

# OUR PRACTICE

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## Automotive

The automotive industry is experiencing one of its biggest transformations in history. From electric, autonomous, and connected vehicles to an evolving regulatory environment and changing consumer behavior, there is no shortage of important and emerging issues. To address these issues, we have a focused and devoted multi-disciplinary team in place to counsel clients specifically in this growing area. Baker Donelson has deep experience representing some of the largest automotive companies across the U.S. and globally and is uniquely qualified to help clients navigate these new challenges and capitalize on the business opportunities they present.

Automotive companies, including international and domestic OEMs, dealers, suppliers, and car and truck rental companies, rely on Baker Donelson's in-depth industry knowledge, unique southeastern footprint, and deep bench of attorneys to advise them on a wide range of business and legal issues, including:

- Bankruptcy and restructuring
- Commercial contracts
- Construction
- Corporate counseling
- Cross-border transactions
- Environmental
- Financing
- Immigration
- Labor and employment
- Litigation
- Mergers and acquisitions
- Product liability
- Real estate
- Regulatory compliance and government relations
- Tax and government incentives
- Supply chain

**Bankruptcy and Restructuring.** Baker Donelson's bankruptcy attorneys have represented a number of clients in the automotive bankruptcy and restructuring area, including floor plan lenders, secured lenders, mezzanine lenders, dealership owners, and buyers and sellers of distressed automotive assets. We have represented floor plan financing lenders with repossessions, foreclosures, and bankruptcies involving multiple automobile dealerships across the southeast, and obtained substantial judgments against dealer principals. We have also had numerous trials before U.S. Bankruptcy Courts for major automotive creditors of consumer credit issues, including relief from automatic stay, objections to confirmation, defense against adversary proceedings, and complaints for turnover.

**Cross-border Transactions and Global Business.** We have advised foreign automotive companies on all aspects of establishing a U.S. presence. Lawyers on our team bring deep understanding of the cultural, commercial, and legal issues involved in cross-border transactions and business operations. Several are bilingual or multilingual, which enables our team to work closely with client personnel and their home country legal counsel.

Our global services include advising on international transactions, import-export controls, site selection, economic development incentives and infrastructure development, construction, and the operations of advanced manufacturing facilities in the U.S. This also includes guidance on public-private partnerships; navigation of intricate tax, real property and utility issues; land use and zoning; and commercial transactions.

**Environmental.** For more than 30 years, Baker Donelson has provided legal representation on all aspects of environmental and health and safety issues under federal, state, and local laws. With extensive experience in traditional air, water, and waste programs, we work with numerous automotive and manufacturing clients to streamline permitting, ensure proactive compliance, and manage environmental risks and costs.

When enforcement or litigation is looming, our environmental trial lawyers are uniquely qualified to help. These attorneys have deep bench and jury trial experience in federal citizen suits, CERCLA contribution, nuisance, strict liability, and land use litigation.

**Financing.** We have some of the most experienced lawyers in the country when it comes to vehicle financing. Numerous attorneys represent banks and other financial institutions in transactions involving the financing of vehicles. In many instances, the transactions involve our clients providing (i) floor plan financing for dealerships, (ii) financing of the customers of the dealerships by purchasing the transaction between the dealership and its customer; (iii) financing to customers with large fleets of vehicles, including leases for security and true leases (including terminal rental adjustment clause structures) and involving use of a vehicle titling trust structure; or (iv) inventory financing to the dealer. We have substantial experience in Uniform Commercial Code, motor vehicle titling statutes, state vehicle lessor licensing requirements and motor vehicle titling trusts, as well as general market terms for vehicle financing transactions.

**Labor & Employment.** We routinely represent automotive manufacturers and suppliers on a range of employment matters across our footprint, including employment counseling and compliance; ERISA/benefits; employee handbooks, contracts, non-compete and non-solicitation agreements; management and worker training; and single- and multi-plaintiff litigation matters.

Our immigration experience in the automotive sector is also extensive. Our team members provide counsel on labor relations and immigration to facilitate inter-company transfers of executives and technical experts between countries and facilities. We serve as primary immigration counsel for a multinational automotive manufacturer, having handled nearly 1,000 immigration matters since 2016 for the company.

**Litigation.** When litigation occurs, we provide a vigorous defense. Our litigators represent automotive clients in an array of complex and routine disputes, including product liability covering a wide array of alleged defects, breach of warranty, dealer litigation, premises liability, contract disputes, and general commercial litigation, among others. We have served as lead trial counsel for major domestic and foreign automobile manufacturers in Tennessee, Maryland, Virginia, North Carolina, Kentucky, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, Indiana, Michigan, the District of Columbia, and Puerto Rico.

More than 35 of our seasoned litigators have experience handling complicated class actions. We serve as primary class counsel in national, regional, and statewide suits – including on behalf of a global automotive and truck manufacturer – and work effectively with out-of-state coordinating counsel in these cases.

**M&A.** Our M&A team members have broad transactional experience with automotive suppliers, including tire manufacturers, equipment manufacturers, technology developers, data companies, vehicle converters, interior manufacturers, auto dealerships, and freight companies. We also regularly handle middle market M&A transactions across automotive and related industries, including automotive suppliers, logistics and distribution, technology, and manufacturing.

Our attorneys have worked in the information technology industry, with individuals who served as CEO of a software company, in software development and IT management, and as in-house technology counsel. We manage middle market M&A transactions involving technology companies as both acquirers and targets.

**Product Liability.** Baker Donelson has a deep bench of attorneys with extensive product defect experience in the automotive industry. We manage single cases and multiple-suit, mass-tort, large class actions as well as high stakes "bet the company" cases involving serious personal injury or death. We have a strong track record defending such cases in some of the nation's most dangerous venues, and we have proven experience with the complex technical, scientific, and medical/health issues involved with these claims. For more than 20 years, we have served as the go-to law firm for product defect cases for one of the largest automotive manufacturers in the U.S.

**Real Estate.** Our real estate attorneys represent automotive clients in commercial leasing matters, transactions involving automotive dealership facilities, economic development and tax incentives, and construction contracting. We have served as real estate counsel to public companies in the development of corporate headquarter projects; recreational vehicle retailers and third party logistics companies in project acquisition, disposition, development and leasing; transportation industry clients in the acquisition, disposition and leasing of terminal facilities; and tenants and landlords in build-to-suit industrial projects.

**Regulatory Compliance and Government Relations.** We advise automotive clients on a full range of compliance issues, including environmental, data privacy, tax, worker safety, customs and import-export controls, and other issues. In collaboration with our public policy advisors, our attorneys have worked with manufacturers on important regulatory and legislative issues such as seat belt safety, tire safety, and hybrid-electric propulsion systems. We also have experience working on a broad scope of industry-related issues with public highway authorities and local government entities.

**Tax and Government Incentives.** Our lawyers and advisors have handled hundreds of negotiations with local, state and federal agencies, and other entities for incentives such as tax abatements; tax credits; infrastructure funding; monetary grants for a variety of purposes; training assistance; utility funding, credits and discounts; bond financing; tax increment financing; and special district incentives, along with financing and unique arrangements for more material projects. We have handled many incentive transactions with incentive and cash values greater than \$100 million. These transactions are significant initiatives for these clients, involving major expansions (1,000+ employees), headquarters relocations, or setting up first-time U.S. manufacturing operations. We handle projects of this nature for automotive manufacturers on a regular basis.

**Supply Chain.** We represent multiple entities within the supply chain, from manufacturing to retail side, which gives us vertical supply chain experience across our ten-state footprint and beyond. And our work happens in multiple manufacturing industries, as well, where we are vertically positioned across every phase of the industry.



## Representative Matters

### Bankruptcy and Financing

- Successful representation of major automotive creditors in contests of vehicle confiscations by law enforcement agencies before the Tennessee Department of Safety, Tennessee Board of Claims, Shelby County Criminal Court and U.S. Department of Justice.
- Handled a \$50 million workout involving three affiliated dealerships in Virginia and Maryland for a multi-national automotive manufacturer, and a separate matter for that same company related to consumer complaints about a dealership's approval of credit and rejection of consumer credit and repossessing of the vehicles.

- Obtained summary judgment on behalf of an automotive manufacturer's captive lending entity in dealer litigation in the U.S. District Court for the Northern District of Florida. The district court judge separately granted a motion for terminating sanctions after we had proven the plaintiff was guilty of litigation misconduct.
- Provided long-term representation of a major automotive creditor in state court trials involving breach of contract actions and actions to recover personal property.
- Successfully defended automobile finance companies in consumer-related actions arising out of credit and installment agreements and other finance issues.
- Assisted lenders on revolving loans to dealerships and affiliated finance companies secured by receivables, inventory, and other assets.
- Represented a regional bank in a loan syndication deal in which the dealerships committed massive fraud, coupled with an ensuing bankruptcy.

### **Commercial Contracts**

- Conducted a comprehensive 50-state rental agreement project for two separate brands under a national rental car company involving review of terms and conditions in the client's existing rental agreements by state; review of competitors' agreements; and review of relevant state statutes covering those agreements.
- Prepared technology agreements (computer software, data centers, manufacturing equipment); patent licenses; research agreements; supply agreements and joint development agreements for various clients as outside counsel for well-known manufacturer of automotive interiors.

### **Cross-Border Transactions and Global Business**

- Represented a German automotive supplier in its \$3.1 million purchase of a manufacturing facility for automotive components.
- Represented a major Japanese subsidiary in the acquisition of the site for its new \$200 million truck and axle manufacturing plant in Marion, Arkansas. We were lead counsel for the client in all aspects of this project, from initial property acquisition through plant completion.
- Represented a German-owned heavy machine manufacturer in two acquisitions, one in the U.S. and one in Canada, for a combined value in excess of \$16 million.
- Represented the parent company of a major truck line manufacturer in the site selection process for the corporation's first North American engine plant. We successfully negotiated a \$48 million incentive package from the State of Mississippi, in connection with the client's selection of its new site in Columbus, Mississippi.
- Participated in negotiations of governmental incentives in several states across the southern U.S. for different foreign vehicle manufacturers.
- Advised an Italian manufacturer on the acquisition of a U.S.-based plant facility.
- Advised a European automotive supplier on greenfield site selection in the U.S. and Mexico.
- Advised a U.S. subsidiary of a Japanese automotive parent company on applying and obtaining a GC-S license for work as a supplier to the automotive company.
- Assisting an Italian automotive manufacturer in all aspects of U.S. market entry.

### **Environmental**

- Provided environmental counsel for a number of clients in automotive and related industries, including an automobile manufacturer and a number of parts suppliers, in acquisitions and other transactions.
- Provided the lead environmental expertise on the initial development of a multi-billion-dollar automotive mega-site, which ultimately became the Volkswagen Automotive facility in Chattanooga, Tennessee.
- Secured a Prevention of Significant Deterioration (PSD) air permit on behalf of one of the largest automotive manufacturers in relation to its \$800 million facility expansion.

- Assisted numerous manufacturers in negotiating voluntary cleanup agreements to allow for the most efficient remediation of past hazardous waste spills without time-consuming and expensive Resource Conservation and Recovery Act (RCRA) permitting or Superfund processes.

### **Labor & Employment**

- Serve as primary immigration counsel for a multinational automotive manufacturer.
- Provide an automotive manufacturer with ongoing employment counseling and advice.
- Obtained dismissal with prejudice on behalf of a multinational automotive manufacturer in a significant discrimination case in which Gloria Allred was opposing counsel.
- Successfully defended an international auto parts company in a FMLA and age discrimination case that was dismissed on summary judgment.
- Conducted numerous internal investigations on behalf of a multinational automotive manufacturer.

### **Litigation**

- Representing one of the nation's largest automotive manufacturers in a \$15 billion class action in Florida.
- Defended a global automobile and truck manufacturer with respect to a nationwide class action alleging defective brake assemblies on one of the manufacturer's truck lines. After we removed the case to federal court under the Class Action Fairness Act and filed a motion to dismiss under the Tennessee Consumer Protection Act and common law fraud, the plaintiffs filed a notice of voluntary dismissal.
- Obtained summary judgment in federal court for a large automaker involving a rollover accident resulting in paraplegia that was upheld by the Eleventh Circuit.
- Reached settlement for a nominal amount for a tire manufacturer in a case where the plaintiffs' vehicle overturned in Mexico, resulting in the fatality of one passenger and spinal fracture in another.
- Defended the general contractor on a more than \$300 million domestic automotive manufacturing construction project in a \$90 million dispute. Two of three week-long arbitrations have been conducted, resulting in very favorable awards for our client thus far.
- Represented an automotive client in a dispute over the construction of a component part in the automotive manufacturing application.
- Obtained summary judgment in favor of an international automaker against a claim for malicious prosecution.
- Represented a national commercial vehicle rental company in premises liability and personal injury litigation.
- Successfully defended a manufacturer of a luxury line of automobiles in a case by a failed dealer alleging that the manufacturer misled and defrauded it regarding its market area and potential profitability.
- Obtained summary judgment in a \$3.4 million suit against an automotive supplier to recover attorneys' fees and costs spent in an underlying patent infringement case, with the federal district court agreeing that the master purchase agreement at issue required the supplier to indemnify the plaintiff and ordering a jury trial on the amount of damages to be awarded.
- Defended major automotive manufacturer in a motor vehicle accident case in which the plaintiff's decedent alleged that an employee rear-ended the vehicle, causing injuries, permanent disability and eventual death. Plaintiff filed a motion for sanctions for bad faith negotiations, and manufacturer did not accept the plaintiff's lowest settlement demand of \$4 million. Ultimately, the jury found the death unrelated to the accident and awarded the plaintiff \$218,000 for personal injuries.
- Represented two automotive dealers in a class action case challenging our clients' practice of passing on the business tax to automotive purchasers. The plaintiffs also challenged the constitutionality of the statute and revenue rule allowing this practice. A Tennessee court denied permission to appeal, affirming the previous ruling in our clients' favor.

## **Mergers and Acquisitions**

- Represented a buyer in its more than \$500 million acquisition of a major automotive parts manufacturer.
- Represented a truck and trailer parts company in its sale as part of a roll-up transaction, structured as a leveraged recapitalization.
- Represented clients in buy-side and sell-side automotive industry asset acquisitions as part of a consolidation resulting from changing market conditions.
- Represented a national vehicle converter (the buyer) in connection with the restructuring of various credit facilities and the simultaneous acquisition of its largest competitor.
- Represented a prime contractor for Honda's Alabama plant in the negotiation and documentation of all plans, specifications, and contracts, as well as the negotiation and resolution of all issues with vendors and suppliers.

## **Product Liability**

- Coordinated defense of over 340 automotive product liability lawsuits in Mississippi for automobile manufacturers.
- Successfully defended a major automobile manufacturer in a product liability action involving a quadriplegic plaintiff who sought \$9.5 million in damages. The plaintiffs alleged that a sport utility vehicle was unstable while towing and the seatbelt was defectively designed. After a two-week trial in one of the most plaintiff-friendly venues in the country, the jury found that the vehicle was not defective, and the accident was caused by the driver.
- Obtained a defense verdict after a two-week trial for an automobile manufacturer in a case involving the deaths of minor children.
- Obtained a defense verdict for an automobile manufacturer in a manufacturing defect case involving injuries sustained by a law enforcement official.
- Successfully defended an automobile manufacturer at trial in a wrongful death product liability case relating to alleged defects in the vehicle's occupant restraint and door latch systems.
- Obtained summary judgment in a product liability case alleging a defective power-train control module, with the decision affirmed on appeal.
- Represented a large international automotive parts supplier in an accident involving an exploding heavy truck air spring (suspension component), resulting in degloving of plaintiff's face, and settled the matter for less than one-eighth of the multi-million-dollar demand.
- Lead trial counsel for a national tire and rubber manufacturer, defending asbestos-related premises and product liability cases throughout Louisiana's state and federal courts.
- Successfully defended an automobile manufacturer at trial in a wrongful death product liability case relating to alleged defects in the vehicle's fuel system.
- Successfully defended an automobile manufacturer at trial in a product liability case relating to the alleged failure of the vehicle's electrical system, which resulted in a residential fire.
- Obtained summary judgment for an automobile manufacturer in a product liability case involving high exposure property damage claims after successfully excluding an expert witness who attempted to offer fire cause and origin opinions on the grounds that his opinions were unreliable.
- Won a \$3 million product liability case for one of the largest motor carriers in the U.S. on a directed verdict.

## **Real Estate**

- Counseled one of the largest automotive manufacturers in the U.S. on zoning and leasing matters and local and state incentive negotiations related to a \$2 billion plant.
- Handled the development of a production facility in North Georgia for a Spanish based manufacturer of material handling equipment.
- Served as real estate counsel to several public companies in the development of corporate headquarter projects.

- Represented multi-family developers, recreational vehicle retailers and third-party logistics companies in project acquisition, disposition, development and leasing.
- Represented clients in sale-leaseback transactions of industrial and distribution properties.