

Thinking Outside the Bud

Episode 416 - Katie Neer

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Navigating New York's Cannabis Landscape: Insights from Legal Expert Katie Neer

In this episode of "Thinking Outside the Bud," host Bruce Eckfeldt welcomes Katie Neer, of counsel at Dickinson and Avella, to discuss the world of cannabis with a focus on the New York market. The conversation covers various aspects of the cannabis industry, including the challenges and opportunities it presents. Katie shares insights into her journey from law school to becoming involved in the cannabis sector, emphasizing the complexities of the legal landscape and the unique challenges faced by cannabis businesses. The discussion delves into the New York market, its regulatory environment, and efforts to address the illicit cannabis market. Katie provides a detailed overview of New York's social equity initiatives, highlighting the state's strong commitment to reinvesting tax revenue into communities disproportionately affected by cannabis prohibition.

Katie is a cannabis regulatory attorney and the go-to expert for cannabis industry players who need help navigating this legal minefield in New York and throughout the Northeast.

She serves as Of Counsel at Dickinson & Avella, a leading New York government affairs law firm, where she assists dozens of clients on NY regulatory compliance issues in heavily regulated industries, including cannabis, gaming, and financial services.

Until recently, Katie was the General Counsel and VP of Industry Affairs at Lantern, an e-commerce marketplace that facilitated the home delivery of cannabis in Massachusetts, Colorado, and Michigan.

Katie also previously worked as the Director of Government Affairs for Acreage Holdings, a public company with a portfolio of cannabis cultivation, processing, and dispensing operations in the U.S., and served as Chair of the New York Medical Cannabis Industry Association.

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EPISODE TRANSCRIPT

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Bruce Eckfeldt

Welcome, everyone. This is thinking outside the bud. I'm Bruce Eckfeldt. I'm your host. Our guest today is Katie Neer, she is of counsel at Dickinson & Avella. We're going to talk about the world of cannabis and specifically the New York market and probably a little bit about the regional market here. And really kind of understand how New York has kind of played in this kind of federal are in this kind of national cannabis dynamic that we have with the state to state frameworks and markets and regulatory environment, and how it's kind of played in there. And then where we are, we've had some drama over the last year or two, gotta figure out where we are with the drama and where things are going. And really how it's going to shape the cannabis market and kind of guess where cannabis is gonna go from a structural point of view and from a business point of view. So with all that, Katie, welcome to the program. Thanks, Bruce.

Katie Neer

I'm excited to be here.

Bruce Eckfeldt

Yeah, it's a pleasure to have you. So before we dig into New York, and what's going on today, love to get a little bit of background, tell us a little bit about how you get into law, how cannabis came into play, give us the backstory,

Katie Neer

for sure. So I mean, ever since I was a kid, I wanted to know how everything worked. And eventually, I think I came to the realization that if I understood the law and the rules of the systems here, then I would have taken the first step to understand how everything worked. So very early on, I knew I was going to want to go to law school. In undergrad at SUNY Albany here in New York's capitol, I got exposed to politics and government. And so I got the bug for politics and government there through a series of internships. And then I went to law school. And then I came back to the area and had my first job as Assistant Secretary on the state operations team of then Governor Andrew Cuomo, and just a job of a lifetime, like had a blast. I loved it, you know, had six agencies in my portfolio. And so I just learned a ton about how government works, the actual operations and governance that goes along with government, you know, visa vie, the politics, right, politics is kind of sits on top and certainly influences things. But within those agencies, that's where the work is done. And so I really loved that experience. And I left and went to a large international law firm, to refine that legal skill set, if you will. And I was there while I got my first client that was a cannabis client. So that was my first professional introduction to the cannabis industry. And interesting, for sure, had been a consumer and a fan of cannabis before that. But certainly getting that first client, which was one of the multi state operators acreage holdings, really was my entree into the advocacy world into the business world. And I did ultimately join them in house and get that in house experience working for a plant touching company for a few years. I then moved and was the General Counsel of a cannabis tech startup called lantern, which has since dissolved and liquidated sadly, but even with that experience comes a great deal, I'm sure learning. Yeah. And you know, here I am today of counsel at Dickinson Avella, largely with a cannabis regulatory practice focused here in New York State. And the

Dickinson Avila team is great there. It's a small and mighty firm that does a lot of lobbying in New York State and really just helps clients navigate that interface with state agencies or with the legislature. Yeah,

Bruce Eckfeldt

I'm curious when you first, you know, picked up this first cannabis client, like, how much do you feel like you knew, I guess about the inner workings of cannabis. And you know, whether it's the kind of the business side or the cultivation side, you know, in terms of, like, how the businesses run, like, what the culture is, you know, I guess how prepared Do you feel like you were getting involved in cannabis? And what did you know? And what did you realize you didn't know? How did that play out?

Katie Neer

I had no idea what I didn't know. And what I didn't know, was virtually everything. I mean, I had not worked for a company, right, like a corporate entity that was doing something right. Like in government, the state agencies that I was, you know, you could say quote, unquote, overseeing right in the governor's office. They were certainly kind of analogous to corporate entities with a mission and a job and an org structure, if you will, but I wasn't within them. I was outside of them and working with them on big picture strategy and policy. And so getting into a company where you have, you know, you have a board, you have a C suite, you've got different departments and you have very clear missions, right? You have licenses and all these markets and you need the numbers to make sense and gotta make money. You're exactly right. And so sort of like skipping business school and just jumping in operating company and getting that type of exposure and that type of an education. And it was absolutely invaluable. But I, I completely underestimated the cannabis industry. To me. I was like, Oh, how fun who doesn't love weed? Right? What a no brainer this is, and then you jump in and you're like, wow, that nothing is simple. Nothing is straightforward. The pervasive, you know, regulatory hoops that you've got to jump through and pretzels you have to twist in to, you know, keep the lights on. It is truly just an emerging market. And it's just getting going, you know, in the regulated space. Of course, there's a long standing kind of legacy existence here. But it is just fascinating. No, two days are the same. I am never bored. Yeah, sure.

Bruce Eckfeldt

I guess from a legal point of view, what we're, I mean, there's lots of regulated industries that are really complicated and has lots of kind of policies and you know, government oversight and things like that, like, I guess how was cannabis different than other regulated industry from a legal point of view? Or what were the unique challenges that you ended up having to grapple with in cannabis relative to other businesses? Well,

Katie Neer

for sure, a huge challenge is the inconsistency between the state laws that legalize it and regulated and the federal law, which still holds it as an illegal schedule one controlled substance, and so that legal inconsistency is massively burdensome and expensive for licensees to navigate. And there's plenty of different industries or sectors that are pervasively regulated at that state level. And entities need to go get, you know, state specific licenses. And the rules are different. In New York versus Pennsylvania, or Massachusetts or California. I mean, you could look at the gaming industry, you can look at the insurance industry, even many states have different alcohol and beverage laws, right liquor laws. So it's consistent in those other kind of comparable pervasively regulated markets. But what stands out apart is that inconsistency with federal law, and there's huge consequences that flow from that, I think the biggest one and one that that a lot of people are talking about, as we kind of wrap up 2023 and head into 2024, is that when your schedule one substance, a business, and

you're in the business of trafficking, that schedule one substance, regardless of the state legality, you cannot take normal business deductions in your taxes. That's what we call 280 E of the federal tax code. And so my clients tell me that's effectively like a 20 to 30% premium on the taxes that they pay. That's enormous. That's

Bruce Eckfeldt

enormous. Well, and take that away, and also 20 30% profit. Yeah,

Katie Neer

exactly. I mean, achieving profitability in this space is insanely rare, right? So if you solve the 280 E issue, you solve a big cashflow problem, you get that much closer to profitability. Yeah, you still have kind of an access to capital issue and some challenges there for sure. But it would be a step in the right direction. Yeah, not be scheduled one or two.

Bruce Eckfeldt

So let's talk a little bit about the New York market in general. So I guess, give us a sense of how the New York market has kind of progressed or kind of where it started and how it's evolved, compared to some of these other states. I mean, New York is obviously kind of coming on late, or at least later in the kind of national scene right at some of these states out west, you know, that have been doing this for quite some time, different models, different policies, kind of different structural dynamics. How do you feel New York has set itself up as a response to some of those things? Like what have you seen in terms of the strategy that New York regulators or the New York system has chosen to the path they've chosen go down on? Why guess what's your take on that?

Katie Neer

Yeah, man, I could talk all day, obviously, about New York, but New York, you know, as a listener to your podcast, I know you've had a couple of people on here that really know New York and have kind of given some airtime to the background and how we got where we are. So I'm going to kind of start like, jump right in. So the New York regulators are catching a ton of heat right now. And, you know, some of that is fair, and some of it is not fair. And what's not fair is that the New York regular they need some grace, I think is they are making a very concerted, very clearly communicated effort to prioritize launching this adult use market with small to mid size businesses, New York, kind of bread businesses, and primarily, you know, social equity businesses, what they call justice involved individuals here is who they're trying to launch the market with. And when you look at that approach to launching an adult use market when you have an existing medical market and existing medical operators, visa vie any other state in the country that had medical and then turned on or authorized adult use, it's very different. So every other market that had medical and then turn on adult use, use those medical operators to launch an adult use market very, very quickly. And there's a lot of justifiable policy reasons for doing that. Primarily, you're trying to, you know, eliminate or capture and convert your consumers and your operators quickly into the regulated channels to try to prevent a runaway illicit market when you're in between, you know, D Krim. And implementing the reg. The other reason to do that is to maximize your tax revenue capture, you want to start getting money in the coffers right away, so that you can pay for your regulator you can pay for programming and support, consumer education, etc. The consequence of launching your program quickly with existing operators, is that most medical programs in the state required, you know, vertical integration, or really, really strict, expensive capital intensive regs. And so you do have a lot of multi state operators who have solved the access to capital issue for the most part, not entirely, but they have creative solutions. And so they dominate those spaces. And New York, on the other hand, said, No, we don't want to do

that we do not want those 10 existing medical operators, full disclosure, many of them are my clients, right. So I've been advocating for them to launch this program. And that has been, you know, a painful and frustrating process, because to New York's credit, they have been like crystal clear. We don't want that we want small and mid sized New York, justice involved people to launch this adult use market. And that has been their top policy goal at the expense of literally everything else. And so I give them credit for communicating that very clearly. I give them credit for trying something new and creative and innovative to achieve an embedded policy goal of New York's law. And where they get criticized, which is fair, right is in New York right now we do have a runaway illicit market, it's a huge problem, not just a problem for new licensees. It's a problem for the existing licensees, my clients, you know, the medical operators, it's a problem for investors who have eyes on New York. And it's a problem for just everyday consumers and, you know, community leaders who just don't want that in their neighborhood. So yeah,

Bruce Eckfeldt

it's interesting. I mean, New York always has this funny dynamic of, you know, kind of New York City and then sort of Albany or upstate New York on some level two different worlds in many respects. But, you know, I knew in the city, there's been just this crazy scheme of, you know, people setting up these shops, and, you know, selling cannabis products, you know, without licenses and, you know, quickly shutting them down, and the enforcement process has been problematic. And then enrolling landlords in the process. Now, I think there was some policy of finding landlords if they find if stores open up, or they are housing stores that are selling cannabis without licenses that they're now kind of on the hook, at some level, give us a little insight on how this has kind of played out. And what are some of the dynamics that have happened in terms of this interim period and these kinds of unlicensed facility, unlicensed retail locations popping up?

Katie Neer

Yeah, it's definitely a massive problem. And I don't know that there's a huge consensus yet in New York on how to tackle it. But what happened in in the 2023 legislative session at the state budget process, is that the legislature and the governor agreed and enacted kind of beefed up enforcement measures to try and tackle this illicit market problem. And it does involve a little bit of all of the above, right. So there's fines issued to landlords, there's daily fines that are issued to the operator. So you've got increased authority for tax and finance to go after these companies. You've got increased authority for the office of cannabis management, that's the relatively new cannabis regulator to shut them down and hold hearings. And it's just not been as effective, I think, as people thought and the tension is that you don't want to re criminalize what you just decriminalized. Right? And so it's hard. It's complicated. You do not want to throw people back in prison, or kind of ruined their lives for selling a substance that we've just legalized. And we want to regulate right, so we've got to find a way the policymakers need to kind of get back to that able, I think, and come up with a way to really focus on market conversion, you want to convert your legacy operators and I do want to make the distinction between the legacy operators, you know, versus kind of the pop up a listed operators, most of whom, you know, are opportunists, versus the true legacy operators who have been reading New York's cannabis market for longer than I've been alive, right. So you want to convert both, arguably, into the regulated channels. And most importantly, you want to convert the consumers. And I think that's what's not happening in New York, like these decision makers, US policymakers, whether it's the regulators at OCM, the board members at the Cannabis Control Board, or, you know, the legislature, no one's talking about the consumer like to date in New York, two and a half years after legalization. Like no one is sitting at those tables, making decisions based on what's best for the consumer. And I think that's probably what needs to shift and change to

kind of get New York on track here. Because once the consumers convert, you know, everything else will click into place. Yeah,

Bruce Eckfeldt

guess what's your take on the illicit market? I'm in a how do businesses are? How do you look at it from a policy point of view in terms of getting shifting us from the illicit to the legal market? Like what are the factors? You know, is it price? Is it access? Is it product quality? Like I guess, from a regulatory point of view, how do you look at getting consumers to actually adopt a legal market in a state like New York?

Katie Neer

I think it's a little bit of all of the above, again, so I think price is probably number one on that list. I think I learned, you know, at my time, both within acreage and then at lantern, consumers are extremely price sensitive. And convenience driven, right. I think that's and that's just cannabis, that's anything that we're purchasing these days, right? You want to be able to go online and do your research, and look at a bunch of different products or a few different retailers and make an educated decision. And usually, that's a balance that's consumer by consumer specific, but it's a balance between quality and price, and probably product form, too. And you can kind of break it down into some demographics of your consumers and who likes what, but generally speaking, price is a huge factor, product form. And quality is another huge factor. So we know that consumers like flour, for example. And then of course, the convenience factor. So if you can kind of do your research online or get it for delivery, that's great. New York has taken a really antiquated approach. They're, they're facing litigation on that issue, as well. So the regs leave no other option for the consumer right now, other than to get up and go walk into a brick and mortar store. Yeah. And I understand the policy reasons for doing that, too. But I think they'll change and evolve. I'm thinking on that one. Yeah. But right now, you know, you gotta go walk into a store. And so you need stores, right? And that's been like the issue in New York. We

Bruce Eckfeldt

Yeah, well, this is one of those ones that I always find interesting, because, you know, in the city, it's kind of like, okay, I forgot to walk a couple of blocks. And maybe I'll take a subway to a couple of like, okay, I can do it. But some of these locations, upstate New York, I mean, this could be 1020 30 miles, I'm going to try to get access to this, I guess, how does the policy or how do regulators grapple with this kind of access issue when you have such a different kind of dynamic in different parts of a state like New York? Yeah,

Katie Neer

access has always been an issue in New York's cannabis market. So historically, speaking with the medical market, it is, you know, the strictest one in the country. And so even just to date, there's 40 Medical dispensaries authorized to operate and that statewide, I mean, that's crazy, right? Like, it's like one Dispensary for every half a million people in state with 20 million people. Yeah. So access has always been this huge challenge. And now with the adult use rollout, we're seeing a similar challenge with access to stores. And to be fair, there was litigation challenging this conditional adult use retail dispensary rollout that New York did, and that did result in an injunction for a few months, three to four months. And so kind of coming out of that. I think we'll start to see stores open again, hopefully soon. If they could find a rhythm of somewhere between eight and 10 dispensaries opening a month. That would be a win that would go a long way to solving this access issue. But just for kind of a snapshot in time for your listeners. We've got I think 2029 or 30 adult use dispensaries open today, statewide is not nearly enough, you know, that's just not gonna Got it? Yeah.

Bruce Eckfeldt

I'm curious about the social equity side of this because I know New York was very sort of focused on trying to address social equity concerns, I guess, give us a sense of how New York has kind of approached this versus other states. And like, where do we feel like we're getting it right? Where do we feel like we're getting it wrong, like, such a big issue in cannabis. And I know so many states have really grappled with that I'm curious with New York Tech has been?

Katie Neer

Yeah, New York's law is unique and strong, I would argue on the social equity front for a few reasons. First and foremost is that 40% of the tax revenue from adult use, sales will be reinvested back into communities disproportionately impacted by cannabis prohibition, no strings attached. So. And what I mean by No Strings Attached is that that reinvestment doesn't have to be related to the cannabis industry in any way it can be for whatever those communities needs that funding for. And so that's a huge piece of the revenue pie. And I think that's phenomenal. And I think that is probably the closest to achieving the concept of reparations that the advocates try to achieve in the state legalization battles that I've seen to date. And so that's a big deal. Number two in the law is this 50% goal to issue all cannabis, adult use licenses to social and economic equity qualified businesses. And so the law defines different categories of what social and economic equity qualified businesses mean, like who that is, and then sets the goal for 50% of the adult use licenses to go to those types of businesses. That's a big deal. And then third, the last thing that the law does is it mandates the state to administer the low interest or zero interest loans to those, you know, social equity qualified businesses, and administers state run incubators and accelerator programs. And so it just embeds sort of the structural programming and solutions to the problems that we now know exist after watching several states go through this. And New York is going to have to do it right. And that's exciting. And I think the office of cannabis management, the Cannabis Control Board are well equipped and appointed to achieve those goals. They just need to execute right, like or two and a half years later, I think everyone is really excited for the execution and implementation of the law as drafted. Yeah.

Bruce Eckfeldt

So where are we now in terms of that? What are the next steps and actually getting the New York market up and running? And guess what is Monday 24th? It looked like, you know, what we might see in terms of, you know, moves and kind of big milestones in terms of getting New York rolling?

Katie Neer

Well, we're in the middle of the first kind of general application window right now. It closes in about a week. And then as we head into the new year, I think we'll see OCM and the Cannabis Control Board award hundreds of licenses, probably in q1 for the entire supply chain. So we'll see full licenses issued, you know, for cultivators, for processors, for distributors, and for retail dispensaries, and that should really help a very robust, very comprehensive market launch here in New York. I think that will achieve a lot in regards to trying to kind of sniff out the illicit market, because if your consumers have regulated channels to go to to purchase cannabis, and they know where they are and how to get it, I think they'll do it. So I'm excited to see that. We'll also see, I think, a lot of legislative activity on the cannabis front in the first half of 2024. There's a lot of sort of disgruntled and angsty stakeholders here in New York. I know you spoke to one of the conditionally licensed adult use cultivators and processors here in the state, who was the hemp farmers who kind of got that first bite at the apple. And we're sold sort of this vision and this promise of getting this market going right, and then the supply chain didn't meet them where they were. And so it's been another kind of disappointing experience for them.

And I think there will definitely be some legislative efforts to make some of them hold or figure out a way to keep their businesses sustainable and successful. And so, you know, I expect to kind of put a bow on it. Hundreds of licenses going out the door. Tons and tons and tons of licenses, doing ribbon cuttings and opening doors or getting going each and every month. I think we'll have you know, bi monthly like two a month CCB meetings just because they're going to be so busy. And then I think the legislature is going to have a lot to say and a lot To propose and put on the table, and the first half of the year,

Bruce Eckfeldt

be exciting to see how things play out. What are you looking at nationally as I mean, there's been kind of these discussions of the scheduling or rescheduling cannabis, you know, addressing some of this to at ease some of the safe banking efforts. What are you watching? What are you anticipating in 2024 or not anticipating in 2024? I mean, give us your take and kind of the federal landscape,

Katie Neer

we definitely have an eye on the DEA to see if they're gonna take the recommendation to reschedule cannabis down from schedule one to schedule three, I have no doubt that there's a slew of unintended consequences that would come from that. And that's kind of the story of cannabis. Right? You think you figured out a subject matter like an issue, and then, you know, 10, more problems pop up from that action, but I think it would be a step in the right direction. So I have an eye on that. I also have an Iowa and Ohio, I think, Ohio, you know, I was proud of them a couple months ago when they voted to legalize cannabis for adult use and you know, preserve women's access to abortion. I was like, Look at Ohio over there. Wow. So I got eyes on Pennsylvania, Jersey is going to continue its rollout Connecticut is well underway. Massachusetts is tweaking things and improving their program each and every year. So I'm focused on the northeast, I think the Northeast looks to the Midwest and the West, and is constantly trying to anticipate those policy problems and proactively address them. And I think we're about to start to see if those efforts and those approaches are successful, or if they lead to a handful of other issues. And I can't wait to see how it all plays out. Yeah,

Bruce Eckfeldt

this is gonna be an exciting year I think for cannabis in the Northeast. KB there's been a pleasure if people want to find out more about you more about the work that you do. What's the best way to get that information? Well,

Katie Neer

my email is k, NIR and E are at Dickinson avella.com folks can always shoot me a note I love to connect with people and talk all things cannabis. And of course, if you need help navigating the New York State government whether it's cannabis related or otherwise, check out Dickinson and avella.com. I've got a lot of colleagues that do a lot of great work and we love love, love to help people solve their problems. Excellent.

Bruce Eckfeldt

I'll make sure that information is in the show notes. Katie, thank you so much for taking the time today. It's been a pleasure.

Katie Neer

Thank you, Bruce. Thanks for having me.

About Eckfeldt & Associates

Eckfeldt & Associates is a strategic coaching and advisory firm based in New York City and servicing growth companies around the world. Founded and led by Inc. 500 CEO Bruce Eckfeldt, E&A helps founders, CEOs, and leadership teams develop highly differentiated business strategies and create high-performance leadership teams who can execute with focus and rigor. Leveraging the Scaling Up, 3HAG, and Predictive Index toolsets, the firm has worked with a wide range of dynamic industries including technology, professional services, real estate, healthcare, pharmaceutical, and cannabis/hemp.

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