laura A. Zaccone** provides estate planning advice at **Legal Services NYC-Bronx** and coordinated the firm's contributions to the **Toys for Tots** program...**Robert J.A. Zito** is a pro bono minister at **Trinity Church** and serves on the boards of the **Holland Lodge Foundation** and **Holland Historical Society**.

Contacts

Business

Steven J. Glusband 212-238-8605

Disputes

Lawrence F. Carnevale 212-238-8617

Trusts & Estates

Theodore R. Wagner 212-238-8705

Real Estate

Macculloch M. Irving 212-238-8714

Tax

Howard J. Barnet, Jr. 212-238-8606

Intellectual Property

H. Thomas Davis, Jr. 212-238-8850

Attorney Directory

Bhavna Agnihotri	212-238-8765	David I. Karabell	212-238-8852
Rita M. Antonacci	212-238-8751	Stephen L. Kass	212-238-8801
Rose Auslander	212-238-8601	Donald J. Kennedy	212-238-8707
Howard J. Barnet, Jr.	212-238-8606	Austin D. Keyes	212-238-8641
Ann M. Batchelor	212-238-8694	Richard N. Kim	212-238-8634
Michael H. Bauscher	212-238-8785	Jayun J. Koo	212-238-8876
Edmund J. Behan	212-238-8630	Guy P. Lander	212-238-8619
Bryce C. Bernards	212-238-8844	Stephen F. Lappert	212-238-8717
Alan J. Bernstein	212-238-8795	Mary Beth Werner Lee	212-238-8868
Elizabeth C. Black	212-238-8758	Alan Lewis	212-238-8647
Jeffrey S. Boxer	212-238-8626	Judith A. Lockhart	212-238-8603
Barbara B. Brown	212-238-8612	Jeffrey L. Loop	212-238-8681
Stephen V. Burger	212-238-8742	Alexander G. Malyshev	212-238-8618
Aaron R. Cahn	212-238-8629	Patricia Matzye	212-238-8730
Chloé D. Caraballo	212-238-8892	Theodore Y. McDonough	212-238-8788
Lawrence F. Carnevale	212-238-8617	Daniel J. McSwiggan	212-238-8760
Clifford P. Case III	212-238-8798	Robert A. McTamaney	212-238-8711
John R. Casolaro	212-238-8736	Karen E. Meara	212-238-8757
Jerome J. Caulfield	212-238-8809	Emily Milligan	212-238-8628
Franklin Ciaccio	212-238-8864	Vincent Monte-Sano	212-238-8808
Brooks S. Clark	212-238-8659	Keith D. Nowak	212-238-8610
Justine M. Clark	212-238-8644	Lee A. Ohliger	212-238-8716
Faith Colish	212-238-8873	Melissa A. Paparone	212-238-8665
Richard B. Covey	212-238-8804	Andriy R. Pazuniak	212-238-8825
H. Thomas Davis, Jr.	212-238-8850	Richard G. Pierson	212-238-8872
Margaret M. Drohan	212-238-8813	Stephen M. Plotnick	212-238-8772
Matthew D. Dunn	212-238-8706	Michael K. Plumb	212-238-8794
Melissa J. Erwin	212-238-8622	Bruce A. Rich	212-238-8895
Gideon Even-Or	212-238-8658	Christopher Rizzo	212-238-8677
Jasmin J. Farhangian	212-238-8871	Jinsoo J. Ro	212-238-8833
Christine A. Fazio	212-238-8754	Karen T. Schiele	212-238-8667
Zara F. Fernandes	212-238-8827	Gary D. Sesser	212-238-8820
David J. Fernández	212-238-8661	Michael Shapiro	212-238-8676
Peter Flügel	212-238-8649	Catherine B. Sheehy	212-238-8684
Michael I. Frankel	212-238-8802	Heywood Shelley	212-238-8709
Kelly M. Frisch	212-238-8746	Ethan L. Silver	212-238-8687
James Gadsden	212-238-8607	Scott M. Sisun	212-238-8728
Victor J. Gallo	212-238-8771	William F. Sondericker	212-238-8656
Peter P. McN. Gates	212-238-8710	Ronald D. Spencer	212-238-8737
Steven J. Glusband	212-238-8605	Ethan I. Strell	212-238-8632
G. Christina Gray-Trefry	212-238-8696	Leonardo Trivigno	212-238-8724
Gerald W. Griffin	212-238-8672	Libby Babu Varghese	212-238-8727
Raphael S. Grunfeld	212-238-8653	Andris J. Vizbaras	212-238-8698
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Christine Y. Jung	212-238-8763	Mark R. Zancolli	212-238-8735
Jack Kaplan	212-238-8602	Robert J.A. Zito	212-238-8768

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If you have any questions or comments about this publication, kindly contact Tom Davis (212-238-8850 or davis@clm.com), Judy Lockhart (212-238-8603 or lockhart@clm.com), or Maria D. Velazquez at 212-238-8670 or velazquez@clm.com.

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CARTER LEDYARD & MILBURN LLP



New York Financial District

2 Wall Street, New York, NY 10005
212-732-3200 Fax 212-732-3232

Midtown Manhattan

570 Lexington Avenue, New York, NY 10022
212-371-2720 Fax 212-371-4234

www.clm.com