

# Looking Ahead

2023

## To Our Clients and Friends:

We learned a lot in 2022, as the United States and much of the world struggled to emerge from the global pandemic. Our clients showed continued growth, withstood unexpected challenges, and in some cases, saw wholesale reorientation of their businesses with new outlooks that required careful decision making. As we look forward to a new year and new opportunities, we have launched our Looking Ahead series, to help our clients anticipate and prepare for the year ahead.

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.

*Carter Ledyard & Milburn LLP*

# Art Law

## LOOKING AHEAD: WHAT TO EXPECT IN 2023

2023 has the potential to see significant changes in all aspects of the art market, from creation to sale of artwork.

In 2022, New York City eliminated its regulation of auctioneers, eliminating numerous legal requirements that had been incorporated into standard auction terms, notably concerning reserves, disclosure of auction houses interests, and warranties of title. 2023 should indicate whether the elimination of those requirements will percolate into changed warranty terms and disclosures in auction houses nationally and internationally.

In 2023, the U.S. Treasury Department remains on track to continue financial regulation of the art market to address concerns about terrorist financing and money laundering, principally through application of existing tools such as suspicious activity reporting and know-your-customer protocols and targeting abuse of shell companies, focusing at the higher-value end of the market.

Finally, the U.S. Supreme Court is evaluating “appropriation” art, which incorporates existing artwork in the creation of new artwork, in the context of Andy Warhol’s use of a photograph of the musician Prince. Oral argument was held in October 2022. The justices’ response suggests that the decision will shed much-needed light on the question of when visual artists appropriating the work of other visual artists must obtain permission and pay licensing fees.

### Thought Leadership and Publications

- [Judith Wallace Quoted in Citywealth on the State of the U.S. Art Market](#)
- In Citywealth, Judith comments on several prescient topics on the US art market, including art fraud, art galleries, and NFTs.

### Client Highlights

- [Carter Ledyard Achieves Victory for Lachaise Foundation in Ownership Dispute of Valued Sculpture](#)
- Carter Ledyard preserved a claim by its client Lachaise Foundation to ownership of the monumental sculpture “Garden Figure” by defeating a motion by the Reis Trust that the Foundation’s claim of ownership was barred by the statute of limitations.

# Cannabis, Hemp & CBD

## LOOKING AHEAD: WHAT TO EXPECT IN 2023

2022 was a dramatic year of change in the state of New York with respect to legalization and permitting in the cannabis space. Most prominently – and our team has written extensively on the subject – is the contention of federal illegality of cannabis (with its simultaneous explosion of laws legalizing cannabis at the state level) that has created challenges for practitioners, businesses, and state-level regulators. One of the most interesting developments to watch in recent years has been the proliferation of lawsuits targeting regulations, and licensing decisions, on constitutional grounds. You can read more about our insights in this developing space here and where we expect to see continued challenges in 2023.

### Thought Leadership and Advisories

- [State of Play: New York's Recreational Cannabis Market in 2022](#)
- *Approximately 18 months after passage of the Marijuana Regulation and Taxation Act (MRTA) – which overhauled New York's medical marijuana program and was intended to usher in an adult-use market – New York finally appears to be on the verge of opening a limited number of recreational dispensaries in the coming months.*
- [Constitutional Considerations for a Federally Illegal Cannabis Industry](#)
- *One of the most interesting developments to watch in recent years has been the proliferation of lawsuits targeting regulations, and licensing decisions, on constitutional grounds.*
- [Emerging Trends in Cannabis Litigation](#)
- *In this article we discuss the collision of federal illegality and constitutional rights, and their effect on the business of cannabis.*
- [One Year Later: Adult Use Legalization in the Northeast](#)
- *In their latest regular article for Thomson Reuters, Alex Malyshev and Sarah Ganley of the firm's Cannabis, Hemp & CBD Industry Group survey the current landscape of adult use cannabis.*

### Client Highlights

- We represented Vessel Brand Inc. in its \$30 million sale to Flora Growth Corp, a leading all-outdoor cultivator and manufacturer of global cannabis products and brands.
- Our cross-border team represented Willow Biosciences Inc., a Canadian biotechnology company based in Vancouver, with a bought deal offering of common shares for approximately \$28.75 million. The offering was made pursuant to an underwriting agreement between our client and a syndicate of underwriters.
- We represented Bold Cannabis Inc. with its non-brokered private placement of units comprised of common shares and warrants for up to CA\$1.9 million.
- In another cross-border matter, we represented Decibel Cannabis Company Inc., a premium cannabis producer, with its bought deal prospectus offering of units for approximately CA\$15 million.
- We provided advice to our client, FOCUS (Foundation for Cannabis Unified Standards), on governance and non-profit issues to a non-profit cannabis standards accreditation provider.
- For HiBNB, we provided advice to the client on regulatory issues and launch of operations in the United States for cannabis friendly short term vacation rentals.

# Capital Markets & Leveraged Finance

## LOOKING AHEAD: WHAT TO EXPECT IN 2023

Looking into 2023, rising interest rates and other global challenges have our clients looking strategically at their debt picture and focusing on acquisitions, public listings and facility wind-downs in order to recapitalize and refocus their businesses and competitive positions. We also foresee many small businesses seeking financing to take advantage of new markets like cannabis, consumer lending, art, and digital assets, and larger clients providing or seeking financing in growing markets such as oil and gas, sports betting, gaming, and renewable energy.

### Client Highlights

- [Carter Ledyard Client Seaco SRL Completes Key Amendments to Its Financing Facilities](#)
- *Carter Ledyard client Seaco SRL, with its affiliates, one of the world's largest marine shipping container companies, completed a series of seven transactions across more than \$5 billion in debt facilities, to amend each of the facilities to remove or revise provisions related to change of control events that would potentially have interfered with the companies' capital structure in the future. The transactions covered seven different financing structures, requiring consents, disclosures, and filings in multiple international jurisdictions.*
- [Carter Ledyard Client Global SC Finance SRL Completes \\$1.365 Billion Credit Agreement](#)
- *Carter Ledyard client Global SC Finance SRL, a wholly owned subsidiary of Seaco SRL entered into a Credit Agreement providing revolving credit of up to \$1.365 billion with a group of financial institutions as Lenders and PNC Bank, National Association, as Administrative Agent.*
- [Carter Ledyard Client Greenfire Resources Inc. Completes Fourth and Fifth Supplemental Indentures](#)
- *Represented longtime client Greenfire Resources Inc., in the execution of the company's Fourth and Fifth Supplemental Indentures for its Senior Secured Notes due 2025, providing for additional capital expenditures totaling USD \$60 million to increase oil and gas production and also to defer the company's required expenditures for hedging.*
- [Bank of New York Mellon Serves as Trustee in Connection with the Issuance of \\$1.6 Billion of Puerto Rico Highways and Transportation Authority Obligations](#)
- *Carter Ledyard represented to The Bank of New York Mellon, as Trustee under the Master Trust Agreement dated as of December 6, 2022, as supplemented.*

# Cross-Border

## LOOKING AHEAD: WHAT TO EXPECT IN 2023

With political and economic uncertainty taking effect in a post-pandemic environment around the world, we are helping clients in Israel, UK, Australia, Ireland, Canada, Turkey and China navigate a path to success in transactions and courts throughout the United States. Facing employment compliance complexities in return-to-work rules, an interest rate environment that makes investing and issuances riskier, and in continuing corporate transactions despite the myriad changes, Carter Ledyard expects 2023 to reflect cautious optimism by international companies with operations, investments and interests in the US. There are plentiful opportunities for growth and our clients continue to look ahead and adapt favorably to supply-chain changes, digital transformation, blockchain transaction complexities, changes adopted by the SEC, state and federal regulatory authorities and private investors alike.

### Client Highlights

#### Israel

- [The Capri Family Foundation Completes its Acquisition of Optibase Ltd](#)
- *The Capri Family Foundation, a Carter Ledyard client, successfully completed its going-private tender offer to acquire Optibase Ltd. (formerly Nasdaq: OBAS) for \$12.64 per share in cash.*
- Senstar Ltd. in its defense and settlement of patent litigation action in a New York court.
- Provided opinion in client's dispute with the government regarding seizure of assets.
- Advising a party in the bankruptcy proceedings of crypto company, Celsius.

#### Australia

- Thorney Investment Group, an Australian investment company in connection with its holdings in a Canadian company's contemplated listing on NASDAQ.

#### Canada

- [Carter Ledyard Client Greenfire Resources Inc. Completes Fourth and Fifth Supplemental Indentures](#)
- *Carter Ledyard represented longtime client Greenfire Resources Inc. in a definitive agreement for a business combination with M3-Brigade Acquisition III Corp. (NYSE: MBSC), a New York Stock Exchange listed special purpose acquisition.*

#### UK

- U.K. investor in the purchase of a U.S. Company in the technology services industry.
- Cognito Europe Limited and its U.S. affiliate, separation agreements with U.S. executives.

# China Cross-Border

## LOOKING AHEAD: WHAT TO EXPECT IN 2023

Our established and booming China Cross-Border Practice continued to counsel U.S. and Chinese clients on a wide variety of inbound and outbound legal matters, including mergers and acquisitions, securities laws and offerings, corporate finance, litigation, intellectual property, corporate governance and compliance, and trusts & estates.

### Client Highlights

- We represented several Chinese investors in their respective investment transactions with NASDAQ listed companies, including several Chinese investors in their respective investments in U.S. private companies engaged in crypto-currency business; and US public companies with principal operations in China in their ongoing public disclosure and compliance matters; and in the purchase of real estate properties in the US. In connection with the growing trend of Chinese citizens seeking global asset allocations and succession plans, our Trusts and Estates Department continued to provide tax and estate planning advice and to create trusts for high and ultrahigh net worth Chinese individuals.
- [Carter Ledyard Secures Litigation Victory in Delaware Chancery Court Battle Over Board Seats](#)
- *Capping a two-day trial, Carter Ledyard & Milburn LLP lawyers secured a complete victory for client Dengrong Zhou as Plaintiff in Delaware Chancery Court Section 225 Action, Dengrong Zhou v. Long Deng, No. 2021-0026-JRS, 2022 Del. Ch. LEXIS 79 (Ch. Apr. 6, 2022). The case was a highly pitched battle of corporate board seats in Delaware, with many of the witnesses and documents being in Chinese.*
- [Litigation Victory on Summary Judgment for Museum of Dream Space LLC and Dahoo American in Copyright Dispute](#)
- *After a three-year legal battle involving highly technical discovery, on July 12, 2022, Carter Ledyard & Milburn LLP lawyers secured a complete victory on summary judgment for clients Museum of Dream Space LLC and Dahoo American as defendants in a groundbreaking copyright action in the United States District Court in Los Angeles, California.*
- A NASDAQ-traded leading China-based pharmaceutical group in a series of acquisition, financing and divestment transactions.
- A NASDAQ listed company with operations in China in its negotiations with award-winning Hollywood producers regarding acquisition, licensing and development of famous brands.
- A China-headquartered and Hong Kong Stock Exchange listed hotpot restaurant chain in U.S. real estate matters.
- A China headquartered music restaurant & bar chain with more than 500 worldwide locations in its dispute resolution matters in the U.S.
- China-based client in sale of its U.S. broker-dealer business.
- A major US bank in an art lending transaction involving Chinese investors.
- Chinese high net worth individual client in successfully settling a dispute involving real estate in the U.S.
- An immersive technology client in securing a complete victory on summary judgment for the client as defendant in a groundbreaking copyright action in the United States District Court.
- We continued to represent a high-net-worth individual investor in breach of contract claims involving a NASDAQ-traded company's significant shares in the Supreme Court of New York.
- A Chinese high net worth individual investor in breach of contract claims involving investments in real estate projects in the Superior Court of New Jersey.
- Several shareholders, current and former officers of a public company in defending a derivative lawsuit in the Supreme Court of New York.
- We represented all current and certain former directors of a public company in defending a breach of fiduciary duty claim in the Supreme Court of New York.
- We advised the board of a public company in a receivership proceeding in the United States District Court.
- We continued to represent individual clients in SEC investigations and enforcement actions.

## Condemnation

### LOOKING AHEAD: WHAT TO EXPECT IN 2023

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 2023, 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 will involve the acquisition of partial and total fee interests as well as temporary easements within Hudson Yards. Upon completion, Phase 2 will result in the creation of approximately three acres of new parkland running from West 36th to West 39th Streets. 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. These negotiations include dealing with three-dimensional surveys, modern ventilation and emergency requirements, modern equipment and developing creative ways to work around missing easement documents.

Our condemnation group will also continue assisting Suffolk County 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. As special condemnation counsel to the County since 2015, we have 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.

We will also be closely monitoring the ongoing planning and implementation of the Fire Island Inlet to Montauk Point Combined Beach Erosion Control and Hurricane Protection (“FIMP”) Project, which will involve 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 FIMP Project may involve fee and easement acquisitions within the towns of Babylon, Islip, Brookhaven, Southampton and East Hampton, as well as house relocation and other floodproofing efforts.

There are a number of other significant projects in the New York area that may involve the future use of eminent domain, including the planned expansion and redevelopment of Penn Station and its surrounding area, 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, and the planned development of the Willets Point neighborhood of Queens, including the construction of a new soccer stadium for New York City FC. Carter Ledyard’s condemnation group will be keeping a close eye on all these development projects, and more, and we look forward to continuing to help governmental entities shape the future landscape of the New York metropolitan area.

#### Thought Leadership and Advisories

- [Mike Bauscher Receives Rising Star Award from Elisabeth Haub School of Law at Pace University](#).
- *The Rising Star Award is given to legal professionals who have had a notable impact on the field of law during the first fifteen years of their legal career, and demonstrated a commitment to Haub Law and an ingenuity of thought that has the potential for having substantial and lasting influence upon the legal profession.*

#### Client Highlights

- [Carter Ledyard Obtains Favorable Decision on Motion For Attorney and Expert Fees in Condemnation Matter](#)
- *Carter Ledyard recently received a favorable decision from the New York Supreme Court, Suffolk County, on behalf of the County, relating to a motion filed by a claimant in a condemnation matter seeking to recover attorney and expert fees and costs. Under New York Eminent Domain Law, a court has discretion to reimburse a claimant for some or all of the fees it incurs pursuing a claim for additional compensation on account of an acquisition.*



# Cybersecurity and Data Privacy

## LOOKING AHEAD: WHAT TO EXPECT IN 2023

Cybersecurity and data privacy approach the top of the list of concerns for organizations today. Carter Ledyard expects increasingly complex cybersecurity and data privacy challenges to continue in 2023 and beyond. Our Cybersecurity and Data Privacy Group has been engaged in numerous matters in this hot area, advising clients on liability mitigation and best practices, creation and implementation of privacy and cybersecurity policies, compliance with laws and regulations, and incident reporting and management.

Some of the issues and developments we are preparing for in 2023 include the SEC's proposed cybersecurity disclosure rules, the effectiveness of several state data privacy laws such as California's Privacy Rights Act, increased enforcement activity by state and federal agencies in connection with data breaches and violations of cybersecurity and data privacy laws and regulations, and continued movement towards a federal data privacy law. 2023 will also likely see an expanded focus on the role of senior executives and corporate boards in cybersecurity and data privacy oversight and governance, precipitated by increased exposure and liability for companies that experience data protection failures and evolving laws and regulations focused on board and executive accountability.

### Client Highlights

- Advised an international technology company in connection with a cyber ransomware attack and associated disclosure obligations.
- Prepared and updated privacy policies, terms of use, cookie policies, and notices of consumer rights under the European Union's General Data Protection Regulation (GDPR) and the California Consumer Privacy Act (CCPA) for many clients, including for-profit and nonprofit entities across many industries, such as textiles, cosmetics, cannabis, and e-commerce.
- Reviewed privacy policies, terms of use, and other privacy documents of target companies in connection with due diligence efforts for M&A transactions.
- Provided advice to foreign clients on cyber risk disclosures in publicly filed documents, including those filed with the SEC.
- Advised a non-profit in connection with a data breach resulting in the disclosure of personal data, which involved incident response and an assessment of regulatory reporting obligations.
- Responded to a regulatory inquiry on behalf of a broker-dealer in connection with a cyber attack, and advised on the client's cybersecurity policies, procedures, and incident response plan.



# Cybersecurity and Data Privacy

## LOOKING AHEAD: WHAT TO EXPECT IN 2023

### Thought Leadership and Advisories

Throughout the year, our attorneys provide thought leadership on issues involving cybersecurity and data privacy, through the publication of articles and advisories and speaking engagements. Below are some recent examples:

- [Best Practices For Boards, Execs After SEC's Cyber Proposal](#)
- Matt Dunn, Chair of Carter Ledyard's Cybersecurity and Data Privacy Group, detailed the SEC's long-anticipated proposed new cybersecurity disclosure rules in a salient piece published by Law360. The proposed rules reinforce that cybersecurity oversight is expected to start at the top of organizations—with executives and boards of directors—and would create regulatory standards to implement this approach to cybersecurity by requiring certain cybersecurity-related disclosures in public filings signed by corporate officers on disclosure of cybersecurity expertise held by any members of the board of directors.
- U.S.-Israeli Webinar on Legal Implications, Disclosure Issues, and Insurance Aspects of Cyberattack
- Guy Ben-Ami participated as a panel member, along with an Israeli lawyer and insurance industry representative, and provided guidance for Israeli companies traded either on NASDAQ or the NYSE regarding the SEC's views on disclosure of cybersecurity risks and incidents.
- [New York DFS Proposes Amendments to its Cybersecurity Regulations; What this Means for Companies and their Boards and Executives](#)
- Matt Dunn and Brielle Kilmartin discussed the New York State Department of Financial Services proposed amendments to its Cybersecurity Regulations, which include annual audits and heightened requirements for certain large entities and specific oversight and management obligations for directors and senior management.
- [The Biden Administration's Executive Order on EU-U.S. Data Transfer Framework: What's Next?](#)
- Sarah Ganley and Joe Basrawi explored President Biden's Executive Order on Enhancing Safeguards for United States Signals Intelligence Activities, which reinforced the U.S. commitments to re-establish a legal regime governing data transfers from the EU to the U.S.
- [Insurance & Cyber Liability Panel at 2022 D&O Insurance ExecuSummit](#)
- Matt Dunn served as the featured speaker and moderator of a panel at the D&O Insurance ExecuSummit, which panel was focused on liability and risks for executives and directors relating to cybersecurity and data privacy, trends in cyber-related attacks and incidents, and issues and concerns relating to cybersecurity and D&O insurance.
- [New SEC-Proposed Rules Emphasizing Cybersecurity Disclosures and Governance](#)
- Guy Ben-Ami analyzed the SEC's proposed rules for cybersecurity risk management and disclosure applicable to investment advisers and public issuers.
- [Recent SEC Initiatives, Including Cybersecurity Regime](#)
- Ron Feiman discussed the SEC's proposed cybersecurity risk management rules for investment advisers and registered funds to buttress their preparedness for, and resilience in the face of, cybersecurity attacks.
- [Ransomware Attacks: What You Should Know if You Do Business in the United States](#)
- Matt Dunn and Guy Ben-Ami, in an article published in the US-Israel Legal Review, explored the various U.S. government responses to the growing danger of cybersecurity breaches and attacks, and provided Israeli companies with legal and practical considerations for dealing with cybersecurity and the threat of ransomware attacks.

# Litigation and Disputes

## LOOKING AHEAD: WHAT TO EXPECT IN 2023

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

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

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

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

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

# Litigation and Disputes

## LOOKING AHEAD: WHAT TO EXPECT IN 2023

### Thought Leadership and Advisories

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

### Case Highlights

- [Carter Ledyard & Milburn LLP Defeats Appeal from Order Dismissing Usury Claim on Statute of Limitations Grounds](#)
- *The Appellate Division, Fourth Department, recently denied the plaintiffs’ appeal from a lower court order granting summary judgment to Carter Ledyard’s client and dismissing usury claims against merchant cash advance funder C6 Capital Funding LLC on statute of limitations grounds.*
- [Commercial Division Enforces On-The-Record Settlement Agreement of Carter Ledyard Merchant Cash Advance Client](#)
- *A decision by the Westchester County Commercial Division enforced an on-the-record settlement agreement entered by Carter Ledyard’s merchant cash advance (MCA) client.*
- [Carter Ledyard Wins Summary Judgment Enforcing Merchant Cash Advance Agreement, Overruling Usury Defense](#)
- *Spin Capital LLC, a Carter Ledyard client, is entitled to summary judgment granting two breach of contract claims against merchant cash advance (MCA) customers for almost \$1.4 million in damages, ruled Commercial Division Justice J. Scott Odorisi in a recent decision, [Spin Capital v. Texas Medical Center Supply LLC](#).*
- [Complete Litigation Victory on Summary Judgment for Museum of Dream Space LLC and Dahoo American in Copyright Dispute](#)
- *After a three-year legal battle involving highly technical discovery, Carter Ledyard secured a complete victory on summary judgment for client, Museum of Dream Space.*
- [Agreeing with Carter Ledyard, Appellate Division Holds that New York’s ‘Anti-SLAPP’ Statute May Not Be Applied Retroactively](#)
- *The Firm’s motion to file an amicus brief, which that court then considered, together with the briefs of the named parties. In its decision, the Appellate Division agreed with the Firm and favorably decided the case on our client’s behalf.*
- [Carter Ledyard Achieves Appellate Victory in Delaware Supreme Court in Shareholder Dispute](#)
- *Carter Ledyard’s appellate litigation team achieved a significant appellate victory in the Supreme Court of the State of Delaware for client Dengrong Zhou.*
- [Carter Ledyard Obtains Dismissal of All Claims Asserted Against Its Clients Xueyuan Han and Related Corporate Entities](#)
- *United States District Judge Gregory H. Woods issued a decision dismissing all claims brought against Carter Ledyard’s clients Xueyuan Han and several foreign entities in which Mr. Han has an indirect or direct interest.*

# Litigation and Disputes

## LOOKING AHEAD: WHAT TO EXPECT IN 2023

### First Amendment Highlights

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

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

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

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

### New Partner Announcements

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

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

[Leonardo "Len" Trivigno](#) represents a diverse client base in general commercial disputes, including claims for breach of contract, unjust enrichment, quantum meruit, trademark infringement, civil RICO violations, and commercial mortgage foreclosures. He has successfully litigated matters in state and federal trial and appellate courts across the country, including the Second and Third Circuit Courts of Appeal, and has arbitrated matters before the AAA, JAMS FINRA and the ICC. Len frequently advises clients in bankruptcy related matters, representing indenture trustees, investors holding claims against debtors arising from the issuance of residential mortgage-backed securities, and defendants in adversary proceedings.

# Environmental and Land Use

## LOOKING AHEAD: WHAT TO EXPECT IN 2023

Dominating our **Environmental and Land Use** practice in 2022 have been the topics of sustainability, climate change and energy efficiency. We have assisted New York State in its solicitations for off-shore wind farms, advised building owners on New York City's greenhouse gas emission law and assisted clients with environmental impact review of projects designed to address storm surges and sea level rise. These themes will continue in 2023 regardless of how economic conditions impact the pace of new construction and development.

Our New York City clients should remain focused on these requirements in 2023. Of particular importance for owners of operators of buildings will be Local Law 97, which starting January 1, 2024 imposes mandatory green-house gas limits on buildings of 25,000 square feet or greater. New York City's 2019 Climate Mobilization Act, also known as Local Law 97, requires owners of most buildings over 25,000 square feet to dramatically reduce their building emissions in phases or face progressively steeper penalties. The law sets emissions limits based on square footage and occupancy category (i.e., commercial, residential, etc.) and ratchets those limits down over time. New York State is considering a state-wide variation on this law as well.

For example, a typical commercial office building under occupancy group B may emit no more than .00846 metric tons of carbon dioxide per square foot (tCO<sub>2</sub>e/sf) between 2024 and 2029, and no more than .00453 per square foot between 2030-2034. Likewise, a typical apartment building under occupancy group R-2 (residential) may emit no more than .00675 metric tons of carbon dioxide per square foot between 2024 and 2029 and no more than .00407 per square foot between 2030-2034. Most (but not all) buildings will comply with 2024 limits or pay nominal penalties. Most buildings will not comply with 2030 limits without changes to emissions through building efficiency upgrades, electrification of HVAC systems and other efforts. The law and its new implementing regulations permit the purchase of credits to meet LL97 limits although the market for such credits for this type of program is untested.

**Legal Challenges.** Beyond the technical and financial challenges imposed by LL97, the law presents legal ones too, particularly in the case of residential and commercial landlords who must change tenant behavior within the confines of fixed cooperative proprietary leases or long-term commercial leases that cannot be modified in the short term. The terms of these relationships in most cases predate LL97 and even newer documents rarely allocate responsibility for energy efficiency matters.

# Environmental and Land Use

## LOOKING AHEAD: WHAT TO EXPECT IN 2023

### Thought Leadership and Advisories

- [New York City's Ambitious Green Buildings Law Faces Legal Challenge](#)
- *In June 2022, members of Carter Ledyard's Environmental and Land Use Group, Karen Meara, Chris Rizzo and Nick Tapert, detail the lawsuit challenging the Climate Mobilization Act – a centerpiece of the City's efforts to combat climate change – that was recently filed by small group of building owners and individuals. The challenge highlights some important policy issues that already loom large in policymakers' minds as the Act's first compliance deadlines approach.*
- [The U.S. Senate's Rule Allowing Filibusters Is Unconstitutional and Stands in the Way of Meaningful Action on Environmental Challenges](#)
- *In October's New York Law Journal column, Chris Rizzo and Karen Meara contend that there are examples abound of how the Senate's "filibuster" rule has led to legislative paralysis, including on climate change and other environmental challenges.*
- [Local Law 97: Q&A for Property Owners, Including Commercial Landlords, on NYC's Groundbreaking Climate Change Law](#)
- *In a November 2022 advisory, members of the Environmental and Real Estate groups detailed the special considerations facing commercial property owners, co-ops and condos in complying with Local Law 97, including the constraints of long-term leases that make it hard to change tenant behavior.*
- [New York State Making Substantial Progress on Offshore Wind](#)
- *In their June 2022 New York Law Journal column, Karen Meara and Chris Rizzo detailed the progress New York State is making on its offshore wind goals—putting it far ahead of any other states.*
- [NY Budget Bill Institutes Historic Reforms to the Protection of Freshwater Wetlands](#)
- *In a May 2022 advisory, Nick Tapert detailed the 2022-23 budget passed by the New York State Legislature and signed into law by Governor Hochul on April 9, 2022, which includes a historic expansion in the protection of New York's freshwater wetland resources (S.8008C/A.9008). The budget bill's amendments (Part QQ) to the state Freshwater Wetlands Act place strict limitations and permitting requirements on development in and around wetlands.*



# Environmental and Land Use

## LOOKING AHEAD: WHAT TO EXPECT IN 2023

### Client Highlights

- **Multi-family Housing:** Carter Ledyard client Angelina Gatto Trust marked a major land use milestone on October 25th, 2022, when the New York City Council approved the zoning actions required to develop an under-utilized parcel of land in Gowanus, Brooklyn. The City Council vote, which approved a rezoning, zoning text amendment and special permit, is the culmination of years of planning efforts on behalf of our client and marks the successful completion of the public and environmental review processes under the Uniform Land Use Review Procedure (ULURP) and City Environmental Quality Review (CEQR). The Trust property was originally improved with housing, which was demolished over 50 years ago. Due to a restrictive manufacturing zoning designation imposed in 1961, development options were limited. The proposed rezoning would allow residential uses on the Trust property and improvements to other grandfathered residential buildings located on the block. The accompanying Special Permit would waive the parking requirement for the proposed building. The land use approvals will facilitate badly needed housing in a transit rich location.
- **Hotels:** In 2022, Carter Ledyard hotelier clients relied on our land use attorneys to protect their development projects. When the City of New York adopted certain text amendments to the Zoning Resolution, requiring zoning special permits for new hotels in manufacturing districts, many projects struggled to complete construction before the new law went into effect at the end of 2021. The developers of these projects either had to comply with the new law or build a conforming commercial project instead. Carter Ledyard pursued a third option under state law and sought to establish that the projects had vested rights to continue construction under the old law. We assembled the evidence required by state common law, to establish that substantial expenditures and construction occurred prior to the change in law and filed appeals with the NYC Board of Standards and Appeals to win four additional years to construct the two hotels.
- **State Agencies:** We have continued our work with the Lower Manhattan Development Corporation and Empire State Development in the redevelopment of the World Trade Center Site. In 2021 and 2022, the firm is advising on redevelopment of Site 5, the sole remaining site that is undeveloped following the attacks of 9/11/2001. The project will conclude the firm's 20 years of work for New York State on the environmental reviews and land-use planning process for the World Trade Center site.
- **Our work in 2022** continues the Firm's valued practice with New York State agencies and public benefit corporations such as the Battery Park City Authority, Hudson River Park Trust, Long Island Power Authority and others. For example in 2022, we assisted the Roosevelt Island Operating Corporation in its closure of long-term ground lease to a joint venture of the Hudson Companies and Related Companies for a new residential building with 357 units of new rental housing. This project follows the Corporations' prior ground lease to the same joint venture for an all-affordable rental building with 341 units of new rental housing.
- **Renewable Energy:** In 2022 we began exciting work with New York State in meeting its ambitious goals under the State's 2019 Climate Leadership and Community Protection Act to produce 70% of electricity from renewable sources by 2030 particularly offshore wind. The State is well on its way to meeting this goal.
- **Gaming:** We advised clients on New York State's amended Racing, Pari-Mutuel and Breeding Law (i.e., Gaming Law) that permits the Gaming Commission' issuance of casino licenses downstate for the first time.
- **Public Open Space:** The group continues to advise a wide range of nonprofit clients on land-use matters and operating agreements with New York City for public open spaces and more. These include the Hudson Yards/Hell's Kitchen Alliance; Hudson Square Business Improvement District and Greenacre Foundation.
- **Nonprofit clients:** The group works with a wide variety of religious and nonprofit organizations in their land-use matters, dealings with municipal government, nonprofit corporate affair and more. These include Heartshare Human Services, which provides affordable housing to special needs individuals, and Leslie Lohman Museum of Lesbian and Gay Art, the City's only museum focusing on LGBTQ art and one of only a few in the nation.



# Intellectual Property

## LOOKING AHEAD: WHAT TO EXPECT IN 2023

Intellectual property continues to be a linchpin asset for clients. We are looking forward to the innovation, disruptive ideas and new technologies that will power a reduced carbon future and entering widespread commercial use that will power business growth for many years to come. And yet we expect continued challenges to holders of IP in several ways. Competition enabled by online sales and worldwide shipping means that IP can be one of the few ways a seller can receive a premium over manufacturing costs. Running a worldwide business in a world where IP rights are grounded in domestic filings and use is a constant challenge. The old adage “an ounce of prevention is worth a pound of cure” remains truer than ever – IP investments during development and before product launch are the surest way to avoid IP conflicts later.

In the coming year, we see a very active US Patent and Trademark Office led by Dr. Kathi Vidal, who is rolling out new initiatives and taking a strong hand in setting standards for ethical behavior before the Office. The Copyright Office continues to work on modernization of its registration and other systems and we expect to see the benefit of that this coming year. In patent litigation trends, the Texas federal courts are losing their appeal as the jurisdiction of choice for plaintiffs, as venue rules change. In appropriate cases, plaintiffs will continue to receive major damages verdicts, and patent enforcement and funding is available for strong patents against solvent defendants.

### Client Highlights

- Carter Ledyard’s patent litigation partners Keith Nowak, Gerry Griffin continued to represent Kaneka Corporation, a long-time client of the Firm. Currently, the firm represents Kaneka against defendants Designs for Health, Inc. and American River Nutrition LLC in a patent infringement action pending in federal court in Delaware seeking an injunction and damages arising out of defendant’s sale of ubiquinol (a/k/a reduced co-enzyme Q10).
- We are counsel for Freedom to Operate, Inc in two petitions for post-grant review filed with the Patent Trial and Appeal Board of the United States Patent and Trademark Office. Freedom to Operate requested review of two patents directed to allegedly new crystal forms of psilocybin, the active ingredient in “magic mushrooms”.
- We also provide patent, licensing and other legal counsel to two companies, Ceruvia Lifesciences LLC and B.More, Incorporated, seeking to develop psilocybin and a derivative of LSD for medical use. Ceruvia is sponsoring research investigating psilocybin and the LSD derivative for the treatment of migraine and cluster headaches and obsessive-compulsive disorder. B.More is investigating the use of psilocybin for the treatment of alcohol use disorder.
- Carter Ledyard also represents defendant Lifescan, Inc., a customer of client Asahi Polyslider, in a patent infringement action brought by Facet Technologies, LLC. Facet alleges infringement of a patent directed to a technology for blood glucose monitoring.
- [Definitive Win for Republic of France in Precedent-Setting Trademark Dispute](#)
- *A team of lawyers from three firms in the United States and France joined Carter Ledyard IP chairman, John Griem, Jr., in representing the French Republic, its tourism development agency, Atout France, and its Foreign Ministry and Minister in this trademark and cybersquatting case. The high-profile case was supervised by officials and representatives from many different parts of the French Government.*

# Real Estate

## LOOKING AHEAD: WHAT TO EXPECT IN 2023

With the soaring real estate market continuing well into 2022 to abruptly shift by Q3 2022, parties engaged in property have enormous challenges to understand and adjust to the changing conditions. Our Real Estate team has seen the beginning of the broad spectrum of market reactions to increased interest rates, but there is more to the picture for 2023 than just that. We expect our clients to experience the cascading effects of an abruptly shifting ecosystem for both New York based real estate real property concerns and investors, landlords, tenants, and related parties. Litigation over subcontracts, return to work and hybrid working office space changes, business districts and large infrastructure project changes, environmental statutes like Local Law 97 concerns, and a host of other outgrowths of a new political dynamic and a drastically different interest rate environment will continue well into 2023.

Our Condemnation practice's work for governmental clients who acquire property through condemnation this past year examined in great detail and interpret the impact of railroad easements dating back nearly a century conveying rights to operate a railroad in Manhattan to certain limiting elevations formed by inclined planes and to evaluate overbuild rights, ventilation obligations and the legal impact of lost filed maps, among other issues. We expect these questions to continue given the continued plans to redevelop New York's Pennsylvania Station and its environs, the Willets Point stadium and property redevelopment, the announced casino license bids and numerous other large-scale projects for the City's redevelopment programs touching on decades—and in some cases, centuries—of building rights.

### Thought Leadership and Advisories

- [Hotels Now Require a Special Permit in New York City; Tourism is Rebounding: A valuable update on the implications of the New York City statutes that have been updated relating to hotel permitting.](#)
- [Local Law 97: Q&A for Property Owners, Including Commercial Landlords, on NYC's Groundbreaking Climate Change Law: Carter Ledyard's sweeping review of LL97 begins here.](#)

### Client Highlights

- *We helped the City of New York in negotiations with Amtrak to secure changes to railroad easements dating back nearly one hundred years in order to facilitate development above the railroad right-of-way while preserving the right of the railroad to meet modern operational requirements. These negotiations included dealing with three dimensional surveys, modern ventilation and emergency requirements, modern equipment and developing creative ways to work around missing easement documents.*
- *Roosevelt Island Operating Corporation in a long-term ground lease to the Hudson Companies and the Related Companies on Roosevelt Island. This lease, representing the last of nine buildings to be constructed in the Southtown Community on Roosevelt Island, will be used to construct a 357-unit residential building, with 104 of the units to be used by Memorial Sloan Kettering Cancer Center for workforce housing.*
- *Restructuring of a multiple party \$150 loan syndication in connection with a Class A million square foot office tower in Chicago. The restructuring included bringing in a second class of lender parties primarily to fund committed tenant improvement work.*
- *Completed \$35 million C Pace financing documentation for energy savings and related improvements in a Class A office building in Chicago.*
- *Proud of our ongoing representation of a New York municipality with extensive ocean front areas in lawsuits involving the interpretation and enforcement of easements permitting renourishment of sand dunes while preventing development which would interfere with the functioning of protective dunes. This representation has led to groundbreaking trial court decisions interpreting such easements.*
- *We were asked by a client to evaluate whether standard deed conveyance language transferring the appurtenances and all rights of the transferor in condemned property led to unwitting transfers of condemnation claims pending when the property was transferred.*

### New Partner Announcement

Carter Ledyard welcomes [Robert G. Koen](#) as partner in the Real Estate Department. Bob joins from Mintz Levin where his practice focused on real estate transactions. He is one of the real estate industry's most prominent attorneys and will continue to focus on commercial real estate acquisitions, complex financing and restructurings.

# Securities

## LOOKING AHEAD: WHAT TO EXPECT IN 2023

### Thought Leadership and Advisories

- [SEC Proposes Major Changes to SPAC Rules](#)
- *In Carter Ledyard's significant white paper on SPAC Rules, author Guy Lander highlights the major changes that companies pursuing SPAC structures need to consider to avoid the pitfalls but also to take advantage of the opportunities presented by this unique and profitable structure.*
- [New SEC-Proposed Rules Emphasizing Cybersecurity Disclosures and Governance](#)
- *The SEC announced its proposals to mandate cybersecurity disclosures by public issuers, which Guy Ben-Ami explores in this advisory. These proposals were the third set of rulemaking proposals by the SEC in 2022 during a time of acute cyber risk to U.S. and Western corporations.*
- [The Green Bay Packers and the Importance of Reading the Offering Documents](#)
- *On the heels of the Super Bowl, Guy Ben-Ami details the "offering" that will remain active for the Packers until February 25, 2022, and provides some examples of the securities law lessons that it presents.*

### Client Highlights

- [Carter Ledyard Client Greenfire Resources Inc. Completes Fourth and Fifth Supplemental Indentures](#)
- *Represented longtime client Greenfire Resources Inc., in the execution of the company's Fourth and Fifth Supplemental Indentures for its Senior Secured Notes due 2025, providing for additional capital expenditures totaling USD \$60 million to increase oil and gas production and also to defer the company's required expenditures for hedging.*
- *Tamarack Valley Energy Ltd., an oil and gas exploration and production company, with its underwritten offering of approximately 33 million common shares at a price of \$3.75 per common share for gross proceeds of approximately \$125.0 million.*
- *Alaris Equity Partners Income Trust, with its prospectus offering of \$65 million aggregate principal amount of listed senior unsecured debentures due March 31, 2027 at a price of \$1,000 per debenture. CIBC Capital Markets, National Bank Financial and RBC Capital and lead the syndicate of underwriters in connection with the offering.*
- *Chronos Resources Ltd. in connection with its non-brokered private placement of subscription receipts for aggregate gross proceeds of \$53.0 million as part of a series of financing for a business combination among Samoth Oilfield Inc. and 2470638 Alberta Ltd. to form Lycos an oil-focused, exploration, development and production company.*
- *Southern Energy Inc., a U.S.-focused, growth-oriented natural gas producer, in connection with an underwritten offering of its common shares as part of an equity financing in which Southern Energy raised an aggregate of US\$31.0 million.*
- *Acumen Capital Finance Partners Limited, acting in its capacity as the lead underwriter as part of a syndicate of underwriters, in connection with a bought deal offering for 28,575,000 units of Cathedral Energy Serviced Ltd. at a price of \$0.70 per unit for \$20,002,500.*
- *Evolution Potash Inc., a Canadian potash development company that uses proprietary extraction and milling technologies to produce high quality and sustainable pelletized fertilizer. in connection with its brokered offering of common share units for aggregate proceeds of up to \$20,000,000.*
- *Phyto Organix Foods Inc., a privately-held, independent Calgary-based innovator, processor, developer and distributor of sustainably processed plant-based proteins, starch, fibre and pea hull fibre for the food and beverage industry, with its non-brokered offering of common shares at a price of \$1.50 per share for up to \$15,000,000.*
- *PI Financial Corp. in its capacity as co-lead underwriter and sole bookrunner in connection with an IPO for Source Rock Royalties Ltd. of 13,667,100 units at a price of \$0.90 per Unit for aggregate gross proceeds of \$12,300,390 and full exercise of an over-allotment option of 1,667,000 units for aggregate gross proceeds of \$1,500,300.*
- *Beacon Securities Limited, acting as co-lead underwriters in connection with a private placement of 8,704,400 common shares of Touchstone Exploration Inc. at C\$0.90 per common share for C\$7.8 million.*

# Tax-Exempt Organizations

## LOOKING AHEAD: WHAT TO EXPECT IN 2023

2022 brought many challenges for nonprofits – back to work policies and constantly changing Covid guidance, finding and retaining qualified staff amidst the “great resignation” and low unemployment rate, turbulence in the financial markets, addressing national and local housing shortages, political polarization and the rise of authoritarianism, the crisis in Ukraine, climate change, the overturning of Roe v. Wade, and so much more. While we seem to be approaching some semblance of post-Covid normalcy in the workplace, these other challenges will continue into 2023 and beyond.

Financial market volatility warrants heightened diligence by Investment Committees and their advisors to ensure directors and officers are satisfying their fiduciary obligations to protect their organizations’ endowments and other investments, and that the actions they take in this respect are documented in meeting minutes or other internal records. Organizations should look carefully at their staff retention policies, training opportunities, benefits, and culture with an eye toward keeping talent in a hot job market, even if budgets tighten and even as the gap between nonprofit and for-profit salaries widens.

We expect to see more groups forming in service of the protection of voting rights and other democratic principals in the US. At a time when basic facts have become politicized, we expect the lines between political, lobbying and charitable activities to become more blurred; and given the change in control in the U.S. House of Representatives after the mid-terms, and a presidential election less than two years away, we expect even more heated debates and mud-slinging in policy areas in which many nonprofits are directly or indirectly involved. These nonprofits will want to revisit their social media policies and staff training around political and lobbying activity, as well as their compliance protocols.

As the Supreme Court has shifted to the right, some precedents long thought to be settled now look shaky, including in the areas of abortion access, affirmative action in college admissions, and gun safety. We will continue to see new and existing charities 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. Also, as concern over climate change continues to mount, tax-exempt organizations will increasingly focus on programs and educational initiatives to address these concerns, often collaborating with for-profit entities via complex structures that raise interesting legal issues.

All the while, new and existing charities nationwide will continue to provide the more traditional yet critical services that so many vulnerable populations rely on – food, housing, physical and mental health, and affordable medicine, to name a few. Corporate structures and delivery/financing models will continue to evolve, as the lines between for-profit and non-profit organizations continue to blur (e.g., with the mainstreaming of impact investing, ESG, PRIs, social enterprise, and “hybrid” structures). It remains to be seen how the FTX debacle and the “crypto winter” will impact donations of cryptocurrency, as well as charities’ willingness to accept these donations and their policies about how quickly they must liquidate them.

In addition, policymakers will continue to debate changes to the appropriate role of the IRS in the regulation of tax-exempt organizations, the rules governing donor-advised funds, whether to reinstitute or make permanent the “universal charitable deduction” in some form, and whether and how to address the problem of “dark money,” particularly in light of recent high-profile transfers of wealth to 501(c)(4) social welfare organizations with limited or no tax liability.

# Tax-Exempt Organizations

LOOKING AHEAD: WHAT TO EXPECT IN 2023

## Thought Leadership and Advisories

- Carter Ledyard and Plan A Advisors, a nonprofit management consultancy, are collaborating on an in-depth exploration of “[Boards & Bylaws](#).” This multi-part series will help nonprofit executives and board members consider revisions and amendments to make their bylaws more congruent with the way nonprofits actually operate, improve governance, and ensure compliance with current law. It also serves as a practical refresher on fulfilling fiduciary obligations. The first few articles in the series cover Bylaw Basics, Mission and Board Role, Board Membership and Terms, and Board Meetings, all in the form of a client friendly tool to help our most valued clients and friends.
- Carter Ledyard’s TEO group also posts regular updates on legal issues of concern to tax-exempt organizations on its blog, the [Tax-Exempt Organizations Bulletin](#), and will be ramping up these updates to help our clients address the challenges of 2023.
- Members of the Tax-Exempt Organizations Group speak and publish frequently about issues of concern to tax exempt organizations. In 2022, Pamela Mann chaired a Practising Law Institute program on Advising Nonprofit Organizations and made a presentation on nonprofit formation. Jeremy Steckel gave a presentation on corporate mergers and dissolutions at the conference. For more information, see here: [Pamela Mann and Jeremy Steckel Present on Advising Nonprofit Organizations in Program Produced by Practising Law Institute](#).

## Client Highlights

- A group of nationally-recognized litigators on the formation of a new public interest law firm to litigate constitutional cases to support principles of democracy and the rule of law.
- An organization dedicated to sustainable and equitable farming on structuring contractual arrangements with a related for-profit entity.
- A family foundation on concluding an agreement with a leading New York hospital governing the creation of an innovative psychiatric treatment model for adolescent patients.
- An organization dedicated to spiritual education on obtaining approval of the NY Attorney General on the sale of its headquarters – and the purchase of a new, more suitable headquarters – on an expedited timeframe.
- An organization dedicated to employment equity in the technology industry on resolving a conflict between the organization and its founder.
- A NYC-based social services agency committed to addressing issues of homelessness and domestic violence on a broad range of corporate, real estate, insurance, employment, compliance and tax matters.
- An organization facing dissent from its members regarding compliant governance practices, on responding to related litigation brought against the organization.
- An organization devoted to Jewish scholarship and academics on applying to the Internal Revenue Service for a change in its exempt status from a private grant-making foundation to a private operating foundation.
- A global organization devoted to increasing the use of environmentally sound materials and practices in the area of textiles on tax-compliant procedures for conducting lobbying and other advocacy efforts.

## New Partner Announcement

Carter Ledyard is pleased to announce the promotion of [Jeremy Steckel](#), from counsel to partner, effective January 1, 2023.

Jeremy represents public charities, private foundations, social welfare organizations, trade associations, and other tax-exempt organizations on corporate, compliance, and governance matters. For clients looking to establish new nonprofits, Jeremy guides them through the incorporation and startup process, providing them with state-of-the-art bylaws, conflict of interest and other key policies, and seeking recognition from the IRS of federal 501(c) status.

Jeremy also advises existing nonprofits on corporate governance, board fiduciary duties, internal investigations, excess benefit transactions, self-dealing, charitable solicitation, charitable giving, fiscal sponsorship, program-related investments, impact investing and other innovative philanthropy, joint ventures, relationships with other not-for-profit and for-profit entities, commercial contracts, structural changes, mergers, asset sales, and dissolutions.

# CARTER/LEDYARD

# Taxation

## LOOKING AHEAD: WHAT TO EXPECT IN 2023

### Looking Ahead: What to Expect in 2023

It has been an interesting year in the tax world. The journey of the new tax law under the Inflation Reduction Act of 2022, signed into law by President Biden on August 16, 2022 (the “Act,”) resulted in changes significantly smaller in scope and effect than many thought would appear. Most notably, the Act does not include many changes originally put forth in the international tax arena such as changes to the laws on the now famed monikers of GILTI (global intangible low taxed income) and BEAT (base erosion and anti-abuse tax.) Some notable changes in the Act include a new tax on stock buybacks which will apply to tax years that begin after 12/31/22, a new corporate alternative minimum tax (“AMT”) affecting certain corporations as well as incentives and credits for certain businesses (climate-related provisions).

What will 2023 bring? This is always a tough one. The CLM tax practice has assisted in numerous transactions this year both foreign and domestic. We expect continued traffic in the mergers and acquisition space and continued focus on the cross-border market. We hope for amelioration in the world situation for all.

### Thought Leadership and Advisories

- [Code §280E Planning Observations: ‘Harborside’ Case Hinges on Definition of ‘Consists of’](#)
- *In this piece, Melinda Fellner writes that cannabis related businesses should take note of an interesting U.S. Tax Court case affecting their industry. Though not a pro-taxpayer case—the IRS won on the major counts—the Harborside case provides some insight into structuring cannabis-related businesses with a view to deduction of business expenses.*
- [IRS Announces Broad Penalty Relief For Some Taxpayers if They Act by September 30, 2022](#)
- *The Internal Revenue Service issued an announcement providing a wide net of penalty relief to certain taxpayers who file the requisite forms by September 30, 2022. This opportunity is potentially a valuable benefit in many circumstances. The Notice provides a waiver of late filing penalties for returns for 2019 and 2020 tax years.*

### New Partner Announcement

Carter Ledyard welcomes [Melinda Fellner](#) to join the Firm as Chair of its Tax Department. Melinda joins us from Rimon PC where her practice focused on transactions including private equity, mergers and acquisitions, real estate and investment funds. In addition to leading the Tax practice, she joins two of Carter Ledyard’s Industry Groups: Real Estate, and Cannabis, Hemp and CBD, given her experience working with entities in these sectors. Melinda also brings experience handling matters in both state and federal tax controversy. Her practice fits well with Carter Ledyard’s international cross-border client practice in the international compliance arena, with experience helping clients navigate the IRS Streamlined Offshore Programs and other options and assisting with other offshore income issues. As the Firm looks to continue its growth, Melinda’s addition to the Firm brings new value to the Tax practice and she will work closely with teams serving clients in the Trusts & Estates, Corporate, IP and Litigation Departments.



# Trusts and Estates

## LOOKING AHEAD: WHAT TO EXPECT IN 2023

### Looking Ahead: What to Expect in 2023

Looking ahead to 2023, we expect continued economic uncertainty, and our legal team will assist our clients to ensure that their estate planning strategies utilize the most effective strategies available. With interest rates currently higher than they have been for over a decade, tools such as qualified personal residence trusts and charitable remainder trusts have become more attractive. While higher interest rates may make grantor retained annuity trusts, charitable lead trusts and intra-family loans less attractive, depressed asset values can counteract the effect of higher interest rates. As discussed below, significant tax law developments provide planning opportunities. Our team will review with clients their specific assets and desires and craft a well-tailored plan to address individual needs.

A number of changes will facilitate estate planning in 2023 and beyond, in particular:

**Five Years to Elect Portability.** Transferring the first deceased spouse's unused exemption amount to the surviving spouse has been simplified. Pursuant to Rev. Proc. 2022-32, certain estates that do not otherwise need to file a federal estate tax return now have up to five years after the first spouse's death to elect portability (*i.e.* to transfer any unused estate and gift tax exemption from the deceased spouse to the surviving spouse), which can potentially result in significant estate tax savings on the death of the second spouse.

### 2023 Exemption Amounts.

- The federal annual gift tax exclusion amount increased from \$16,000 in 2022 to \$17,000 in 2023, meaning that couples can make gifts of up to \$34,000 to individuals in 2023. Consistent effective 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 2023 to \$12.92 million per individual (\$25.84 million for married couples). Clients may wish to consider making use of these exemptions before they are scheduled to be cut in half beginning in 2026. Our team advises clients on the different techniques available to effectively and efficiently make use of these exemptions.

**Keeping Current with Tax and Other Developments.** Keeping a close eye on legislative developments, regulatory requirements and case law that affect our clients, our legal team analyzes the most relevant changes in the trusts and estates area. Led by Carter Ledyard's own legend, Richard Covey, our publication *Practical Drafting*, available on our firm website, has garnered the respect of peers and provides analysis and insights that add value to those practicing across the legal, tax and accounting areas. Our attorneys publish articles, give presentations and participate in Bar and other professional organizations so that they can bring to our clients the most current information and help them understand the implications of changes in the law.

**Estate Planning.** As a cornerstone department of Carter Ledyard, we have a long, storied history of providing guidance to our clients across multiple generations. Our clients continue to receive the unwavering support and assistance we have provided for generations to help them navigate the evolving post-Covid world, uncertain economic conditions, and changing tax landscape. We are committed to crafting tailored estate planning instruments that build flexibility into our clients' estate plans, taking advantage of unprecedented exemption amounts while allowing for future strategic planning.

**Domestic and International Estate and Trust Administration.** In addition to estate planning, we represent clients in their roles as fiduciaries of a broad array of estates and trusts across the country and around the world. Carter Ledyard provides consistent guidance to assist with probate proceedings, estate administration, judicial accountings, decanting proceedings, the removal and replacement of trustees and executors, and the termination of estates and both personal and charitable trusts. Each of those areas involves tax opportunities and pitfalls, and we bring to bear our tax knowledge to achieve the best possible results for our clients. In the international arena we have dealt over the past year with the tax and legal systems of many countries, including the U.K., France, Italy, Switzerland, Luxembourg and South Africa, partnering with counsel in those jurisdictions to navigate the intersection of the rules in multiple jurisdictions and obtain the optimum results for our clients.

**Fiduciary Litigation.** Our clients continue to seek our advice in connection with fiduciary litigation matters in state (and sometimes federal) courts, ranging from contested probate proceedings, to challenges to improper decantings of trusts, to proceedings to remove and replace trustees. We are able to combine our deep knowledge of both substantive trusts and estates law and tax law, with our excellent litigation capabilities, to effectively represent our clients in litigated matters. Over the past year we have been successful in settling disputes to our clients great advantage, and we anticipate that our clients will continue to seek our advice in this area.