



Dear Clients & Friends,

Over the past year, adaptation and growth continued to be a prevailing theme for Brody Wilkinson due to two major events. First, the ongoing global pandemic required us to rethink the way we practice law and serve clients. Second, our merger with the former law firm of Hermenze & Marcantonio required us to expand not only our offices but also our team, with the addition of paralegal Deanna Flanagan, legal assistant Alana Dallai and Trusts & Estates associate Lauren Cimbol, with more planned growth on the horizon.

We are pleased to publish the 2022 issue of our Client Newsletter. Inside this issue, we cover important topics ranging from Connecticut's enhanced Family and Medical Leave benefits to the new Connecticut Parentage Act, which gives non-traditional families in Connecticut traditional inheritance rights, among other ground-breaking basic rights. Finally, in addition to introducing Lauren Cimbol in greater detail, we highlight other noteworthy BW news and reflect further on our merger.

In closing, we hope you find this newsletter to be beneficial and of interest. We also hope the content reflects the unique and complementary experience and skills that our attorneys provide to clients. If you wish to opt-in to receive our electronic update, you may complete the news sign-up form on the BW website or send us a note at info@brodywilk.com. Remember to follow us on LinkedIn, Twitter and Facebook. We are grateful for your ongoing support especially during these unprecedented times. We wish you and yours continued health and safety.

Best Regards,

Brody Wilkinson PC

Lauren Cimbol Joins The Firm



BRODY WILKINSON IS PLEASED TO WELCOME LAUREN CIMBOL

to the firm as an associate in the Trusts & Estates Group. Ms. Cimbol practices in the areas of estate planning, trust and estate administration and taxation. Ms. Cimbol received her LL.M. in

Taxation from New York University School of Law in 2021. She received her J.D. from Benjamin N. Cardozo School of Law in 2020, where she served as associate editor of the *Cardozo Arts & Entertainment Law Journal* and was awarded a Course Prize for Outstanding Performance in State and Local Tax. Ms. Cimbol received her B.A., *cum laude*, from Brandeis University in 2014. She is admitted to practice in Connecticut and New York.

While in law school, she worked as a legal intern at Legal Services NYC, Low Income Taxpayer Clinic, where she assisted low income individuals with their IRS tax audits. Prior to law school, Ms. Cimbol was employed for three years at the UJA-Federation of New York in the Planned Giving & Endowments Department.

"We are excited to welcome Lauren to the firm. Her advanced degree in taxation and planned giving experience add depth and breadth to our trusts and estates practice. She also bolsters our team of attorneys within the Group who are admitted to practice in New York, where Brody Wilkinson has a midtown office," stated principal Ronald B. Noren.

2022 Estate Planning-Related Tax Adjustments: What To Know

THE IRS HAS RELEASED ANNUAL INFLATION ADJUSTMENTS FOR 2022. These include increased gift, estate and generation-skipping transfer tax ("GST") exemptions and annual gift tax exclusions. The changes are as follows:

The gift and estate tax exemption and GST exemption increased to \$12,060,000 for an individual (from

\$11,700,000 in 2021). This means that with proper estate planning, a married couple now has \$24,120,000 of available exemption.

The annual gift tax exclusion increased to \$16,000 (from \$15,000 in 2021). As a result, individuals are now able to give \$16,000 per year (\$32,000 for a married couple) to any number of persons (outright or through withdrawal rights in a trust) without using any gift tax exemption.

The annual gift tax exclusion for gifts to non-U.S. citizen spouses increased to \$164,000 (from \$159,000 in 2021). (Note that gifts made to a U.S. citizen spouse are not taxable in any amount whether made during the spouse's lifetime or at death.)

The gift and estate tax exemption and GST exemption are scheduled to reduce to approximately \$6,000,000 for an individual (or \$12,000,000 for a married couple) as of January 1, 2026, unless Congress changes the law.

In addition, the Connecticut gift and estate tax exemption increased to \$9,100,000 for an individual (from \$7,100,000 in 2021). This means that with proper estate planning, a married couple now has \$18,200,000 of available exemption. For those who have already funded a spousal lifetime access trust ("SLAT") up to the amount of the prior Connecticut exemption, they can add an additional \$2,000,000 to that trust without paying any Connecticut gift tax. The Connecticut gift and estate tax exemption will match the federal starting next year, so next January the balance of the federal exemption may be added to a SLAT without paying any gift tax.

If the federal (and, therefore, Connecticut as well) exemption goes down in 2026 (or sooner), there will no longer be an opportunity to take advantage of these historically high federal and Connecticut exemptions (i.e., exemption in excess of \$6,000,000 per individual). For more information, please contact Lisa F. Metz (lfmetz@brodywilk.com) or another BW attorney.

Far-Reaching Family And Medical Leave Changes Take Effect In CT

ON JANUARY 1, 2022, SIGNIFICANT CHANGES to Connecticut's family and medical leave statute became effective, providing enhanced benefits to eligible employees who require temporary leave from work. As a result, Connecticut employees may now avail themselves of benefits provided through two separate laws, the "Connecticut Family and Medical Leave Act"

and the "Connecticut Paid Leave Act." Each program, which is administered separately, is summarized below.

CONNECTICUT FAMILY AND MEDICAL LEAVE

Connecticut Family and Medical Leave provides up to twelve weeks of unpaid job-protected leave. One of the most consequential changes to Connecticut Family and Medical Leave is its applicability to small businesses. Previously, Connecticut's job-protected leave applied only to employers of seventy-five or more. However, today, the revised law requires employers with at least one employee (in other words, all employers) to provide such leave with just two conditions. First, an employee must be employed by the employer for at least three consecutive months to be eligible for leave. Second, an employee's accrued paid time off may be applied to the leave if required by the employer or if requested by the employee. Nevertheless, in a deviation from typical leave programs, an employee may choose to preserve up to two weeks of their accrued paid leave time. Broadly designed to be flexible, leave may be used in connection with a variety of circumstances, including the birth or adoption of a child, care for a serious health condition of the employee or a family member, to serve as an organ or bone marrow donor, and exigencies arising from military service or domestic violence.

CONNECTICUT PAID LEAVE

Connecticut Paid Leave provides up to twelve weeks of income replacement to eligible employees and, similar to Connecticut Family and Medical Leave, is applicable to all employers with at least one employee. Funded through payroll deductions beginning in January 2021, Connecticut Paid Leave is administered through the Connecticut Paid Leave Authority, a newly formed state agency. Eligible applicants may receive benefits for similar circumstances which are covered by Connecticut Family and Medical Leave as described above.

EMPLOYER TAKEAWAYS

In response to this new legislation, Connecticut employers should ensure that they are taking the required payroll deductions for Connecticut Paid Leave. In addition, employers should review existing leave policies and update such policies to comply with the new laws. In particular, employers should examine how existing sick leave and short-term disability policies interact with the new laws and adjust such policies accordingly. *For more information, please contact Daniel B. Fitzgerald (dfitzgerald@brodywilk.com) or another BW attorney.*

The Use Of Lifetime Discretionary Trusts To Protect Family Wealth From Divorce

MANY CLIENTS ARE CONCERNED ABOUT

protecting their child's inheritance if the child later divorces. While prenuptial and postnuptial agreements may effectively waive rights to a spouse's inheritance, conversations surrounding these agreements are often avoided out of discomfort and the necessary extensive asset disclosure.

In the event there is no prenuptial or postnuptial agreement, lifetime discretionary trusts can be employed in an estate plan and can shield inherited assets from a divorcing spouse (and may even provide tax benefits).

A discretionary distribution standard provides the trustee with the authority to distribute assets in its sole and absolute discretion without any fixed standards (such as support or health). The beneficiary is not entitled to receive periodic distributions and cannot demand a distribution. To effectively employ a discretionary distribution standard, an independent trustee (someone who is not an eligible beneficiary) must be appointed. Often a professional trustee such as a bank, trust company, attorney, or accountant will serve in this role.

Broadening the class of beneficiaries so that a child and the child's children are eligible beneficiaries can also help provide asset protection. This further evidences a child's lack of ownership over the trust assets because the trustee can vary distributions among multiple beneficiaries.

Creating a trust with these terms may seem inflexible or unnecessary given the circumstances of a child. Some of these concerns can be alleviated with the appointment of a trust protector who oversees the trust and acts in the best interests of the trust and its beneficiaries. A trust protector often holds the power to remove and replace a trustee and terminate a trust.

Even though a trust may be protected from division of assets during a divorce, it is important to recognize that Connecticut is an equitable division state. Courts, therefore, may consider the history of trust distributions actually made and award a greater share of non-trust marital assets and enhanced alimony to the other spouse. However, use of the discretionary lifetime trust can preclude a direct award of the trust assets

to the beneficiary's spouse. Depending on a family's situation, incorporating a discretionary lifetime trust into an estate plan may be a good choice. *For more information, please contact Peter T. Mott (pmott@brodywilk.com), Lauren Cimbol (lcimbol@brodywilk.com) or another BW attorney.*

Not So Fast! Consider These Tax Advantages Of Forming A Corporation Over An LLC

THE LIMITED LIABILITY COMPANY (LLC)

can be a particularly attractive form of business entity for start-up founders, especially where tax advantages are of primary concern. Notwithstanding their "pass-through" tax advantage, LLCs do not hold all the cards. This article considers two unique advantages available to subchapter-C corporations that are not available to LLCs taxed as partnerships.

SELF-EMPLOYMENT ADVANTAGE

Members of an LLC taxed as a partnership run the risk that the Internal Revenue Service will deem distributions to members that are also employees of the LLC as subject to self-employment tax, even if the member receives separate W-2 wages. This risk is greatest in the context of LLCs that provide services through the member-employee. Corporate shareholders, in contrast, may be both a shareholder and employee of the corporation without the same risk. Corporate shareholders should be mindful, however, that income from the corporation received as an employee in excess of the employee's reported W-2 wages are treated as dividends not deductible by the corporation and taxed at both the corporate and shareholder level.

QUALIFIED SMALL BUSINESS STOCK

Shareholders of eligible subchapter-C corporations may be able to exclude 100% of the gain they recognize on the sale of qualified small business stock (QSBS) under Section 1202 of the Internal Revenue Code (the "Code"). The exemption is limited to the greater of \$10 million or ten times the aggregate adjusted basis of the stock at the time it was issued. While eligibility rules for the exclusion are complex, in general, eligible shareholders (1) are all non-corporate shareholders,

though, not all partnerships will qualify for the full benefit; (2) have held the stock for more than five years; and (3) received their stock as an original issuance after August 10, 1993. Eligible corporations, generally, (1) include most (but not all) subchapter-C corporations and LLCs taxed as a C-corporation; (2) have not had more than \$50 million of tax basis in assets at any time between August 11, 1993 through the instance the stock is issued (eligibility is not destroyed if tax basis exceeds \$50 million at a later date with respect to such stock); (3) must not have made any "significant" redemptions of stock in the year preceding or following the sale; (4) must not be a business listed in Section 1202(e)(3) of the Code; and (5) must use 80% or more of its assets (by value) in the active conduct of its business. *For more information, please contact Jeffrey L. Volpintesta (jvolpintesta@brodywilk.com), Robert L. Teicher (rteicher@brodywilk.com) or another BW attorney.*

Non-Traditional Families Now Get Traditional Inheritance Rights

KATE AND MARY HAD BEEN TOGETHER since 2008 but never married. Eager to start their family, Kate was implanted with embryos created with Mary's egg and the two happily welcomed their son Matthew. Unfortunately for Kate, even though this was her son whom she carried for nine months, she was not considered a legal parent - in fact, Connecticut considered Kate to be a legal stranger to Matthew. Kate's only option was to go through the long and costly process of adoption.

Similarly, Stacey and her husband John welcomed their daughter Sarah. John left the family and had no relationship with Sarah, thereafter. Stacey then married Steven, who has acted as a parent to Sarah since she was two-years-old. Sarah is now fourteen-years-old. Were Stacey to die, Steven would have no parental rights with respect to Sarah.

The Connecticut Parentage Act ("CPA"), which went into effect on January 1, 2022, aims to solve these problems. The CPA creates paths to legal parental relationships for LGBTQ, unmarried or non-biological parents, and their children. The CPA allows parents to establish parentage in the following ways: giving birth (except for surrogates), adoption, presumption (such as being married to a child's birth parent at the time the child is born or residing in the same household with a child and being held out as a parent for at least two years from the child's birth), genetic connections

(except for donors), de facto parentage (if the parent meets seven defined standards), and intended parentage through surrogacy or assisted reproduction.

The CPA may allow a child to have more than two legal parents if the Court finds that failure to do so would be detrimental to the child. To make the parentage official, the parents will need to take additional legal steps. Creating a legal parentage allows for changes in custody rights, parental decision-making, financial support responsibilities, and inheritance rights.

The CPA goes a long way in providing critical legal recognition of the changing nature of families today by expanding the definitions of parent and child. *For more information, please contact Kimberly T. Smith (ksmith@brodywilk.com), Heather J. Lange (hlange@brodywilk.com) or another BW attorney.*

A Reflection On BW's Merger, One Year Later

LAST YEAR, WE WERE THRILLED TO ANNOUNCE

our merger with the former law firm of Hermenze & Marcantonio in our 2021 Client Newsletter. This year, we thought it appropriate to publish an update reflecting on our successful transition. To this end, we interviewed long-time BW principal Ronald B. Noren and new principal David R. Hermenze, formerly a founding principal of Hermenze & Marcantonio, to get their thoughts.

Q: From your perspective, how has the merger benefitted all of us as a combined firm?

RBN: It's benefited the firm in many ways. From my standpoint, the biggest enhancement comes in the form of increased intellectual capital. We added three highly sophisticated and experienced estate planning attorneys. We all benefit from the additional depth of knowledge and cross-fertilization of ideas.

DRH: I know that I also speak for Ed Marcantonio and Jim Funnell when I say that the opportunity to compare notes today with a robust team of estate and tax planning attorneys has been enormously helpful and eye-opening. Not only for our legal practices but also for our administrative practices. I trust the original BW lawyers would agree that as a combined whole, we're learning best practices from one another and gaining new perspectives.

Q: Have there been any positive surprises in terms of benefits?

RBN: I was really overwhelmed by the positive response we received about the merger from clients, professional referral sources, the press and friends. I wasn't expecting that level of interest and support. The response definitely made us all feel extra confident that it was indeed the right decision. It also energized us.

DRH: Surprises no, exceeded expectations yes. Merging cultures and personalities is no small task. The merger made great sense in theory but whether it would hold up in practice was still to be determined. Many of us already had established working relationships of the highest regard, but there were no guarantees that it would all gel. It did gel. I have to say that I'm greatly enjoying the day-to-day experience of practicing at a bigger firm.

Q: Can you identify a particular win or moment that solidified the value of the merger?

RBN: There have been a few. As I said earlier, the amazing feedback we received from the outside world felt like a huge win. Seeing the completion of our office renovation to accommodate our growth was also very gratifying. We wouldn't have taken on that project otherwise and it looks fantastic. The office is more functional and open. It also provides clients with easy walk-in access from the parking lot. Last but not least, our New York client base has significantly increased with the addition of Ed Marcantonio and is continuing to build, as we hoped it would.

DRH: The moments when I've been able to retain client matters in-house that I previously would have referred to outside attorneys have solidified the value of the merger for me in a big way. I'm now able to stay involved and witness how nicely these matters unfold. It benefits my clients to have their needs appropriately met and it benefits me to have a broader picture of their business and personal affairs.

Q: Can you identify a particular challenge that was not anticipated during the planning phase of the merger?

RBN: We definitely experienced some growing pains, specifically related to technology, but these challenges were converted into opportunities to invest in expanding our infrastructure. Our efforts will pay off tomorrow, in addition to today, since we're developing the firm's new technology with an eye on the future.

DRH: In more ways than one, the merger was the tipping point for change, challenging us to examine everything in place. We're going to have the technological equivalent of our new first-floor reception area and client conference room as a result. We're designing beautiful solutions around the issues we encountered.

Q: What do you see on the horizon for the firm in terms of growth and goals?

RBN: The Business and Trusts & Estates Groups are actively hiring for associates, paralegals and legal assistants. Our immediate goal is further expansion. Since the merger, we've already added a Trusts & Estates associate, a Business associate, a paralegal and a legal assistant. There is more to come.

DRH: Growth is the macro vision. Rethinking how we do things here on an administrative basis is the micro vision. It's a bigger business now and it requires more management and support. Better integration, more centralization, etc. These are important things for us to start considering as we build the new.

Q: How would you describe the culture of BW today?

RBN: I think it's a collaborative collegial culture. We practice law together rather than in twenty-five separate silos. Legal matters are staffed by the most appropriate lawyers within the firm to handle specific needs without friction or competition. Serving clients to the best of our capabilities is our number one priority.

DRH: I believe that the culture of the firm stresses balance. Our team of extremely talented lawyers and dedicated staff work very hard and the firm places a high value on their quality of life. As we continue to grow, we're committed to preserving the work/life balance that makes BW such a safe and happy place to work. We all have lives outside the firm and those interests expand us.

Representative Matters

We represented a privately held reinsurance brokerage company in connection with the sale of its stock to the subsidiary of an international entity for \$100 million, which included a \$50 million earn-out and a procurement of representation and warranty insurance.

James M. Powers, Justin L. Galletti, Mark W. Klein and Jeffrey L. Volpintesta worked on this matter.

We successfully defended an appeal that sought to vacate and modify an arbitration award that had been confirmed as a judgment in favor of our client by the Superior Court. **Stephen J. Curley** worked on this matter.

We closed another record-setting number of residential real estate transactions for buyers and sellers over the past year. **Brian T. Silvestro, Seth L. Cooper and James M. Powers** worked on these matters with substantial paralegal assistance from **Carol Arias, Joan Bucknall and Deanna Flanagan**.

We represented the non-profit Squash and Education Alliance in connection with its expansion into Connecticut, including its acquisition and development of a recreational and educational center in Bridgeport. **Thomas J. Walsh, Jr. and Justin L. Galletti** worked on this matter.

We successfully represented a co-executor and beneficiary in administering his uncle's contested estate and receiving his rightful share of inheritance. **Douglas R. Brown and Heather J. Lange** worked on this matter.

We served as counsel to a family office, preparing multiple employment agreements and managing all human resources issues, updating estate planning documents, and handling residential real estate transactions. **Daniel B. Fitzgerald, Peter T. Mott and Thomas J. Walsh, Jr.** worked on these matters.

We successfully defended a minor's guardian from being removed after allegations of malfeasance by the minor's father and grandmother. **Douglas R. Brown** worked on this matter.

Accolades & Credits

Brody Wilkinson was named to the 2022 "Best Law Firms" list by *U.S. News & World Report* and *Best Lawyers*. The firm was also recognized with a Tier 1 ranking in the areas of Real Estate Law and Trusts and Estates, a Tier 2 ranking in the area of Corporate Law, and Tier 3 rankings in the areas of Business Organizations (including LLCs and Partnerships) and Litigation – Trusts and Estates in the Metropolitan Stamford region. Firms included in the 2022 "Best Law Firms" list are recognized for professional excellence with persistently impressive ratings from clients and peers. Achieving a tiered ranking signals a unique combination of quality law practice and breadth of legal expertise. "Best Law Firms" rankings are based on a rigorous evaluation process that includes the collection of client and lawyer evaluations, peer review from leading attorneys in their field, and review of additional information provided by law firms as part of the formal submission process. *For more information on methodology, visit <https://bestlawfirms.usnews.com/methodology.aspx>.*

Nine Brody Wilkinson lawyers were selected by their peers for inclusion in the 28th Edition of *The Best Lawyers in America*® 2022. **Douglas R. Brown** was selected in the fields of Litigation – Trusts and Estates and Trusts and Estates; **Seth L. Cooper** was selected in the field of Real Estate Law; **James D. Funnell, Jr., David R. Hermenze, Edward Marcantonio, Peter T. Mott** and **Ronald B. Noren** were selected in the field of Trusts and Estates; **James E. Rice** was selected in the field of Energy Law; and **Thomas J. Walsh, Jr.** was selected in the fields of Business Organizations, Closely Held Companies and Family Business Law, Commercial Transactions/UCC Law, Corporate Law and Real Estate Law. In addition, **David R. Hermenze** was named “Lawyer Of The Year” in his field of Trusts and Estates within the Stamford Metropolitan Region. *Best Lawyers*® lists are compiled based on an exhaustive peer-review evaluation. For the 2022 Edition of *The Best Lawyers in America*®, 7.8 million votes were analyzed, which resulted in approximately 60,000 leading lawyers being included in the new edition. Lawyers are not required or allowed to pay a fee to be listed; therefore inclusion in *Best Lawyers*® is considered a singular honor. *Corporate Counsel* magazine has called *Best Lawyers*® “the most respected referral list of attorneys in practice.” For more information, visit <http://www.bestlawyers.com/about/MethodologyCT.aspx>.

Eight Brody Wilkinson lawyers were recognized in 2021 by Super Lawyers. **Douglas R. Brown** (Estate Planning & Probate), **Seth L. Cooper** (Real Estate), **Stephen J. Curley** (Business Litigation), **James D. Funnell, Jr.** (Estate Planning & Probate), **David R. Hermenze** (Estate Planning & Probate), **Edward Marcantonio** (Estate Planning & Probate), **Peter T. Mott** (Estate Planning & Probate) and **Ronald B. Noren** (Estate Planning & Probate) were named to the “Connecticut Super Lawyers” list. All eight attorneys were featured in *New England Super Lawyers Magazine* and in a special supplement of *Connecticut Magazine* along with their designated practice areas. Based on a rigorous, multiphase peer-review process, Super Lawyers is a credible, comprehensive and diverse listing of attorneys in more than 70 practice areas. Super Lawyers listings are used as a resource guide to assist businesses and individuals in hiring legal counsel. Super Lawyers is published by *Law & Politics* as a special supplement in top newspapers and city and regional magazines across the country. The published list represents no more than 5% of the lawyers in the state. For more information on the Super Lawyers selection process, visit https://www.superlawyers.com/connecticut/selection_details.html.

Brody Wilkinson’s **Trusts & Estates** practice and **Douglas R. Brown, David R. Hermenze** and **Peter T. Mott** were recognized in the *Chambers High Net Worth 2021 Guide*, a publication directed specifically at the private wealth market. Brody Wilkinson’s Trusts & Estates practice received a fifth consecutive ranking in the category of Private Wealth Law in Connecticut. Only eight firms in the state, with just two based in Fairfield County, were awarded this esteemed designation. Additionally, Mr. Mott and Mr. Hermenze received individual rankings in the category of Private Wealth Law, and Mr. Brown received a ranking in the category of Private Wealth Law Disputes. For more information on the Chambers selection process, visit <https://chambers.com/research/methodology>.

Thomas J. Walsh, Jr. served as the budget officer of the Business Law Section of the American Bar Association (ABA), the largest section of the ABA.

Douglas R. Brown co-presented a seminar entitled, “A Planner’s Guide To Probate Litigation: When To Call In The Litigator” before the Executive Committee of the Estates and Probate Section of the Connecticut Bar Association. He continued to serve on the Connecticut Probate Practice Book Advisory Committee. The Committee assists the Connecticut Probate Court Administrator in reviewing and editing the probate court rules of procedure used in all Connecticut probate court proceedings. In addition, he was elected to serve as chairman of the Board of Managers of the Brooklawn Park Neighborhood Association. He also served on the Board of Directors of the Greater Connecticut Youth Orchestras and was principal author of the organization’s endowment documents.

Brian T. Silvestro was recognized by the Wakeman Boys and Girls Club as an honorary and lifelong member of their Board of Trustees. Mr. Silvestro also hosted a seminar for local realtors entitled, “Connecticut’s Residential Real Estate Challenges And Opportunities During The Pandemic.”

Heather J. Lange was elected to serve a two-year term as chair of the Estates and Probate section of the Connecticut Bar Association.

Stephen J. Curley was named chair of the Solo, Small Firm and General Practice Division of the American Bar Association which includes over 20,000 members.

Jeffrey L. Volpintesta participated as a speaker in a continuing legal education presentation through the Fairfield County Bar Association entitled, “The Nuts And Bolts Of Business Formation.”

Trusted Advisors, Practical Solutions

ATTORNEYS

Jennifer A. Basciano	Lisa F. Metz
William J. Britt	Barbara S. Miller
Douglas R. Brown	Peter T. Mott
Lauren Cimbol	Ronald B. Noren
Seth L. Cooper	James M. Powers
Stephen J. Curley	James E. Rice
Daniel B. Fitzgerald	Alyssa V. Sherriff
James D. Funnell, Jr.	Brian T. Silvestro
Justin L. Galletti	Kimberly T. Smith
David R. Hermenze	Robert L. Teicher
Mark W. Klein	Jeffrey L. Volpintesta
Heather J. Lange	Thomas J. Walsh, Jr.
Edward Marcantonio	