



Looking Ahead 2024



CARTER / LEDYARD

LOOKING AHEAD / WHAT TO EXPECT

2024 Preview



TO OUR CLIENTS AND FRIENDS

While the last year saw several uncertainties for businesses in the U.S. and globally, our clients continued to overcome challenges and even thrive. Careful decision-making among precedent-setting legal decisions has defined the success of our clients around the world.

This Looking Ahead publication is designed to do exactly that: prepare our clients to take on 2024 with informed and precise insights. Carter Ledyard's aim is to deliver value to our clients through service and knowledge as well as thought leadership and legal analysis.

Within this publication, we also reflect the successes that our clients have recently achieved, and highlight the observations and insights of our lawyers across a wide array of thought leadership, alerts, and tools to help you navigate and find solutions.

In this publication we include some views from our new office positioning us to help our client move into the future and handle new legal challenges.

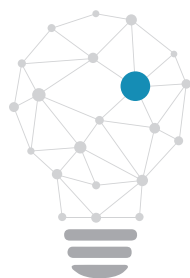
PAMELA MANN, PARTNER TAX-EXEMPT ORGANIZATIONS GROUP

“My ideal client is a not-for-profit organization that the Tax Exempt Organizations Group and the firm as a whole can assist with a variety of issues and challenges – from the full range of issues unique to nonprofits, such as governance, tax, and fundraising issues to issues affecting all organizations, such as IP, data privacy, employment, and antitrust issues. We particularly enjoy assisting organizations with boards that are striving for the highest standards of fiduciary responsibility and good governance.”



Tax-Exempt Organizations

With the presidential election in 2024, tax-exempt organizations will face the challenges of working to further their programmatic goals in ways that comply with the complex rules restricting lobbying and the promotion of candidates for public office, while still carrying out initiatives that address the urgent issues of the day. Particularly those nonprofits whose missions will be impacted directly or indirectly by the outcome of the 2024 elections will want to revisit their social media policies and staff training around lobbying and political activity, as well as their compliance protocols.



In light of recent Supreme Court decisions that have undermined long-standing precedents, including in the areas of abortion access, affirmative action in college admissions, and gun safety, we expect that nonprofit organizations will continue to grapple with the implications of these cases and their potential impact on their employment and grantmaking decisions. We expect this trend, which began last year, to continue into 2024 and to see clients looking for ways to help provide access to services for people in states that prohibit or restrict certain rights (e.g., abortion rights), in a manner that serves their mission while preventing or minimizing legal exposure. The war in Israel and Gaza will have a major impact on the work of many of our clients, as they struggle to balance the competing programmatic imperatives of organizations and individuals in the U.S. and abroad and seek to further urgent humanitarian concerns, promote free speech, and condemn hate speech.

Events

We hosted an informational breakfast symposium where nonprofit leadership and board members were briefed on key concepts and given the opportunity to ask questions and get answers in real-time.

These difficult times increase the stakes for nonprofit boards, and well-informed and responsible directors are key to the success of any organization. Our clients continued to look to us for guidance concerning the responsibilities of board members and best practices for fulfilling their fiduciary obligations. To respond to this demand, Carter Ledyard again teamed up with our friends at Plan A Advisors in 2023 and continued our in-depth "[Nonprofit Boards & Bylaws](#)" series aimed at helping executives and board members consider ways to make their bylaws more congruent with the way their organizations actually operate, improve governance, and ensure compliance with current law. Also in 2023, Jeremy Steckel, a partner in the Tax-Exempt Organizations Group, presented at the NYC Bar Association's 10th Annual Not-for-Profit Law Institute, addressing statutory traps for unwary nonprofits.

Client Highlights

- Assisted clients in assuming effective control of organizations in financial straits, including, in one matter, via the establishment of a single member structure and majority board control, and, in another, the replacement of incumbent board members with a new slate of directors that included the organization's ousted founder.
- Negotiated loan agreement from a large international philanthropic organization to finance client's purchase and distribution of nasal naloxone for free or at a low cost to harm-reduction groups in order to reduce opioid overdoses.
- Advised private foundations with significant connections to iconic modern artists in a range of governance and compliance issues.
- Helped structure 501(c)(3)-compliant programs for educational nonprofits focused on training and job placement for historically underserved young people, and monitored implications of recent Supreme Court affirmative action decision.
- Prevented an organization from using our nonprofit client's name and brand via a cease and desist letter.
- Restructured a client's international grant-making program, including internal corporate approvals and documentation, to ensure they were exercising appropriate discretion and control.
- Assisted an international scientific organization in formalizing a system of governance that aligned with U.S. law and in applying for 501(c)(3) exempt status.

JON TRAFIMOW, PARTNER EMPLOYMENT

“One key to success in the employment law space is for organizations to get out ahead of the workplace issues as soon as they become aware of them. It is more efficient to address workplace issues when they are relatively small, and not wait for them to become big problems.”



Employment and Labor

In 2023, employers began to return to normal following a period of extraordinary adjustment in the wake of Covid-19. As it recedes (at least for the moment), new issues continue to emerge. Carter Ledyard responded by assisting clients in the evolving risk environment across a number of areas, collaborating with multiple groups in the Firm such as Trade Secrets, AI, Litigation, Corporate and Cross Border.

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 contracts law. We do 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. 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 claims from individual employees who claim they were paid less frequently than required. An additional change to New York's employment 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.



Artificial Intelligence ("AI")

Effective July 5, 2023, New York City requires employers or employment agencies that use automated employment decision tools ("AEDTs") to submit those AEDTs to periodic bias audits, to make information about the bias audit publicly available, and to provide certain notices to job candidates or employees.

Covenant not to compete bill

Governor Veto but negotiations still under way. The New York state legislature passed an amendment to the state's Labor Law that essentially bars the use of non-competes, but negotiations to encode some degree of the bill are under way.

National Labor Relations Act (NLRA) Developments Impacting Settlement Agreements

Recent decisions by the NLRA and a follow-on memorandum from the Board's General Counsel have dramatically impacted the Board's position on what terms private sector employees may include in severance agreements for employees covered by the NLRA.

Cannabis Leave and Testing Rules

New York Labor Law offers protections for most New York employees for off-duty cannabis use. Subject to certain limitations, the general rule is that most employees of private sector employers will be protected to use cannabis recreationally on their own time, off of the employer's premises and without use of the employer's equipment or other property.

Thought Leadership and Publications

- [New York City's Algorithmic Hiring Law: What You Need to Know](#)

This article provides the details about the new legislation in New York state to employers and employees under the statute, addressing questions about enforcement and applicability.

- [Writing for Thomson Reuters, Alex Malyshev and Jonathan Trafimow Take Stock of Employee Cannabis Use in New York](#)

In a detailed collaboration of our Cannabis and Employment law practitioners, insight into the employer and employee dynamic around cannabis use in New York state provides readers with vital details.

- [Jonathan Trafimow Joins Carter Ledyard's Employment Law Practice as Partner](#)

Carter Ledyard welcomed partner A. Jonathan Trafimow to the Employment Law Practice. Jon brings a wealth of knowledge and experience to Carter Ledyard's clients.

- [The Federal Trade Commission Proposes Rule Banning Non-Compete Agreements](#)

Art Law

In a year of transformational changes for the rights of artists, Carter Ledyard's team has had parts to play representing clients and staying ahead of the news cycle in understanding technological developments and regulatory requirements that affect clients, including concerning NFTs, gift tax, AI content, and estate questions. These dominated Carter Ledyard's Art Law team throughout 2023 and we fully expect to see a continuation in 2024.



Our art law practice also continues to develop creative litigation strategies that achieve client goals by building on the unique synergy of our experience with art transactions with the depth of knowledge in related areas, such as tax exempt organizations, trusts and estates, and intellectual property.

Client Successes

- Resolved claim against an artist's estate concerning the ownership of artwork, with a creative settlement that resulted in the dissolution of the litigation adversary, a not-for-profit corporation, by the New York State Attorney General, and acquisition by CLM's client of the only architectural work by the artist located in the United States, saving it from foreclosure and potential destruction. The successful strategy helped secure and safeguard the artist's legacy, with the assistance of the firm's real estate and tax exempt organizations practices.
- Public art commissions increasingly range from highly conceptual to technologically advanced works. The selection and contract process is often geared to generic public project construction and ill-suited to the unique challenges of working with artists' studios for artwork. In 2023, the firm represented artists in commissions for monumental public artwork, in the U.S. and internationally, helping to resolve novel contract issues with practicable solutions concerning insurance, fabrication, authorship, artists' rights, roles and responsibilities after installation, and eventual decommissioning.
- The U.S. Supreme Court's decision in *Warhol Foundation v. Goldsmith* has generated a reassessment of fair use and copyright, especially concerning photographs of artwork, and copyright of appropriation artwork. The firm has helped artists and their heirs and estates to address these issues, often in the context of administering foundations that manage copyright, licensing, and artists' legacies.
- Building on the expertise of our corporate department, assisting galleries and other art market players in navigating new expectations for increased financial transparency from their clients and their financial institutions, which are often at odds with longstanding art market customs and practices.

Thought Leadership and Publications

- [In Managing the Risk of Using AI-Generated Content in a World of Copyright Uncertainty: Are AI Content Generators and AI Generated Expressions "Derivatives" of Copyrighted Works?](#)

Jack Griem and Judith Wallace discuss whether AI-generated content constitutes "derivative works" of copyrighted material, practical steps businesses can take to avoid liability for copyright infringement when incorporating AI-generated content in their products and services, and safeguards for owners to control access to their copyrighted works.

- [Judith Wallace Quoted in Bloomberg News on High-Stakes Art Dispute.](#)

In Bloomberg News, Judith offers insight on the ongoing legal dispute over a \$410 million insurance claim for fire-damaged artworks by Ron Perelman.

- [U.S. Supreme Court Issues Long-Awaited Copyright Decision in *Warhol Foundation v. Goldsmith*.](#)

*In their collaborative analysis, Jack Griem and Judith Wallace dissect the U.S. Supreme Court's recent decision in "*Warhol Foundation v. Goldsmith*," highlighting the ruling's significance for fair use and appropriation art.*

- [Judith Wallace Quoted in Bloomberg on Sotheby's Legal Fight over 'The Lost Leonardo' Painting | Carter Ledyard & Milburn LLP \(clm.com\).](#)

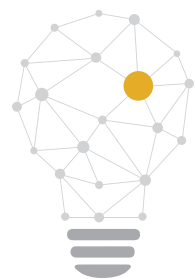
Judith weighs in on the roles and duties of art advisors in the litigation between Sotheby's and Dmitry Rybolovlev, and how the surprising lack of clarity in transactions by sophisticated market players often leads to disputes.

Trusts and Estates

Throughout 2023, our trusts and estates team continued to help our clients navigate the economic and legal realities of higher interest rates, fluctuating asset values and increased transfer tax exemptions. We advised clients regarding the efficient administration and transfer of their assets around the globe and helped our international clients minimize exposure to double taxation.

We guided fiduciaries through the administration of estates and trusts and assisted with decanting proceedings, judicial accountings, the replacement of trustees and termination and distribution of trusts. We continued to be active in the fiduciary litigation area, effectively and efficiently representing our clients and obtaining very favorable results both in court and through negotiated settlements. We also helped clients with charitable objectives negotiate gift agreements with public charities and implement gifting strategies through the use of private foundations, charitable remainder trusts, and donor advised funds.

We constantly monitor all tax law developments and changes, and are prepared to implement cutting edge strategies to address our clients' needs going forward, whatever the economic climate. We seek to incorporate flexibility into plans we devise for our clients, to address future uncertainty while achieving their goals with maximum efficiency.



A number of recent developments and anticipated changes will be of particular relevance to our estate planning clients in 2024 and beyond. Some of them are:

New Reporting Requirements for Certain Closely Held Businesses

Reporting requirements have been instituted at both the federal and New York level for closely-held entities. The Corporate Transparency Act and LLC Transparency Act will require certain closely-held entities to file information reports with the relevant authorities beginning in 2024 for newly formed entities and in 2025 for existing entities. Our clients make frequent use of closely-held entities that will be affected by this legislation, and we are prepared to advise them on their new filing obligations.

2024 Exemption Amounts

- The federal annual gift tax exclusion amount increased from \$17,000 in 2023 to \$18,000 in 2024, meaning that couples can make gifts of up to \$36,000 to individuals in 2024. Consistent use of this exclusion for multiple beneficiaries can be a powerful estate planning tool.
- The federal estate, gift and generation-skipping transfer tax exemptions increased in 2024 to \$13.61 million per individual (\$27.22 million for married couples). Our team is pleased to advise clients about making efficient use of these exemptions before they are scheduled to be cut in half beginning in 2026.

New Guidance from the Courts and the Internal Revenue Service

- In *Schlapfer v. Commissioner* (2023 U.S. Tax Ct. LEXIS 2445 (T.C., May 23, 2023)), the U.S. Tax Court ruled that substantial compliance with Treas. Reg. 301.6501(c)-1(f) is sufficient to meet the adequate disclosure requirement to disclose a gift to the IRS and begin the limitations period, and provided some guidance as to what would constitute adequate disclosure. We advise our clients in connection

Thought Leadership

Our lawyers are active in local and national professional organizations, keeping apprised of legislative, judicial and regulatory developments, and speak and write on current topics of importance in the estate planning realm.

In 2023, our lawyers published articles and gave presentations on a wide variety of topics, including lifetime gifting, charitable gifting, private foundations, the constitutionality of a wealth tax, the tax implications of gifting alternative assets, and best practices in estate and trust administration.

with filing gift tax returns with the IRS to begin the running of the limitations period during which the IRS can challenge the reported tax consequences of a gift.

- In CCA 202352018, a recent memo from the Office of Chief Counsel for the Internal Revenue Service, the IRS issued guidance taking the position that a modification of a grantor trust to add a reimbursement provision allowing the trustee discretion to reimburse the grantor for income taxes paid and executed with the beneficiaries' consent constitutes a taxable gift by the trust beneficiaries. We continue to monitor developments regarding the CCA, and to take it into account when drafting trust agreements and other estate planning documents.
- The Supreme Court has agreed to review the decision of the Eighth Circuit in *Connolly v. United States* holding that corporate-owned life insurance on the life of a deceased shareholder, that was to be used to redeem the deceased shareholder's shares, should be taken into account in determining the value of the deceased shareholder's stock. This ruling is contrary to the ruling of the Eleventh Circuit in *Estate of Blount v. Commissioner*, 428 F.3d 1338 (11th Cir. 2005). This case is important to our business planning clients in structuring buy-sell agreements, and we are monitoring it closely.

JEFF BOXER, PARTNER LITIGATION
AND TRADE SECRETS PRACTICES

“I work with clients to analyze employees' restrictive covenants to minimize risks to the client...This is a rapidly changing area of the law, so we also monitor developments in all states and at the federal level and advise clients on changes that may impact them.”



Litigation and Disputes

Carter Ledyard's Litigation and Disputes Department embodies the collaboration that is at the heart of our Firm. Client matters involving Intellectual Property, Cybersecurity, Trade Secrets, Employment, Art, Financial Services, Environmental, Ethics and Professional Responsibility, Real Estate, Antitrust, Fiduciary, Commercial, Shareholder and Securities disputes, corporate and commercial litigation continue to keep our nationally recognized litigators busy serving a wide variety of clients.



Anticipating new legislation, regulations, and questions about [Crypto, Digital Assets and Blockchain](#), and new applications of technology and [AI](#), the Firm has built a knowledgebase among our lawyers focused on developing ideas like machine learning and automation with an expectation of litigation and investigations.

When the NLRB, FTC and multiple US states enacted and amended statutes or rules concerning non-compete agreements, Carter Ledyard sprang forward to deliver insights to clients in several summaries and analyses of these provisions.

Our Litigation team stays ahead of case law as we represent multiple clients facing questions around merchant cash advances. Our News and Insights in this area reflect the updated knowledge of how decisions around the country affect clients in this space, combining legal guidance with intelligence.

A number of recent developments and anticipated changes will be of particular relevance to our estate planning clients in 2024 and beyond. Some of them are:

Client Highlights

- [Carter Ledyard Wins Reargument on Discovery of Post-Employment Damages | Carter Ledyard & Milburn LLP \(clm.com\)](#)
- [Carter Ledyard Obtains Dismissal of Aiding and Abetting Breach of Fiduciary Duty Claims Against Firm Client Dengrong Zhou | Carter Ledyard & Milburn LLP \(clm.com\)](#)
- [Carter Ledyard Obtains \\$1.5 Million Judgment for Investor Clients Against Property Developer | Carter Ledyard & Milburn LLP \(clm.com\)](#)
- [In Significant Appellate Victory, Carter Ledyard Client Radio Drama Network Allowed Broad Discovery in Its Challenge to The Diversion of the \\$100 Million Legacy of Radio Pioneer Himan Brown | Carter Ledyard & Milburn LLP \(clm.com\)](#)

Thought Leadership and Publications

- [New York Governor Vetoes Legislation Barring Non-Competes](#)

In this article, Jeffrey Boxer, Alex Malyshev, and Madelyn White address Governor Hochul's unexpected veto of this game changing legislation. In the background article, [New Legislation in New York Bars Non-Competes](#), the team discusses the new statute the New York state legislature passed to the state's Labor Law that would have barred most non-compete agreements and provide answers to some key questions about the substance of the legislation.

- [Second Circuit Brings Federal RICO Caselaw in Line with New York State Merchant Cash Advance Decisions.](#)

In this article, Jacob Nemon discusses the summary order in Fleetwood Services LLC v. Richmond Capital Group LLC, issued by the United States Court of Appeals for the Second Circuit, which affirmed a district court judgment in favor of a merchant cash advance (MCA) customer (merchant) against its funder.

- [Minnesota Bars Non-Competes with Employees and Independent Contractors.](#)

In this article, Jefferey Boxer discusses a new Minnesota statute that will render non-compete agreements void and unenforceable, prohibiting such arrangements between employers and employees, including independent contractors, with limited exceptions and penalties for employers not in compliance.

- [The National Labor Relations Board \(NLRB\) Takes a Shot Across the Bow at Non-compete and Employee Non-solicit Agreements.](#)

Madelyn White, Alex Malyshev, and Jeffrey Boxer provide information on the NLRB's general counsel's memo suggesting that many non-compete and non-solicit provisions likely breach Section 7 of the National Labor Relations Act by limiting employees' collective action rights, substantially restricting the enforceability of such agreements, while still allowing exceptions for specific managerial roles and narrowly tailored post-employment restrictions like confidentiality agreements.

- [Record Retention Policies.](#)

In this article Guy Lander, Richard G. Pierson and Jennifer Frank discuss the complexities of record retention policies, their primary aim of designating when records can be safely discarded without adverse consequences and that the retention of documents depends on various factors, including legal, litigation, and business requirements.

RICH PIERSON, PARTNER CORPORATE

“Given the breadth of my practice, providing M&A and corporate counseling and support to individuals and companies of all sizes, maturity levels, and in a wide array of business segments and industries in the U.S. and abroad, I’m able to bring high quality negotiation, drafting and corporate counseling expertise to any private transaction or business.”



Corporate

When the global marketplace for M&A and other corporate transactions faces headwinds, clients still need their lawyers to guide them through other challenges.

With a busy year in 2023, Carter Ledyard's Corporate team assisted clients navigate hard questions to achieve their business and legal objectives in a tough interest rate environment and an uncertain political and economic one.



Client Highlights

- [Carter Ledyard Client CooperVision Completes Acquisition of SynergEyes](#)
- [Carter Ledyard client Pacific Current Group \("PAC"\), a multi-boutique asset management firm, in its acquisition of a 24.9% stake in Avante Capital Partners, LP, one of the largest women- and minority-owned private credit firms in the U.S. focused on flexible capital to fund growth. PAC's 24.9% equity interest in Avante was acquired for a purchase price of up to US\\$40M](#)
- [Carter Ledyard Client Greenfire Resources Merges with M3-Brigade Acquisition for NYSE Listing and Several Financing Transactions](#)
- [Carter Ledyard Client Trinity Biotech Agrees to Sell Fitzgerald Industries to Biosynth](#)
- [Carter Ledyard Guides Client Pacific Current Group in Minority Investment in Cordillera Investment Partners, LP](#)
- [Carter Ledyard Assists Client Arq Limited in Sale](#) Advanced Emissions Solutions, Inc. (NASDAQ: ADES) in its merger agreement with Arq Limited, pursuant to which Arq and ADES will combine their respective businesses.
- Crescent Point Energy Corp. in its announced \$2.55-billion deal to purchase Hammerhead Energy Inc., a Calgary-based energy company.
- Gilat Satellite Networks Ltd. (Nasdaq: GILT, TASE: GILT), a worldwide leader in satellite networking technology, solutions, and services, in its announced agreement to acquire DataPath, Inc. (DPI).
- Senstar Technologies Ltd. (NASDAQ: SNT), a video and access control security company, in its announced transaction to move the corporate domicile of the Company to the Province of Ontario, Canada, from its current incorporation under the laws of the State of Israel.

Thought Leadership and Publications

- [The Corporate Transparency Act: New Beneficial Ownership Reporting Requirements.](#)
In this article Guy Lander, Austin Keyes, and Jennifer Frank discuss the Corporate Transparency Act, the law's reporting requirements and potential implications for businesses and beneficial owners in the United States.
- [Record Retention Policies.](#)
In this article Guy Lander, Richard G. Pierson and Jennifer Frank discuss the complexities of record retention policies. In this updated insight the team examines designating when records can be safely discarded without adverse consequences and that retention requirements depend on various legal and business factors.
- [Effectiveness of New Rules and Disclosures Related to Rule 10b5-1 Insider Trading Plans \(Update\).](#)
In this article, Guy Ben-Ami and Steven Glusband provide guidance and insight on new rules and disclosures related to Rule 10b5-1 insider trading plans that have been implemented.
- [FAQ Re: Incentive Based Compensation – Understanding the New Clawback Rules.](#)
In this article, Guy Ben-Ami and Steven Glusband analyze the new Compliance and Disclosure Interpretations providing further guidance about the "Clawback" rules adopted by the SEC.
- [The Expanding Scope of CFIUS's Jurisdiction and Mandatory Reporting.](#)
In this article Raphael Grunfeld discusses new regulations which expanded CFIUS's review powers and authority.

Environmental and Land Use

A substantial part of our environmental and land use work in 2023 revolved around three key public policies: City and State efforts to decarbonize buildings and the electric grid, the reimagining of the commercial real estate sector, and the need for affordable housing. We continue to advise various state agencies on their efforts to advance offshore wind and onshore renewable energy projects, and to carry out storm resiliency projects. We also continue to advise building owners on adaptive reuse of underutilized commercial spaces and new and complex commercial, entertainment, hotel and retail projects. And we advise our clients on both green building mandates and development of affordable housing. This work will continue in 2024.



Although New York's commercial real estate market faces serious challenges in 2024, City and State efforts to incentivize adaptive reuse should help. We expect to see additional residential conversions, industry incubators, and other creative retrofits. New York City's "City of Yes, Rezoning for Economic Opportunity" zoning text amendment will improve the business environment for a wide variety of commercial projects. But we continue to wait to see how the City and State will work together to address the twin crises of millions of excess square feet of commercial office space and a statewide shortfall of 500,000 housing units.

For example, in 2024 there will be tremendous pressure on the State to replace the expired 421-A tax break for affordable housing development. Clients must continue to focus on developing plans for compliance with Local Law 97, which took effect on January 1, 2024.¹

Clients can expect to see changes to the electric grid accelerate in 2024, as the state pushes to meet its mandate to secure 70 percent of all electric power from renewable sources by 2030, and as federal Inflation Reduction Act funds are infused into New York clean energy projects.

¹ [See Local Law 97: Q&A for Property Owners, Including Commercial Landlords, on NYC's Groundbreaking Climate Change Law | Carter Ledyard & Milburn LLP \(clm.com\)](#)

Client Highlights

- **Forest Hills Gardens Corporation.** We provide land-use and litigation counsel to this nonprofit homeowner's association in relation to its management of private streets and sidewalks in a 900-home community. High-profile litigation involves the operation of Forest Hills Stadium within the residential community.
- **New York State Energy Research and Development Authority (NYSERDA).** NYSERDA is at the forefront of New York State's efforts to decarbonize the economy as required under the Climate Leadership and Community Protection Act, including power generation. CLM has advised on environmental, regulatory and procurement issues on a variety of projects, including offshore wind development and solicitations, and onshore large scale renewable energy development.
- **NYS Public Benefit Corporations:** We provide land-use, environmental and real estate counsel to a variety of state public benefit corporations and state-created corporations such as Battery Park City Authority, Empire State Development, Hudson River Park Trust, Long Island Power Authority and Roosevelt Island Operating Corporation. This work continues our group's 30-year tradition of service to New York State on long-standing duties such as compliance with the State Environmental Quality Review Act and new duties such as addressing climate change and storm resiliency.
- **Gaming:** We have advised clients on the NYS Gaming Commission's early 2023 issuance of a request for applications for up to three gaming licenses to be awarded downstate—the first time New York will allow live gaming and casinos in New York City and nearby counties.
- **Hudson Yards Hells Kitchen Alliance.** CLM continues to advise public-private partnerships such as business improvement districts and park conservancies on a wide variety of matters. For example, the firm continues its work with the Hudson Yards Hells Kitchen Alliance on of Bella Abzug Park—the signature open space in the City's Hudson Yards neighborhood.
- **TD Bank.** For over 15 years, we have provided land use counsel to TD Bank in connection with its New York City real estate interests. We provide the counsel on the regulatory framework applicable to the bank's proposed sites and have pursued variances, rezonings and landmarks approvals to facilitate development.
- **Tahl Propp Equities.** We provide general land use counsel to Tahl Propp Equities, one of the largest landlords in Harlem. Tahl Propp's new construction business is focused on the development of the legacy parking lots and outparcels associated with existing project-based Section 8 buildings. TPE recently completed construction of the award-winning Carolina, a 475,454 square foot mixed use building on which it partnered with L & M Development Partners. We helped to facilitate entitlements for that development, which included rezoning, public disposition of property, and large-scale development planning. We are currently assisting Tahl Propp with similar entitlement work associated with the Carolina's sister project: Park 127. Together these two building will bring over 1,000 new units of badly needed affordable housing to New York.

Thought Leadership and Publications

- [Chris Rizzo and Karen Meara Publish "Stadium Controversies and Special Permits" in New York Law Journal.](#)

In their article for the New York Law Journal, Christopher Rizzo and Karen E. Meara discuss the ongoing controversies surrounding the special permits for Madison Square Garden (MSG) and other stadium proposals in New York City; exploring how these decisions impact the city's transit, infrastructure, and the well-being of its residents and economy.

- [Landmark Climate Change Ruling in Montana Sets Precedent for New York's Environmental Rights Amendment.](#)

In this article, Christopher Rizzo and Karen Meara shed light on Held v. State of Montana, a landmark case that directly tied fossil fuel use to climate change and compelled broader environmental consideration in governmental decisions; the ruling holds relevance for New York because of the State's newly amended constitutional provision, comparable to the Montana provision that was the basis of Held, creating a "right to a healthy environment." Were a New York court to follow Held, the amendment would create an individual cause of action related to greenhouse gas emissions.

- [Environmental Director Chris Rizzo Quoted in The New York Times on Parkland and the Public Trust Doctrine.](#)

Christopher Rizzo provides his legal insights on parkland and the public trust doctrine as it relates to the controversial International Cricket Council Stadium proposal in Van Cortlandt Park.

- [NY Looked Seriously at a 'Builders' Remedy' Law to Address Affordable Housing Shortage.](#)

In this article Christopher Rizzo addresses the "New York Housing Compact" and its attempt to tackle restrictive zoning and incentivize affordable housing construction.

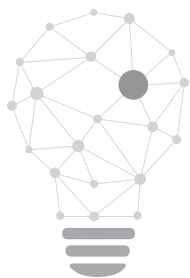
- [New York City Brings the Hammer Down on Landlords Supporting the Gray Cannabis Market.](#)

In their Law360 article, Alexander Malyshev, Paul Proulx, and Louie Ayash discussed the potential liability that landlords may face under New York Real Property Law ("NYRPL") Section 231 when a landlord has actual or constructive knowledge of their commercial tenants using the premises for the sale of unlicensed cannabis.



Condemnation

Our Condemnation practice group looks forward to continuing to help our governmental clients in all phases of acquiring real property by eminent domain for many important projects throughout the New York metropolitan area. In 2024, Carter Ledyard will continue providing advice in its role as special condemnation counsel to the City of New York and the Hudson Yards Development Corporation ("HYDC"), as it has done since 2004.



We will continue assisting with implementing Phase 2 of the Hudson Park & Boulevard Project, which upon completion will result in the creation of approximately three acres of new parkland running from West 36th to West 39th Streets. Carter Ledyard will continue assisting the City and HYDC obtain possession of the Phase 2 properties so that demolition and construction activities may proceed on schedule. We will also continue representing the City in connection with fee and fixture claims related to determining just compensation for the acquired property interests, including both fee interests and a temporary easement. The valuation process involves coordinating with many experts, including fee and fixture appraisers, zoning consultants, architects, and cost estimators.

Carter Ledyard will also continue representing the City and HYDC in connection with negotiating changes to certain railroad easements dating back nearly one hundred years in order to facilitate development of portions of the Hudson Park & Boulevard above the railroad right-of-way while preserving the right of the railroad to meet modern operational and safety requirements.

Our condemnation group also looks forward to assisting the Town of Southampton with property acquisitions and related activities in connection with the Fire Island Inlet to Montauk Point Combined Beach Erosion Control and Hurricane Protection ("FIMP") Project. The FIMP Project will involve fee and easement acquisitions, as well as house relocation and other floodproofing efforts, related to beach erosion control and hurricane protection efforts along approximately 83 miles of the southern shoreline of Long Island from Fire Island Inlet to Montauk Point.

The use of condemnation for purposes of climate resiliency projects has been a trend that we expect to continue as governmental entities try to mitigate the risks of climate change. Since 2015, Carter Ledyard has represented Suffolk County as special condemnation counsel in connection with the Fire Island Inlet to Moriches Inlet (FIMI) Project, a beach stabilization project undertaken by the County, the State of New York, and the Army Corps of Engineers to create, restore, and maintain sand dunes damaged by Superstorm Sandy. We conducted and received favorable decisions in nine valuation and damages trials (related to full fee takings, easement acquisitions, and situations where a property owner's land was acquired but the owner relocated their house to a nearby parcel). Our work

has involved the interpretation and enforcement of easements permitting renourishment of sand dunes while preventing development that would interfere with the protective dune's functionality. This representation has led to groundbreaking trial court decisions interpreting such easements and determining the proper method of calculating damages in house relocation cases.

There are a number of other significant projects in the New York area that may involve the future use of eminent domain, including the construction of additional rail tunnels under the Hudson River as part of the Gateway Program to improve rail service along Amtrak's Northeast Corridor, the potential expansion and redevelopment of Penn Station and its surrounding area, and the development of the Willets Point neighborhood of Queens. Carter Ledyard's condemnation group will be keeping a close eye on all these projects, and more, and we look forward to continuing to help governmental entities shape the future landscape of the New York area.



JACK GRIEM, PARTNER IP PRACTICE

“I’m drawn to companies that rely heavily on their reputation or technology to attract customers. My advice is focused on proactive measures and crafting tailored solutions to ensure the security of my clients’ assets and the integrity of their brands.”



Intellectual Property

With collaboration across a wide range of practices at Carter Ledyard, our Intellectual Property group sets a high bar for cross-industry knowledge of multidisciplinary areas of law. Our practice counsels many long-term clients with patent and trademark, licensing and copyright issues across a range of industry sectors, including Art, Technology, Life Sciences/ Pharmaceuticals and Healthcare.



Artificial intelligence (AI)

is one of the most rapidly developing technologies, and it is already having a major impact on the IP landscape. For example, AI-generated works are raising questions about copyright ownership and infringement. As AI becomes more sophisticated, we can expect to see new challenges and opportunities in the area of IP law.

Blockchain

is another emerging technology that is likely to have a significant impact on IP. Blockchain can be used to create secure and transparent records of ownership, which could be used to manage IP rights. For example, blockchain could be used to track the ownership of copyrighted works or to manage patent licensing agreements.

The Internet of Things (IoT) is a network of physical objects that are embedded with sensors, software, and other technologies that allow them to collect and exchange data. The IoT is raising a number of IP issues,

such as who owns the data collected by IoT devices and how that data can be used.

3D printing

is a technology that allows users to create physical objects from digital models. 3D printing is raising IP issues such as whether 3D printed objects are protected by copyright or design patents.

Client Highlights

- Carter Ledyard represents Kaneka Corporation in a patent infringement action against defendants Designs for Health, Inc. and American River Nutrition LLC in the United States District Court for the District of Delaware. Kaneka Corporation alleges infringement of one of its patents directed to a composition including a significant weight-percentage of reduced coenzyme Q10. Reduced coenzyme Q10 is a useful compound in many health settings.
- We are counsel for investors in a biopharmaceutical startup bringing derivative and minority oppression claims to recover intellectual property and other property improperly taken by the majority investors and managers.
- For Textile Exchange, we are providing counsel on expanding and securing its worldwide trademark and certification mark portfolio.
- For different startup and growth stage companies, we provide comprehensive patent strategy and prosecution services as they develop and market products and services in areas including exercise equipment, clinical trial verification systems, and endoscopic medical devices.
- Carter Ledyard continues to represent defendant Lifescan, Inc., a customer of client Asahi Polyslider, in a patent infringement action brought by Facet Technologies, LLC in the United States District Court for the Central District of California. Facet alleges infringement of a patent directed to a technology for blood glucose monitoring.

Thought Leadership and Publications

- [In Managing the Risk of Using AI-Generated Content in a World of Copyright Uncertainty: Are AI Content Generators and AI Generated Expressions “Derivatives” of Copyrighted Works?](#)

Jack Griem and Judith Wallace discuss whether AI-generated content constitutes “derivative works” of copyrighted material and the potential risks and considerations for companies and copyright holders in the face of this evolving technology.

- [Latent Ambiguities in New York’s Digital Fair Repair Act as Finally Enacted.](#)

Jennifer Frank, John Griem and Mathew Dunn discuss New York’s Digital Fair Repair Act, its interpretation and application.

- [No Way Out: Antitrust Considerations Buttress Right To Repair Statutes.](#)

John Griem Jr., Mathew D. Dunn and Jennifer Frank, discuss New York’s Digital Fair Repair Act and its potential impact on original equipment manufacturers (OEMs) right to repair.

- [U.S. Supreme Court Issues Long-Awaited Copyright Decision in Warhol Foundation v. Goldsmith.](#)

In their collaborative analysis, Jack Griem and Judith Wallace dissect the U.S. Supreme Court’s recent decision in “Warhol Foundation v. Goldsmith,” highlighting the ruling’s significance in the realm of copyright law and artistic appropriation.

GUY BEN-AMI, PARTNER ISRAELI CROSS-BORDER
AND SECURITIES PRACTICES

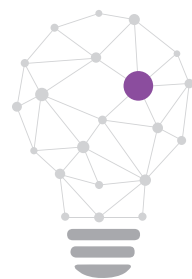
“I really appreciate the idea of cross border work and helping foreign companies find the financing and the markets they need here in the U.S., dealing with all the problems they might face from a regulatory perspective.”



Capital Markets, Securities & Banking, and Lending

Throughout 2023, Carter Ledyard fielded inquiries and handled new matters for clients facing questions about cross-border debt and equity issuances, alternative currencies, cryptocurrency and the disclosure rules applying to investments and transactions related to these and other financial products.

While interest rate uncertainty shifted corporate strategy generally, opportunities for capital-raising and growth drives new strategies for our clients. Moreover, the data protection measures that continue to develop have driven clients to come to Carter Ledyard with their questions about privacy and cybersecurity.



Client Highlights

Equity

- [Prime Harvest in its Alternative IPO](#) (Reg A+ IPO), a technology-focused full-service cannabis company, in its. Prime Harvest is a Delaware corporation based in California that deals with recreational and medical cannabis.
- Armlogi Holdings, a warehousing and logistics service provider based in California, in its initial public offering (IPO) on Monday. The company has expressed its intention to offer two million shares at a price range of \$5 to \$6 per share.

Debt

- [Greenfire Resources in its Merger with M3-Brigade Acquisition for NYSE Listing and Several Financing Transactions](#) including a private offering of US\$300 million aggregate principal amount of 12% senior secured notes; debt tender offer to retire Greenfire's previously existing 12% senior secured notes of approximately \$217 million; a credit agreement with Bank of Montreal, as agent, and a syndicate of other financial institutions as lenders for senior secured extendable revolving credit facilities for C\$50 million; and a PIPE financing in which 4,177,084 Greenfire Common Shares were issued to PIPE investors for approximately US\$42 million.
- Seabridge Gold (TSX: SEA) (NYSE: SA) in its wholly-owned subsidiary, KSM Mining ULC ("KSMCo"), in the sale of a US\$150 million secured note to Sprott Resource Streaming and Royalty Corp.

Thought Leadership and Publications

- [SEC Adopts New Cybersecurity Disclosure Rules for Public Issuers.](#)

In this Article, Guy Ben-Ami, Steven J. Glusband, and Mathew D. Dunn provide information on the SEC's new cybersecurity rules for public companies and their requirements.

- [Making Waves Across the Crypto Industry: SEC v. Ripple.](#)

In this article, Guy Ben-Ami, Alex Malyshev, Mathew Dunn discuss the ruling SEC v. Ripple Labs, Inc. which marks a potential turning point in the cryptocurrency industry's regulatory landscape.

- [SEC Addresses Cybersecurity Market Risks, Controls and Disclosures for Market Participants Through Proposed New Rules and Amendments.](#)

In this article, Ronald Feiman and Mathew Dunn discuss the SEC proposed rigorous regime changes intended to address cybersecurity and technology risks for a wide range of market participants that maintain data about investors.

- [Effectiveness of New Rules and Disclosures Related to Rule 10b5-1 Insider Trading Plans \(Update\).](#)

In this article, Guy Ben-Ami and Steven Glusband provide information on new rules and disclosures related to Rule 10b5-1 insider trading plans that have been implemented.

- [FAQ Re: Incentive Based Compensation – Understanding the New Clawback Rules.](#)

In this article, Guy Ben-Ami and Steven Glusband analyzed the new Compliance and Disclosure Interpretations providing further guidance about the "Clawback" rules.

Cybersecurity and Data Privacy

New issues crop up every day in these rapidly evolving multi-faceted areas of law. Our Securities practitioners worked with clients facing questions about the evolving SEC cybersecurity disclosure rules for public companies and our M&A lawyers uncovered data privacy issues in connection with corporate transactions and related due diligence. We prepared and updated many privacy policies and terms of use to reflect and ensure compliance with the newer, higher-risk legal landscape. We also assisted clients with risk mitigation and investigation and assessment of obligations in connection with cybersecurity data incidents.



This collaboration reflects the continued support our clients receive across a wide range of legal areas to deliver solutions designed for success.

Many mandatory state data privacy laws are set to go into effect in 2024. In 2023, the Cyber and Data Privacy team followed and advised on important legal trends, laws, and regulations, including in the areas of biometrics, state data privacy laws, cross-border data transfer, digital repair laws like the ones enacted in New York and California, and the continued evolution of AI and its impact on privacy and data security.

[Turn next to our new Artificial Intelligence, Machine Learning and Automation Industry](#) group to learn about how our team is helping clients understand and manage the risks and opportunities.

Client Highlights

- Prepared and updated privacy policies, terms of use, cookie policies, and notices of consumer rights in compliance with the evolving landscape of data privacy laws, including the European Union's General Data Protection Regulation (GDPR), California Consumer Privacy Act (CCPA) and Privacy Rights Act (CPRA), the Colorado Privacy Act (CPA), Connecticut Data Privacy Act (CTDPA), Utah Consumer Privacy Act (UCPA), and Virginia Consumer Data Protection Act (VCDPA) for many clients, including for-profit and nonprofit entities across many industries, such as staffing and human resources, finance, and e-commerce.
- Advised clients on instituting and carrying out new procedures in order to comply with various applicable data privacy laws.
- Assisted a client with risk mitigation and investigation and assessment of reporting obligations in connection with cybersecurity data breach.
- Reviewed privacy policies, terms of use, and other privacy documents of target companies in connection with due diligence efforts for M&A transactions.
- Advised a New York non-profit in connection with a cybersecurity breach incident involving the hacking of an employee email account and theft of funds induced by fraud. Guided the client through a forensic investigation and assisted the client in obtaining recovery of the funds.
- Assisted public companies with disclosure obligations in connection with SEC reports.

Thought Leadership and Publications

■ [Understanding Tech Terms: Cybersecurity, Crypto, and Data Privacy.](#)

In this 5-part series, Matthew Dunn, Thomas Davis Jr., Jennifer Frank, Jodutt Basrawi, and Brielle Kilmartin define terms to help others better follow the ongoing discussions of cybersecurity, data privacy, AI, blockchain and crypto.

■ [Latent Ambiguities in New York's Digital Fair Repair Act as Finally Enacted.](#)

In this article Jennifer Frank, Matthew Dunn, and John Griem, Jr. discuss New York's Digital Fair Repair Act (DFRA) and its potential impact on original equipment manufacturers (OEMs).

■ [SEC Adopts New Cybersecurity Disclosure Rules for Public Issuers.](#)

In this Article, Guy Ben-Ami, Steven Glusband, and Matthew Dunn provide information on the SEC's new cybersecurity rules for public companies.

■ [The Growing Risks of Collecting and Using Biometric Data: Regulations in New York and Elsewhere.](#)

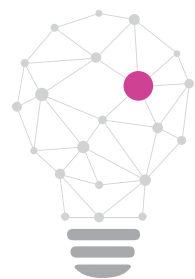
Matthew Dunn, Jennifer Frank, Jodutt Basrawi, and Brielle Kilmartin provide insight into the issues relating to the collection and use of biometric data and the applicable regulations and privacy laws.

■ [No Way Out: Antitrust Considerations Buttress Right To Repair Statutes.](#)

John Griem, Jr., Matthew Dunn and Jennifer Frank discuss New York's Digital Fair Repair Act and similar laws and how they, along with federal antitrust laws, are affecting the business of original equipment manufacturers (OEMs).

Tax

Our group assisted in a multitude of sophisticated corporate transactions in 2023. We look forward to more of the same in 2024. Of course, with the election, this year should prove to be quite interesting in the tax space.



Client Highlights

Our Tax Department advised on several transactions including:

- [Carter Ledyard Client McIntyre Partners Raises \\$100m Debt Offering | Carter Ledyard & Milburn LLP \(clm.com\)](#)
- [Carter Ledyard Client Pacific Current Group Purchases 24.9% Stake in Avante Capital Partners, LP | Carter Ledyard & Milburn LLP \(clm.com\)](#)
- [Carter Ledyard Client Greenfire Resources Merges with M3-Brigade Acquisition for NYSE Listing and Several Financing Transactions | Carter Ledyard & Milburn LLP \(clm.com\)](#)
- [Carter Ledyard Client, Scholly, in Asset Acquisition by Sallie Mae, Enables Free App for Users | Carter Ledyard & Milburn LLP \(clm.com\)](#)
- [Carter Ledyard Guides Client Pacific Current Group in Minority Investment in Cordillera Investment Partners, LP | Carter Ledyard & Milburn LLP \(clm.com\)](#)
- [Carter Ledyard Client CooperVision Completes Acquisition of SynergEyes | Carter Ledyard & Milburn LLP \(clm.com\)](#)
- [News & Insights | Carter Ledyard & Milburn LLP \(clm.com\)](#)

Thought Leadership

- *Our Tax team launched a suite of multimedia thought leadership including audio summaries of Client Advisories, and culminating in a podcast series, Tax Tete-a-Tete, with a series of interviews; and an exciting video series with the head of our Cannabis Group focused on relevant taxation issues for clients in that industry.*

Podcast Series

- [Tax Tête-à-tête Podcast | Carter Ledyard & Milburn LLP \(clm.com\)](#)

Video Series

- [Alex Malyshev and Melinda Fellner Discuss the Intersection of Tax and Cannabis in New Video Series – Part IV: Harborside | Carter Ledyard & Milburn LLP \(clm.com\)](#)
- [Alex Malyshev and Melinda Fellner Discuss the Intersection of Tax and Cannabis in New Video Series – Part V: Controversy | Carter Ledyard & Milburn LLP \(clm.com\)](#)

- [Alex Malyshev and Melinda Fellner Discuss the Intersection of Tax and Cannabis in New Video Series – Part III: State Level Taxes | Carter Ledyard & Milburn LLP \(clm.com\)](#)
- [Alex Malyshev and Melinda Fellner Discuss the Intersection of Tax and Cannabis in New Video Series – Part II: U.S. Code § 280E | Carter Ledyard & Milburn LLP \(clm.com\)](#)
- [Alex Malyshev and Melinda Fellner Discuss the Intersection of Tax and Cannabis in New Video Series – Part I: Planning | Carter Ledyard & Milburn LLP \(clm.com\)](#)

Publications

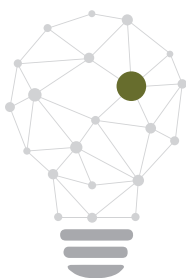
- [The Supreme Court Takes a Deep Dive Into Potentially Perilous Water with the Moore Case | Carter Ledyard & Milburn LLP \(clm.com\)](#)
- [Crypto Tax Implications for Gifting | Carter Ledyard & Milburn LLP \(clm.com\)](#)
- [The Supreme Court Issues Pro-Taxpayer Opinion in FBAR Penalty Case | Carter Ledyard & Milburn LLP \(clm.com\)](#)
- [“Has the IRS Found its Mojo, Just like Austin Powers? A Commentary on the Trilogy of IRS Offshore Voluntary Disclosure Programs” \(Source: Volume 26, Number 06, July/August 2013, pp.15-22\(8\) in Journal of Taxation and Regulation of Financial Instruments](#)

Pro Bono

Carter Ledyard's long history of supporting organizations and individuals with pro bono work is well-established. Year after year, our lawyers and staff build strong ties to communities in need with decisive legal advice on important matters with enduring value.

In 2023 some of our pro bono matters involved sensitive issues such as immigration and asylum cases, investor claims involving economic disaster, and other matters such as criminal appeals and more.

Some of the organizations that receive on-going pro bono assistance from the firm include New York Lawyers for the Public Interest; New York County District Attorneys Appeals Program; Her Justice; Immigration Equality; Legal Aid; Volunteer Lawyers for the Arts and Eastern and Southern United States District Courts.



FIRM NEWS

An exciting year with [plenty of ups and downs](#), Carter Ledyard enjoyed recognition in several [global legal rankings publications](#) including several of our lawyers and practices being named and ranked by peers and clients alike.

Our partners were involved in significant legal events such as [vetting candidates eligible for appointment as the next Chief Judge of the New York Court of Appeals](#) and another partner is member of the drafting committee of the Commercial and Uniform State Laws Committee of the New York City Bar that prepared a [Report for the City Bar's Task Force on Digital Technologies](#) addressing issues presented by new technology.

Carter Ledyard launched working groups focused on the emergence of new legal problems focused on [Artificial Intelligence \(AI\), Machine Learning \(ML\) and Automation | Carter Ledyard & Milburn LLP \(clm.com\)](#) and [Crypto, Digital Assets and Blockchain | Carter Ledyard & Milburn LLP \(clm.com\)](#) to keep up with client demand and ongoing questions that our legal teams work to resolve on a day to day basis.

We are proud to continue our commitment to an inclusive legal landscape and joins as a signatory of the Disability Inclusion Commitments by Diversity Lab as part of the collaborative effort with 90+ leading law firms in the industry.: [Carter Ledyard Joins 90+ Law Firms in Disability Inclusion Commitments | Carter Ledyard & Milburn LLP \(clm.com\)](#)



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