

# OUR PRACTICE

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## Equipment Leasing and Finance

**Baker Donelson's equipment leasing and finance team represents some of the largest equipment leasing and finance companies in the United States. These include independent and captive leasing and finance companies, national and state banks and bank subsidiaries, financial services corporations, investment funds, brokers, originators and funders.**

With extensive backgrounds in financial transactions, tax and corporate issues, our team guides clients through the full transaction experience, handling various business and legal issues along the way. Some examples include:



- Creating and revising form documentation for use in transactions of all sizes and types;
- Creating and modifying policies and procedures;
- Structuring, documenting, negotiating and closing complex transactions;
- Litigation services, including enforcement and dispute resolution;
- Providing bankruptcy and workout representation;
- Auditing portfolios;
- Presenting in-house seminars for operations and other personnel; and
- Advising on entity structure for new ventures.

We have experience in a wide variety of transaction types, including terminal rental adjustment clause (TRAC and split-TRAC), first amendment, fair market value (FMV), service contract and other true lease structures; leases for security; equipment finance agreements and traditional loan transactions; progress payment, interim funding and construction financings; sublease and inventory structures; mixed goods and services transactions; vendor lease programs; warehouse and funding lines; refinancings; and back-leveraging, both as lenders and limited recourse borrowers. We have developed standard form participation/assignment/syndication documents for syndicating equipment lease and loan transactions, including those in which clients retain fiscal agency obligations (some of which include "perfect pay" arrangements). We have also developed motor vehicle titling trusts and master aircraft trusts to facilitate the syndication of those assets.

In addition, we help our clients acquire and dispose of portfolios of finance transactions, including continued servicing for the purchaser. Our services to portfolio purchasers (and to other participants in specific lease transactions) also include developing remarketing arrangements. The Firm represents clients in connection with the closing and syndicating of synthetic lease or off-balance sheet loan transactions, and in the development of standard form documentation for that type of transaction satisfying the often-conflicting requirements of FASB regulations and state taxing authorities.

In the area of synthetic leases, we have developed an approach that improves our clients' ability to protect their interests if a transaction is re-characterized as a secured loan instead of a lease. We have also developed a successful approach to documenting off-balance sheet loans in build-to-suit transactions. Our attorneys are also knowledgeable with a range of equipment types, including electric generation facilities; waste treatment facilities; drilling rigs and gas compression equipment; manufacturing equipment and facilities; medical equipment; computer, telecommunications and other high-tech equipment; construction equipment; and furniture, fixtures and equipment (FF&E). We also have deep experience with transportation assets, including motor vehicles (trucks, tractors and trailers), corporate aircraft, railroad rolling stock and marine vessels. The

Firm is a leader in maritime finance law; our involvement in this area has earned us both national and international recognition, and several of our shareholders have chaired various committees of the Maritime Law Association of the United States, an association of practitioners and law firms working in the shipping sector. In connection with maritime transactions, our attorneys have provided advice regarding compliance with United States coastwise trade or Jones Act requirements under 46 U.S.C. Section 12112, and U.S. citizenship requirements under 46 U.S.C. Section 50501.

Our firm is an active member of the Equipment Leasing and Financing Association (ELFA) and other trade organizations. Our attorneys include current and past members of ELFA's Legal Committee; a recipient of the Edward A. Groobert Award for Legal Excellence by ELFA; a long-time columnist for *The Monitor*, the leading independent trade publication in the equipment leasing and finance industry; and multiple members of the Board of Directors of LJN's *Equipment Leasing Newsletter*.

Our attorneys also publish articles in a variety of other equipment leasing and financing journals, including the *ABF Journal*, *The Journal of Equipment Lease Financing* and *The American Bankruptcy Institute Journal*. Our attorneys are also listed in *Chambers USA*,<sup>®</sup> the *Best Lawyers in America*<sup>®</sup> and *Super Lawyers*.<sup>®</sup>

## Representative Matters

- Outside general counsel to the largest independent helicopter leasing company in the world. In less than two years, successfully negotiated and closed equipment acquisition and leases of approximately \$1.2 billion in value, in more than 20 different jurisdictions around the world. Included was a \$450 million portfolio acquisition of aircraft from one of the world's largest private equity firms, representing 31 aircraft in 10 different jurisdictions.
- On behalf of multiple middle market lessors, developed a standard form of master assignment agreement for use in connection with the syndication of equipment finance transactions, with the flexibility for use with respect to both loan and lease transactions (including true leases and leases for security).
- On behalf of the United States branch of a foreign bank, developed a standard form of limited recourse loan agreement and related documents for use in connection with the back-leveraging of leases of corporate aircraft.
- Developed a motor vehicle titling trust for use by a middle market lessor in connection with the syndication of equipment finance transactions involving certificate of title motor vehicles under tax-motivated lease structures, including the negotiation and documentation of the Trust Agreement and Servicing Agreement.
- As seller's counsel, negotiated and documented the sale of a portfolio of small ticket leases and related leased equipment (having an approximate value of \$35 million).
- As lessor's counsel, structured, negotiated and documented a synthetic lease of furniture, fixtures and equipment, and related leasehold improvements (having an approximate value of \$175 million), involving more than 200 locations, which was syndicated through the sale of participation interests to 18 investors.
- As lender's special maritime counsel, documented and negotiated a \$120 million nationally syndicated senior debt facility for a tug and barge operator.
- Served as U.S. counsel in connection with a \$148 million financing transaction relating to the acquisition of mining equipment for use in Latin America.
- Represented lender on \$65 million revolving loan to heavy equipment manufacturer secured by equipment inventory, receivables and other assets.
- Prepared primary legal documentation and procedures in connection with the establishment of multiple bank-affiliated leasing companies, addressing direct originations of middle-market and small-ticket transactions as well as warehouse agreements, assignment documents, broker agreements and other documents for sell-desk and buy-desk transactions.

- Represented a non-traded, equipment leasing fund in connection with a \$150 million initial public offering.
- Represented lead banks in leveraged lease financing of fractional interest in \$320 million offshore drilling platform and \$125 million grain terminal.
- Represented lender in connection with a construction-to-term-loan facility for a \$62.5 million landfill gas-to-electricity facility in California, and the subsequent sale by such lender of a participation interest in the financing.
- Obtained favorable state rulings on sales, lease and use tax implications of complex leasing transactions.
- Prepared fifty-state surveys for multiple equipment leasing and finance companies on a variety of relevant topics, including licensing, usury, motor vehicle titling, and landlord lien issues.
- Represented lender in refinancing of \$58.5 million portfolio of equipment leases, installment sales contracts and other equipment financings.
- Structured multiple deferred and reverse like-kind exchanges.
- Represented marine financing company in multi-million dollar hull and breach of warranty insurance coverage dispute.
- Represented lenders or borrowers in numerous non-recourse project financing transactions involving energy generation facilities, having an aggregate value in excess of \$1 billion, including anaerobic digester, landfill gas-to-energy, co-generation and natural-gas-fired turbine projects located throughout the country.
- Representing global equipment manufacturer in reorganization of transportation company in the United States Bankruptcy Court for the District of Maryland.
- Provided both legal and business advice in structuring and closing equipment financing transactions of first impression involving parties in the United States and Asia.
- Prepared comprehensive lien perfection policies for multiple bank-affiliated equipment leasing and finance companies and a large, nationally known captive finance company.
- Served as U.S. Counsel in connection with a \$10 million tax lease of equipment located in the Republic of Guinea in West Africa.
- Represented bank subsidiary in connection with \$22 million synthetic lease of earthmoving, construction and material handling equipment.
- Represented bank subsidiary in connection with a \$20 million TRAC lease.
- Represented bank subsidiary in connection with \$16 million equipment financing, structured to address possible fraudulent transfer issues under federal and state law.