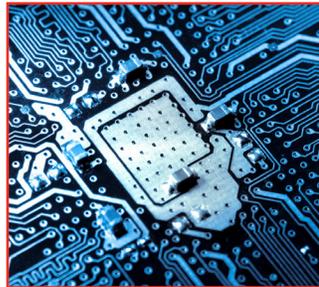


# BAKER DONELSON EMERGING COMPANY BOOT CAMP

New Orleans Entrepreneur Week  
Friday, March 16, 2012



**BAKER DONELSON**  
BEARMAN, CALDWELL & BERKOWITZ, PC





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# BAKER DONELSON EMERGING COMPANY BOOT CAMP



## Baker Donelson Emerging Company Boot Camp

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New Orleans Entrepreneur Week  
New Orleans, Louisiana  
Friday, March 16, 2012

**BAKER DONELSON**  
BEARMAN, CALDWELL & BERKOWITZ, PC

### AGENDA

- 8:30-9:00 a.m. Breakfast and Registration
- 9:00-9:15 a.m. Welcome and Opening Remarks  
*David Rieveschl, Baker Donelson*
- 9:15-9:45 a.m. Corporate Formation/Taxation  
*Biff Bayard, Baker Donelson*
- 9:45-10:45 a.m. Intellectual Property Essentials: Trademarks, Copyrights and Patents  
*Warner Delaune, Baker Donelson*
- 10:45-11:00 a.m. Break and Networking
- 11:00-11:30 a.m. Labor and Employment Basics  
*Steve Griffith, Baker Donelson*
- 11:30-12:00 p.m. Accounting and Back Office Basics  
*Robert Johnson, Ernst & Young*
- 12:00-12:30 p.m. Insurance Basics for Startups  
*Parke Ellis, Gillis, Ellis & Baker*
- 12:30-1:30 p.m. Lunch - Presentation and Discussion  
*Rodrick Miller, New Orleans Business Alliance*
- 1:30-2:00 p.m. Contract Basics  
*Chris Sloan, Baker Donelson*
- 2:00-2:30 p.m. Tax Incentives for Emerging Companies  
*Rob Wollfarth, Baker Donelson*
- 2:30-3:30 p.m. Venture Capital Panel Discussion  
*Moderator: David Rieveschl, Baker Donelson*  
*Panelists: Ralph Maurer, EMH Strategy;*  
*Clayton White, South Coast Angel Fund;*  
*Les Alexander, MSB Fairway Capital Partners*
- 3:30-4:00 p.m. Open Questions  
*All presenters*
- 4:00 p.m. The Big Idea at Manning's



## Step One: Establishing An Entity

The Right Type  
in the Right Place  
at the Right Time

Presented by:

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### The Right Type – Choice of Entity

- **Primary considerations:**
  - Nature of business (active or passive; tax-sensitivity)
  - Number of owners
  - Role of owners (active or passive)
  - Allocation of profits, losses, and cash flow
  - Ability to attract outside capital
  - Taxation
- **Other considerations:**
  - Cost of organization
  - Formality of governance
  - Transferability of ownership interests
  - Continuity of existence
  - Ability to attract and retain management and employees
  - Estate planning objectives

## Common Forms of Organization

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- Sole proprietorship
- General partnership
- Limited partnership (LP)
- Corporation
  - NOTE: An S-corporation is an election to be taxed a certain way for federal tax purposes, not a different kind of corporation
- Limited liability company (LLC)



## Sole Proprietorship

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- Simplest form of business
- Most widely used form of business, by far
- Business is alter ego of owner
- Single owner has complete control, but also full personal liability
- Generally requires nothing more than filing a certificate of assumed name and obtaining a business license
- All income and losses flow through to owner's personal tax return
- When owner dies, business dies



## General Partnership

- Two or more persons (or entities) undertaking a business endeavor
- Agreement as to respective duties and allocation of profits, losses, and cash flow
- Agreement may be oral but should be written; implied by law when two persons act in concert to conduct business
- Each partner is fully liable for 100% of the partnerships debts and obligations



## General Partnership

- Each partner has a fiduciary obligation to the others, but one partner can unilaterally bind the others to a contract or incur liability for all
- Tax effects flow through to partners; tax accounting rules can be very complicated
- Partnership dissolves upon death or withdrawal of any partner
- Not a good choice for most businesses; if two or more owners, a liability-shielded entity should be considered



## Limited Partnership (LP)

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- Like a general partnership with shareholders
- Must have at least one general partner with full liability (may be a person or an entity)
- Unlimited number of limited partners, shielded from personal liability but also having very limited voice in management of business
- Written partnership agreement and filing of certificate with state required
- Tax effects flow through to partners, but almost inevitably extremely complex
- Expensive to set up (accounting and legal costs)
- Generally not well-suited for active business; frequently used for passive businesses such as commercial real estate where highly structured tax planning is desirable

## Corporation

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- Legal entity having separate existence recognized by state
- Governed by board of directors elected by shareholders; directors responsible for hiring and overseeing executive management
- May be only one shareholder, who serves as sole director and as president; must be at least one other officer (unless only one shareholder, in most states)
- Bylaws are the constitution, defining how corporation will be governed
- Shareholders not liable for debts and obligations of corporation, *provided that corporate formalities adhered to*
- Policy is to encourage business risk-taking by protecting owners from liability, so long as persons dealing with corporation are on notice that it is a corporation

## Corporation (cont'd)

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- Generally best choice for attracting outside capital
- May have multiple classes of ownership
  - Common stock represents basic equity ownership
  - Preferred stock can be created to represent ownership that gets dividends ahead of common stock holders and/or that gets a specified rate of return before common holders get any cash and/or that has special voting privileges



## Corporation (cont'd)

---

- Multiple classes of preferred stock can be created, each having different rights and preferences
- Venture capital investors typically want preferred stock
- In terms of distributions and voting, all common stockholders must be treated same, on pro rata basis; likewise, all holders of a given preferred stock class must receive equal treatment



## Corporation (cont'd)

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- For federal tax purposes, corporation is treated as a separate entity (a C-corp) unless it qualifies for and elects to be taxes like a partnership (S-corp)
- Many states do not recognize S-corp status and tax the corporation as a separate entity
- Corporations (S or C) and partnerships (including LLCs) not permitted to be S-corp shareholders; neither are non-resident aliens
- S-corporation limited to 100 shareholders and one class of stock (but S-corp is permitted to have differences in voting rights within single class of stock as long as all other rights are identical)

## Corporation (cont'd)

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- Election of S-corp status requires unanimous consent of current shareholders
- Corporation can switch from S to C status and vice-versa (assuming it meets S-corp qualifications), but substantial tax effects may arise, especially from C to S
- Cost of organizing a corporation generally less than setting up an LLC



## Limited Liability Company – LLC

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- Like corporation, LLC is legal entity separate from its owners (called “members”)
- Depending upon your state, governed either by board of directors elected by members, by members as a group, or by managers selected by members (who may or may not be members themselves)
- Operating agreement is the constitution for LLC, defining the rules for governance
- Operating agreement also serves as the partnership agreement, defining how profits, losses, and cash flow will be allocated
- Operating agreement also can serve the function of a shareholder agreement or buy-sell agreement
- Relative complexity of operating agreement makes setting up an LLC more costly than creating a corporation

## Limited Liability Company – LLC (cont’d)

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- LLC allows maximum flexibility in terms of governance and economic allocations
- Single-member LLC now expressly or implicitly recognized in all states
- Single-member LLC will be disregarded for federal tax purposes; owner (member) reports income on Form 1040 like a sole proprietorship
- Like shareholders in a corporation, members of an LLC are fully shielded from personal liability for debts and obligations of LLC provided appropriate formalities are followed
- Unlike limited partners in an LP, members can be fully involved in management and control of LLC
- Unlike S-corps, no restrictions on types of owner for LLCs

## Limited Liability Company – LLC (cont'd)

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- Until a few years ago, taxation of LLCs as partnerships (i.e., flow-through taxation rather than entity-level taxation) required careful planning and jumping through hoops; now LLC can merely “check-the-box” to elect how whether to be taxed like a corporation or a partnership
- Price for tax flexibility of LLC is increased expense for preparing partnership tax returns (can be substantial if complicated structure involved)
- LLC structure can be somewhat cumbersome for attracting outside institutional capital but may be desirable to an angel or other individual investor

## Tax Considerations

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- The reality of C-corp double taxation
- Deductibility of flow-through losses
- State income (or franchise/excise) taxation
- Wage taxation/self-employment tax
- Cost of tax reporting
- Hassle factor (payroll tax filings)



## Tax Considerations (cont'd)

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- Tax is complicated
  - *Generally*, receipt of stock in exchange for contribution to corporation (C or S) is nontaxable (so long as 80% control test is satisfied), provided liabilities not in excess of tax basis of contributed assets (excluding trade receivables and trade payables)
  - *Generally*, receipt of membership interest in exchange for contribution to LLC (or partnership) is nontaxable unless it is a disguised sale, but members who contribute assets encumbered by liabilities recognize gain if allocation of liabilities creates negative capital account
  - Even S-corp subject to double taxation if it distributes E&P left over from C-corp, or sells built-in gain property, or has excess net passive income; if C-corp on cash method makes S election, recognition of income from A/Rs in the following 10 years will trigger built-in gains tax
- In other words, consult an attorney or tax advisor

## Tax Considerations (cont'd)

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- Some basic tax considerations
  - Deductibility of operating losses in S-corp limited to shareholder's tax basis in stock
  - LLC members may include their share of the LLC's debt in their tax basis for purposes of deducting operating losses, thus potentially allowing larger write-offs
  - Incentive Stock Option (ISO) plans not available to LLCs
  - Employee-member of LLC must pay self-employment taxes on entire share of LLC profits (not just the amount of reasonable compensation)

## Shareholder/Operating Agreements

- As a general proposition, equity interests in a company (whether stock, LLC membership, or LP interests) are assets that are freely transferable (subject to securities laws), may be pledged as collateral for a debt, and may be bequeathed by will
- Consider these scenarios in a small company having three owners, all of whom are active in the business:
  - An owner dies, leaving her stock to her husband who is a complete jackass and now is your business partner
  - An owner pledges his LLC interest for a loan, then defaults; now the bank is your partner and wants to liquidate the business
  - An owner leaves the company to work for a competitor; he still is entitled to financial and other information about the company
  - An owner gets divorced and his stock is awarded to his ex-wife; now he works for her

## Shareholder/Operating Agreements (cont'd)

- In a closely-held company, each owner typically relies heavily on the abilities and judgment of the others
- All owners of a small business have a common interest in preventing outsiders from becoming partners without consent
- Shareholder agreement (also called buy-sell agreement or stock restriction agreement) is a contract among owners of a company as to limitations on transferability and related contingencies
- Separate document for a corporation, but often incorporated into operating agreement for LLC or into partnership agreement for LP



## Shareholder/Operating Agreements (cont'd)

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- Typical provisions:
  - Rules for decision-making
  - Prohibition on sale or transfer of interest or pledging interest as collateral without approval of majority of other owners
  - Company and/or other owners have right of repurchase (either for fair market value to be determined at the time or for a value based upon a specific formula) in the event of:
    - **Death of owner and transfer of interest to estate**
    - **Divorce of owner and transfer of interest to ex-spouse**
    - **Bankruptcy of owner and transfer of interest to third party**
    - **Resignation or retirement of owner as employee**
  - Voting rights suspended upon involuntary transfer

## The Right Place – Which State(s)?

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- Formation (domestication)
  - Corporation: Home state versus Delaware
    - Governance
    - Dispute resolution
    - VC funding
  - LLC: Not so much difference
- Foreign qualification: primarily a tax concern
  - Locations of offices
  - Locations of sales people
  - Other contacts with a state



## The Right Time

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- Need a limited liability entity at the outset
- May evolve in complexity as business partners, investors, and employee/owners come into picture
- Form of organization can be changed as need arises
  - More tax efficient to change from LLC to corporation than to change from corporation to LLC
  - Don't change without talking to your lawyer and accountant
- Evaluation of your Shareholder Agreements and Partnership Agreements and Operating Agreements



## Basics of Copyrights, Trademarks, and Patents

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### IP BASICS

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**The Big 4:**

- Copyright
- Trademark
- Patent
- Trade Secrets (not covered)



## Copyrights

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### What is a copyright?

- A bundle of rights protecting an original work of authorship fixed in any tangible medium of expression

U.S. Constitution, Art. 1, Sec. 8, Cl. 8  
17 U.S.C. § 101 *et seq.*



## Copyrights

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### What is copyrightable?

- Literary works
- Musical works (incl. words)
- Dramatic works (incl. music)
- Pantomimes and choreographic works
- Pictorial, graphics and sculptural works
- Motion pictures and audiovisual works
- Sound recordings
- Architectural works
- Computer software



## Copyrights

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What is *NOT* copyrightable?

- Names
- Titles
- Slogans, short phrases
- Domain names
- Facts, ideas, systems, methods
- Recipes (mere listing of ingredients)
- Clothing designs



## Copyrights

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### Creation

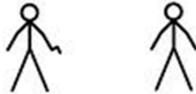
- Copyright automatically exists as soon as work is created in "fixed form"
- Registration with U.S. Copyright Office is not required, but brings benefits:
  - Ability to bring infringement action
  - Timely registration allows recovery of statutory damages and attorneys fees
  - Prima facie evidence of validity of copyright



## Copyrights

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- To be protected by copyright, a work must contain at least a certain minimum amount of authorship in the form of original literary, musical, pictorial, or graphic expression.



## Copyrights

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### Computer Program

- Set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result
- Protects that particular expression of the set of statements or instructions, not what the program does



## Copyrights

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What is in the bundle of rights?

- Reproduce the work in copies or phonorecords
- Prepare derivative works
- Distribute copies or phonorecords
- Perform the work publicly
- Display the work publicly

## Trademarks

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**A trademark** is a symbol used by a person in commerce to indicate the source of the goods and to distinguish them from the goods sold or made by others. The symbol can be a word, phrase, design, image, sound, color, or even fragrance.



## Creation upon Use In Commerce

### Creation

- Trademark rights conferred by use in commerce
- Registration with U.S. Patent and Trademark Office is not required, but brings benefits:
  - Nationwide notice
  - Can achieve incontestable status
  - Additional remedies & statutory penalties for infringement
- Goals:
  - Consumer Protection
  - Incentives to Users

## Trademark



### What is a trademark or service mark?

- Any word, name, symbol, device, or combination thereof either used or intended to be used by a person to identify and distinguish goods or services from those of others and to indicate their source of origin



## Trademark

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### Levels of Distinctiveness

- Fanciful or Coined
- Arbitrary
- Suggestive

---

- Descriptive
- Generic



## Trademark

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### Fanciful or Coined

- Letters that form a word without meaning, has no relation to the product
- Strongest type of mark
- E.g., KODAK, EXXON

*Problem: Can become generic*



## Trademark

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### Arbitrary

- One or more words whose common meaning has nothing to do with the goods or services being labeled
- Strong mark
- E.g., PARLIAMENT, CAMEL, used for cigarettes



## Trademark

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### Suggestive

- One or more words that hint at or suggest the nature of a product without actually describing it
- Requires a mental step before association between mark and product is understood



## Trademark

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### Descriptive

- Words that merely describe the product or its components or ingredients
- Very weak; protectible as trademark only if it can establish that term has acquired "secondary meaning"
- E.g., World Book (encyclopedia); 5 Minute Massage

## Trademark

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### Generic

- Words that designate the "genus" of the product or what the product is
- Cannot trademark
- E.g., THERMOS, ASPIRIN, CELLOPHAN!

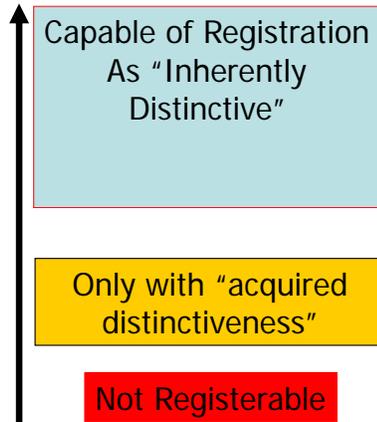


## Spectrum of Distinctiveness

### Levels of Distinctiveness

- Fanciful or Coined
- Arbitrary
- Suggestive

- 
- Descriptive
  - Generic



## Secondary Meaning

- Used to be descriptive
- Acquired distinctiveness "as a trademark" when the primary significance of Coca-Cola is now the identifier of the source



## Goods and Services

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- Not “squatter's rights”
- Only registerable for the goods and services for which you seek trademark protection



## Stylized / Design Trademarks

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- “WALMART”
- “WAL\*MART”

WAL\*MART



Walmart   
Save money. Live better.

## Use it or lose it!

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- Trademark law is dependent upon use of the mark



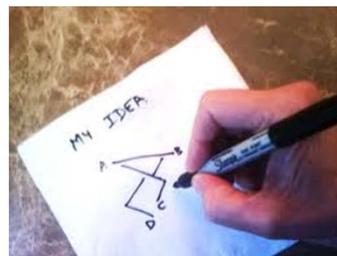
## Patents

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What is a Patent?

- Set of exclusive rights granted to an inventor for a fixed period of time in exchange for the public disclosure of the invention
- Limited property right

U.S. Const. Article I, Section 8  
35 U.S.C. § 101 *et seq.*



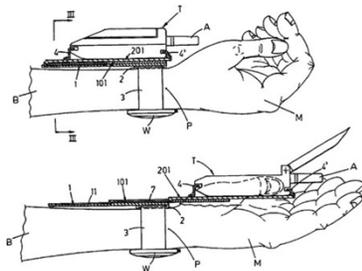
## Exclusive Rights

- Right to exclude others from making, using, selling, offering to sell the invention within the U.S., or importing into the U.S.
- Does not give inventor the right to make, use, sell, offer to sell
  - still bound by regulatory restrictions
  - still subject to other prior patents
  - improvements (only the new stuff)



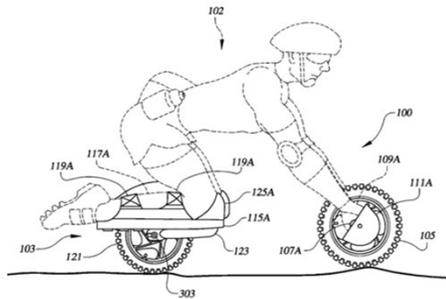
## Types of Patents

- Utility – protects a useful device or method, e.g. the way it works or is used; functional and structural features
- Design – protects the ornamental (non-functional) appearance of an article, e.g. the way it looks
- Plant – protects certain types of asexually reproducible plant varieties



## Utility Patent Requirements

- Patentable Subject Matter
- Utility (must be useful)
- Novelty (no single patent discloses all of the invention)
- Nonobvious to a person of ordinary skill in the art to which the invention pertains (may be shown by combinations)

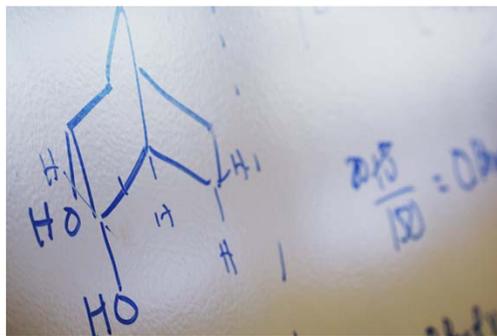


## Utility Patents – Subject Matter

- Machine – concrete thing, consisting of parts or of certain devices and combinations of devices
- Manufacture (Article of Manufacture) – production of articles for use from raw or prepared materials by giving to these materials new forms, qualities, properties or combinations, whether by hand labor or by machinery
- Composition of Matter – composition of two or more substances; chemical compounds; gas, fluid, powder or solid
- Process – act, or a series of acts, performed upon the subject-matter to be transformed and reduced to a different state or thing; methods

## Patentable Subject Matter

- CANNOT obtain a patent for:
  - scientific truths, laws of nature
  - mathematical expressions
  - algorithms
  - abstract ideas
  - physical phenomena



## Novelty

- Inventor Can Destroy Novelty
  - public use or disclosure of invention
  - prior sales or offers for sale of invention

U.S. – more than 1 year prior to filing  
Foreign – absolute novelty bar

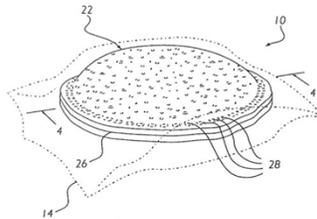


***Unlike copyrights and trademarks, you must:***

- (1) timely file application with the USPTO; and***
- (2) undergo examination and have patent issued***

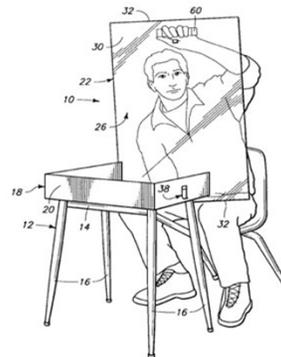
## Ownership

- In U.S., only individuals can apply for a patent (not corporations, similar entities)
- Inventors can assign the patent to any entity
- Each inventor owns full rights to invention without an obligation to the other inventors
- *BOTTOM LINE: Consolidate ownership; get obligation to assign IP rights in employment agreement!*



## Provisional Patent Application

- Low cost and quick
- No claims required
- No particular format
- Provides earlier effective filing date, permits use of "patent pending" status
- Not examined; only a place holder
- Does not issue into a patent
- Must file nonprovisional utility application within 1 year



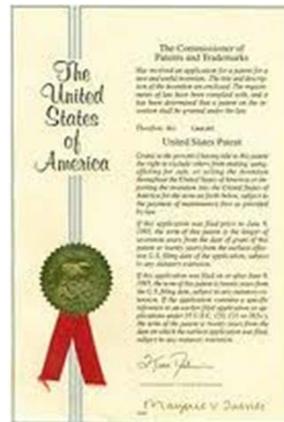
## Licensing

- Contract where parties agree to the terms and conditions under which certain rights in the invention/patent are granted (manufacturing, selling, etc.)
- Exclusive or nonexclusive
- Field of use restrictions (industries, markets, uses, etc.)
- Geographical restrictions
- Royalties or other compensation (highly variable)



## Enforcement/Infringement

- To infringe a patent claim, all elements of a claim must be present in the accused device or method
- Patent owner is entitled to a claim scope commensurate with the details of the specification and their “reasonable equivalents”
- Patent validity will always be contested:
  - Failure to consider material prior art
  - Concessions made during prosecution (estoppel)
  - Inequitable conduct



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## Top 10 Patent Points for the Product Development Cycle

### Conception and Reduction to Practice

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- Write all ideas down with dates of conception; can avert undeserved co-inventorship
- Keep a written record of changes and improvements
- Identify all collaborators with brief description of contribution to the effort; missing co-inventors can cause expense, broken deals, and invalidity
- Manuals, grant proposals, etc., are very helpful; great basis for patent application specification
- Store in a safe place, like in the "cloud"; think Katrina and Rita...

## Secrecy

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- Secure strong nondisclosure agreements (NDAs) with other parties, but limit the number of NDA's; not everyone is worth it or trustworthy
- Should contain assignment language to avert co-ownership problems with co-inventors; may meet with some resistance, but the alternative is worse with an "unintended partner"
- Term should be for at least enough time to get past a long patent prosecution (assuming no publication at 18 months); typically 3-5 years

## Search

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- Searching is optional, BUT:
  - Prevents throwing good money out after bad
  - Knowing prior art is critical for drafting persuasive specifications and claims
  - Anticipate possible rejections
  - Trade journals and other technical publications must be considered in rapidly evolving technologies (no patent records); think software, pharma, solar, nanotechnology, etc.

## Provisional Applications

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- Use provisional applications sparingly and wisely
  - Delays in examination; only a place holder for up to 12 months
  - Added costs
  - Failure to adequately support claims in later nonprovisional application
  - May jeopardize foreign rights if too lean an initial disclosure, because the same 12 month deadline applies
  - Difficult to avoid with Patent Reform Act; file early and often

## Filing Strategy

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- Develop a strategy for protecting a portfolio of ideas (alternate embodiments, future developments, etc.); build the spider web
- FOCUS: "all eggs in one basket" rarely makes good sense; only one invention per application; restriction requirements and election of species will cause divisionals anyway
- Filing decisions and claim drafting should factor in how products will be marketed; think system vs. method, and how prospective licensees may want one, but not the other

## Organization and Priorities

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- Patents are business tools
- Treat each idea/application as an asset to be valued in a transaction; how can each asset be monetized?
- Many early stage companies rely almost entirely on IP assets (rather than revenue); even a portfolio of pending applications preserves IP rights for prospective purchasers, and may be important to future investors
- Let licensing and enforcement considerations drive the discussion regarding claims, including which divisionals and CIP's may be desirable

## Disclose Prior Art

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- Affirmative duty of disclosure of known prior art to the USPTO; only if "material to the examination"
- No "hiding the ball"; full disclosure is part of the deal between you (patent owner), the public (progress of science and the useful arts), and the federal court system (enforcement of your rights)
- Potential invalidity for failure to disclose prior art
- Includes prior art from foreign patent prosecutions which may not have been considered in the U.S.
- Avoids inequitable conduct defense by infringers

## Defense

---

- Patents are a sword, not a shield
  - Patents provide only an exclusionary right; no rights to do anything, only to stop others from doing what's in the patent
  - No relevance to infringement of prior patents; just because you have a patent, you can still be sued for infringement
  - Know competitor's patent portfolio; map out claims for "design around" efforts; think Venn diagrams
  - Possible use of patents as a basis for counterclaims and cross-licensing to settle disputes

## International Patents

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- U.S. is a signatory to several multinational patent treaties; preserve international rights (national, regional, PCT) before 12 months from initial application
  - But will depend on U.S. non-publication request; if non-publication request is filed, then filing foreign will jeopardize U.S. application
  - Add "outlier" countries that may be important based on market and manufacturing, e.g. Taiwan, and some South American, African, and Middle East countries
  - PCT search results are almost always faster than U.S. examiners
  - Budget carefully and prioritize; can be very expensive

## **Patent Reform Act (September 2011)**

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- File early and often
- No more “first to invent”; effective March 2013
- Still have to be an “inventor”; can’t file for others’ inventions
- Self-disclosure buys another year and can avoid some prior art, but ruins international rights in “absolute novelty” countries
- Still a 12-month grace period from your own disclosures, but not disclosures of others
- Post-grant review within 9 months may reduce some litigation?

## Top Ten Ways to Reduce the Risk of Employment Litigation

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Baker Donelson Bearman, Caldwell & Berkowitz, P.C.  
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### The Countdown Begins at the Beginning

10. Make Sure Your Employment Application Is In Compliance With State and Federal Laws
  - Arrest / convictions
  - Disability
  - Verification of truth / accuracy
  
9. Set Up A Legal Process For Background Checks
  - Hire an agency!
  - Fair Credit Reporting Act
  - Use of convictions



## And once you have employees . . .

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8. Create an Employee Handbook with AT LEAST the following:
- At will statement
  - Anti-harassment / discrimination policy
  - Rules for workplace behavior
  - Explanation of benefits
  - Complaint procedure



**\*\* DO NOT INCLUDE POLICIES YOU WON'T FOLLOW! \*\***

## It's the Little Things That Cost Big Bucks

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7. Make sure employees are classified correctly for wage and hour purposes and pay them accordingly.
- Non-exempt employees must keep records of all hours worked and must be paid minimum wage and overtime
  - Exempt employees must meet certain legal tests to be exempt from minimum wage and overtime.



## Who Is an Employee?

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6. Understand the difference between employees and independent contractors – obligations to employees:
  - Withhold taxes
  - Covered / protected by MANY employment laws (Title VII, FMLA, ADEA, ADA)
  - Workers' compensation
  - Unemployment benefits
  
5. Temporary employees are still YOUR employees for the purpose of many employment laws like harassment, discrimination, and retaliation



## Key Lessons to Learn

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4. Respond quickly and appropriately to employee complaints about possible employment law violations and understand they have a legally protected right to complain.
  - Discrimination / Harassment
  - Wages
  - Safety Issues



## Key Lessons to Learn

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3. Do not wait for the straw that broke the camel's back before taking action – Investigate!
  - Prompt
  - Thorough
  - Appropriate Remedial Action
  - Confidential



## Don't Be Penny Wise and Pound Foolish

---

2. Train your managers on employment laws and leadership skills
  - Recognize harassment, discrimination, request for accommodation
  - Know reporting / action is required
  - Document discipline
  - Be accurate in performance evaluations

1. Develop a relationship with an EMPLOYMENT lawyer.



## Questions

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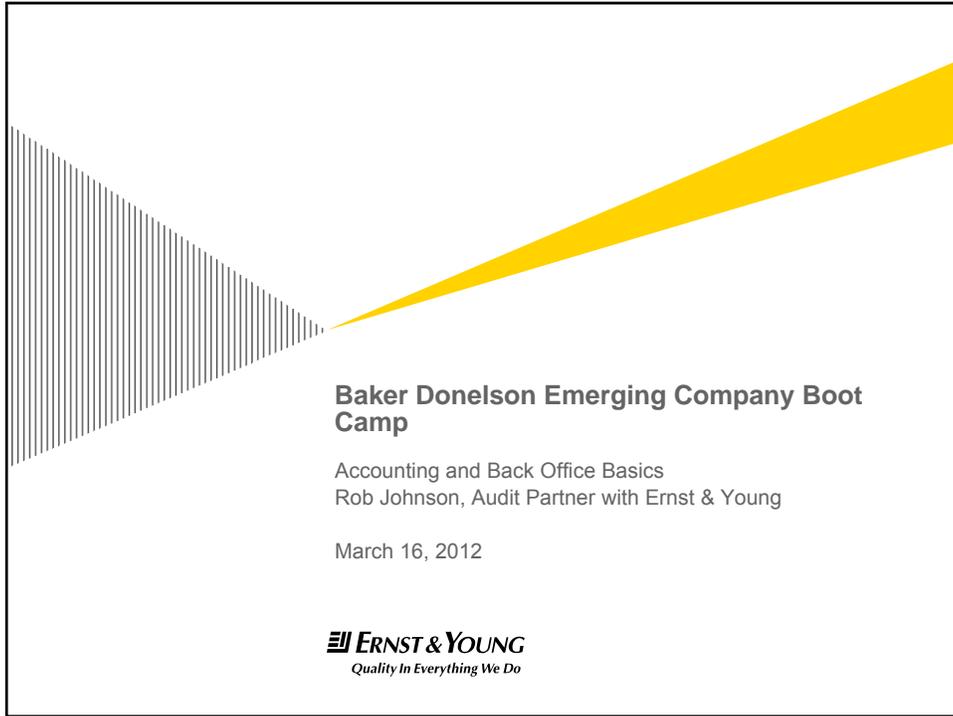
### Top Ten Ways to Reduce the Risk of Employment Litigation

---

Presented By

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**Baker Donelson Emerging Company Boot Camp**

Accounting and Back Office Basics  
Rob Johnson, Audit Partner with Ernst & Young

March 16, 2012

**ERNST & YOUNG**  
Quality In Everything We Do

## Agenda

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- ▶ Accounting sets the foundation
- ▶ Accounting information systems
- ▶ Accounting polices and procedures
- ▶ Internal controls
- ▶ Financial statements and reporting
- ▶ Tax responsibilities
- ▶ Questions

## Accounting sets the foundation

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- ▶ Accurate accounting is critical to understanding your business
  - ▶ Track and report results
    - ▶ Outside parties want to understand your financial results
  - ▶ Manage your business decisions
    - ▶ What works and what doesn't
  - ▶ Develop budgets and project future results
    - ▶ Accurate historical information sets the foundation to budget for the future

## Accounting information systems

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- ▶ Accounting software
  - ▶ Quickbooks/ Peachtree/Other industry specific applications
  - ▶ Choose an application that will be able to meet your near term growth plans
  - ▶ Must consider system maintenance
    - ▶ Internal resource or outsource to vendor
    - ▶ Accounting staff/employees need to be proficient in the application
      - ▶ Training and education

## Accounting policies and procedures

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- ▶ Accounting policies
  - ▶ There are different accounting policies for different businesses
    - ▶ Oilfield related services
    - ▶ Health care services
    - ▶ Manufacturing
    - ▶ Distribution
    - ▶ Construction or contractors
    - ▶ Not-for-profit
    - ▶ Other services – professional, insurance, etc
  - ▶ AICPA Accounting Guides
    - ▶ Available for many specific industries
    - ▶ Provides guidance on proper accounting for industry specific matters

## Accounting policies and procedures

---

- ▶ Accounting procedures
  - ▶ Employees
    - ▶ Accounting director or controller with sufficient knowledge
    - ▶ Determine the appropriate support staff
      - ▶ Accounts payable, accounts receivable, payroll, other areas such as revenue if complex
      - ▶ Payroll can be outsourced (e.g., ADP)
  - ▶ Closing of the books
    - ▶ Typically done monthly
    - ▶ Develop a schedule
    - ▶ Document responsibilities

## Internal controls

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- ▶ Safeguarding business assets and helps ensure accurate financial reporting
  - ▶ Entity level controls
    - ▶ Management tone
    - ▶ Segregation of duties
    - ▶ High level controls that lay a foundation
    - ▶ Management review of results
  - ▶ Transaction level controls
    - ▶ Bank reconciliations
    - ▶ General ledger account reconciliations
    - ▶ Check signing authorizations
    - ▶ Information systems controls

## Financial statements and reporting

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- ▶ Basic financial statements
  - ▶ Balance sheet
  - ▶ Income statement
  - ▶ Cash flow statement
  - ▶ Financial statements summarize the information maintained in the general ledger
- ▶ Well presented financial statements include financial statement footnotes
  - ▶ Accounting policies
  - ▶ Significant account details
  - ▶ Other quantitative and qualitative information

## Financial statements and reporting

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- ▶ Users of the financial statements (bankers, potential investors) will expect well presented financial statements and accounting records
- ▶ Management must understand the financial statements and be able to explain to other users of the statements
- ▶ Your outside CPA can provide critical support
  - ▶ Bookkeeping
  - ▶ Income tax and other tax reporting
  - ▶ Accounting matters consultation
- ▶ Audited financial statements
  - ▶ Often required by lenders or investors
  - ▶ Independence considerations for CPA performing the audit

## Tax responsibilities

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- ▶ Income tax filings (both federal and state)
- ▶ Payroll taxes
  - ▶ Amounts withheld from employees and employer portion must be submitted timely – avoid severe penalties
  - ▶ Outsourced payroll provider assists with payroll tax filings
- ▶ Sales/Use taxes
  - ▶ Understand the types of sales and purchases that your business incurs that are subject to tax
  - ▶ Various jurisdictions collect tax
  - ▶ Outside CPA can assist

# Questions

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## Ernst & Young

Assurance | Tax | Transactions | Advisory

### About Ernst & Young

Ernst & Young is a global leader in assurance, tax, transaction and advisory services. Worldwide, our 144,000 people are united by our shared values and an unwavering commitment to quality. We make a difference by helping our people, our clients and our wider communities achieve their potential.

### About Ernst & Young's Assurance Services

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## INSURANCE OVERVIEW

# The Large Print Giveth\*

**\*AND THE SMALL PRINT TAKETH AWAY**



## Premise Number 1

**If** you have a good agent and

**If** you are involved in the process and

**If** you focus on the cost of risk and not on the cost of the insurance

**Then you will be OK.**

## The Purchase

1. Two ways to purchase commercial insurance
  - Direct Writers
  - Independents
2. Application
  - If possible meet face to face. At **your** place.
  - Know your stuff
  - Ask the “What If” Questions
  - Start 90 days before you need the coverage.
  - Get the Quote 2 weeks early when possible.
  - Check out the company. What the A. M. Best ratings mean.



## PROPERTY INSURANCE

IT WON'T HAPPEN TO ME.....



## Property Insurance

- Building and Contents – how are they defined
- What are perils? Which “form” do I buy.
- Improvements and betterments versus contents.
- Business Income – What is it?
  - Business Interruption
  - Extra Expense
  - Your agent needs your financials.



## Property Insurance -

- **THE SMALL PRINT**
  - Percentage Deductibles.... A percentage of what???
  - What about somebody’s else’s stuff in your care?
  - Off Premises? Transit.
  - Flood
  - Equipment Breakdown
  - Understanding Coinsurance (“Did” divided by “should” times amt of loss) HUH??



## Coinsurance – De-Mystified

- For Sale: Building 6,000 Square Feet
- Great Deal on a Building - \$240,000!!!
- Mortgage - \$240,000
- You Purchase Insurance on the Building at \$240,000. Replacement Cost coverage. Mortgagee is happy. Premium - \$2,400.
- 80% Coinsurance clause is lurking
- Building is damaged in a fire. \$150,000
- How much do you get?

## Coinsurance – De-Mystified

- Adjuster determines replacement cost of the Building at \$100 per square foot.
- 6,000 square feet times \$100 per Square Foot - \$600,000
- Your co-insurance clause? Probably 80%. So you have to insure to \$480,000
- Did  $(\$240,000) \div \text{should } (\$480,000) = 50\%$  times amount of loss (\$150,000).
- Your check - \$75,000.
- Now how much does the insurance cost?

# General Liability

1. Covers Two Perils
  - Bodily Injury (Plus some personal injury claims)
  - Property Damage
  - At Your Premises & for your Products and Completed Ops.
2. How Much is Enough?
  - \$1,000,000 per occurrence / \$2,000,000 aggregate
  - Consider Umbrella / Excess Liability
3. How is rated
  - Retail – per \$1,000 sales
  - Contractor – per \$1,000 of payroll
  - Landlord – square footage of building
  - BUT!!!! ..... BEWARE THE MINIMUM PREMIUM
  - AND THE AUDIT!!!!!!!!!!!!



# General Liability

- MORE SMALL PRINT
  - Personal Property of Others in Your CCC
  - Contractual Liability – could /should be a seminar unto itself
    - Contractual liability is excluded. Then the “give back”
  - Subcontractors
    - They belong to you
    - You pay for them two ways
    - Your solution - Certificates of Insurance
  - Coverage Territory



## COMMERCIAL AUTO

- Honestly? Most of the claims are small
- But we have to plan for the WHAT IF!!!

This you can handle



BUT THIS??????



## Commercial Auto

- The Basics
  - Liability – BI and PD
    - Do yourself a favor – Go the \$1,000,000
  - Medical Payments
  - Uninsured Motorist Coverage – Decisions, Decisions
  - Collision – means BANG Go for an affordable deductible
  - Comprehensive – Everything else Ditto on Deducible
- **THE SMALL PRINT**
  - The non-owned auto. **EVERYBODY NEEDS THIS.**
  - The hired auto
  - Towing and rental
  - Size Matters. So does location.
  - MVR's - **PRIVACY ACT** - beware of this one.

## Workers' Compensation

- Yes, you need it.
- Covers the medical bills of employees injured in course and scope and  $66 \frac{2}{3}$  of average weekly wage (subject to maximums).
- Rated based on payrolls applied classification code.
  - ▣ Be sure you get this right.
  - ▣ Check the “Scopes”.



## Work Comp - Continued

- **The Small Print**
  - ▣ Owners/Officers can exclude themselves (this is not a recommendation...)
  - ▣ If not excluded payrolls are capped for owners/officers
  - ▣ The audit
  - ▣ Here come those subs again
  - ▣ Stay away from the Water, or endorse policy accordingly (USL&H)
  - ▣ Report, report, report your claims. (Second payor fund)



## What else are they not telling me?

- Beware of M.P. / 25% Min. earned / Canc. Amend
- Umbrella
- Employment Practices Liability
- Employee Benefits Liability
- Flood... and Excess Flood 30 DAY WAIT!!!
- Cyber Liability



## What's Next

- Decide where you are on the scales....



## The cost to you is 12%. What should you expect???

- Involvement
- Responsiveness
- Risk Management
- Guidance
- A Trusted Advisor.... Not a salesperson
- You are driving the bus.



## Questions?



## Contract Basics for Entrepreneurs

---

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EXPAND YOUR EXPECTATIONS™

### Overview

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- What is a Contract?
- The Importance of Written Contracts
- Contract Fundamentals
- Common Contract Types
- Negotiating with Customers
- Other Common Contract Issues

## What is a Contract?

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- A promise supported by consideration
  - Sometimes described as a “bargained-for exchange”
- Example
  - Chris offers David \$100 to buy David’s pet honey badger
  - David agrees
  - Chris and David have a contract
- “Consideration” can be almost anything of value
  - Money
  - An action
  - An obligation to pay money or do something in the future

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## The Importance of Written Contracts

---

- Oral contracts can be enforceable (except when they aren’t)
- Proof is the problem
  - Old legal saying: “If it’s not in writing, it didn’t happen.”
- Written agreements provide proof and clarity.
- “Written” does not mean formal.
  - e.g. An email exchange can create a contract.

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## Contract Fundamentals

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- Contracts serve three main purposes:
  1. Documenting the deal
  2. Risk allocation
  3. Legal compliance (not as common as you might think)
- Get it ALL in the contract
  - People turn over
  - “Understandings” are forgotten
- Use the Law of Common Sense
  - “Magic language” is rare

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## Customer Contracts

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- KISS: K eep It Simple Stupid
- Long and (needlessly) complicated is rarely better
- Simple can speed up sales cycle
  - People understand plain English
  - Understanding = Acceptance = LESS LAWYER TIME = MORE \$\$
- A few tips:
  - Don't repeat
  - Don't use lots of words when fewer will work fine
  - Use active voice
  - Be choosy about what clauses really add value

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## Clauses You Should Care About

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- Included/excluded products/services
- Payment terms and remedies for failure to pay
- Disclaimers and Limitations of Liability
- Dispute Resolution
- Assignment
- Indemnification
- Term and Termination
- IP

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## Other Common Contract Types

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- NDA
- Software Development Agreement
- Software License or SAAS Agreement
- Terms of Use
- Hosting Agreement
- Employment Agreement

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## Nondisclosure Agreements

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- Use if you are disclosing trade secrets or other confidential info
- Clearly define scope
  - Be careful of labeling requirements
  - Common exceptions
- Trade secrets
  - Specifically include in scope
  - Specifically exclude from expiration

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## What About Vendor Contracts?

---

- Vendors usually push their own paper (but not always)
- Most vendors will negotiate to some degree
  - Your mileage will vary according to leverage and vendor
- Vendor contracts can be long, complicated, and/or tricky
  - Some are very poorly drafted
  - Some are confusingly organized
- Vendor forms can be full of traps and outs
- READ VERY CAREFULLY
  - Critical thinking is important
  - Use common sense – your instincts are often right

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## Software Agreements

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- IP ownership is often misunderstood
- To own it, you MUST have an express assignment
  - Usually NOT a work made for hire
- If you are doing the work, make payment a precondition for transfer of IP ownership
- Detailed functional specs and implementations plan are always better
  - #1 source of disputes = in-scope vs. out-of-scope
- All payments tied to objective milestones
- For SAAS, address SLA and credits for failures (if important to ops)

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## Contact Us

---

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## TAX INCENTIVES FOR EMERGING COMPANIES IN LOUISIANA

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EXPAND YOUR EXPECTATIONS®

### Introduction of Topics

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- A. What are Louisiana tax incentives?
  - 1. General definition
  - 2. Benefit of Louisiana tax incentives
- B. When should an emerging company in Louisiana start planning for Louisiana tax incentives?
- C. Why should an emerging company concern itself with Louisiana tax incentives?
- D. How does a business qualify for Louisiana tax incentives?
- E. A sampling of the more prominent Louisiana tax incentives
  - 1. How they are earned
  - 2. How much can be earned
  - 3. How to benefit from them
  - 4. Special rules to consider
  - 5. How to apply for them

## What are Louisiana Tax Incentives?

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- Relief from payment of tax that your business and/or its owners would otherwise owe
- Designed to encourage some activity, generally a trade or business activity



## What is the Benefit of Louisiana Tax Incentives?

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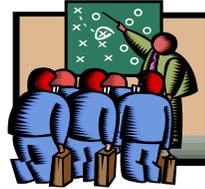
Your business and/or its owners will not have to pay tax otherwise owed



Tax incentives such as tax credits put extra cash in your pocket

## When should an Emerging Company in Louisiana Start Planning for Louisiana Tax Incentives?

As early on as possible



- Louisiana tax incentives can impact the financing of your business, in terms of the timing of the financing, the amount of financing available and the kind of financing that your business is able to obtain
- Louisiana tax incentives can impact the organizational structure of your business

## Why should an Emerging Company Concern itself with Louisiana Tax Incentives?



Some are lucrative and you could be leaving a significant amount of money on the table



Louisiana tax incentives can make a business more attractive to equity investors and lenders and in some cases serve as the direct source of their returns

## How does a Business Qualify for Louisiana Tax Incentives?

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- Engaging in the particular business activity that the Louisiana tax incentives were designed to encourage
- Generally, a two-part application process
  - pre-certification
  - final certification



## A Sampling of the more Prominent Louisiana Tax Incentives

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Angel Investor Tax Credit

Research and Development Tax Credit



Louisiana Entertainment Incentives

- Louisiana Motion Picture Investor Tax Credit
- Digital Interactive Media and Software Tax Credit
- Musical and Theatrical Production Tax Credit
- Sound Recording Tax Credit

Technology Commercialization Credit and Jobs C



## A Sampling of the more Prominent Louisiana Tax Incentives cont'd

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Wind or Solar Energy Systems Tax Credit

# The Investor Ready Entrepreneur

SouthCoast  
ANGEL FUND

[www.southcoastangelfund.com](http://www.southcoastangelfund.com)

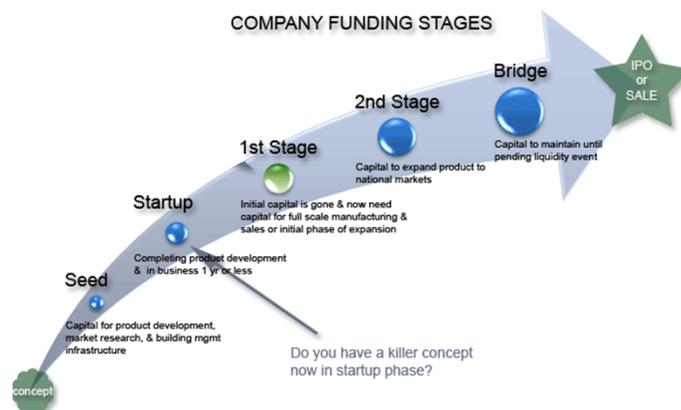
SouthCoast  
ANGEL FUND

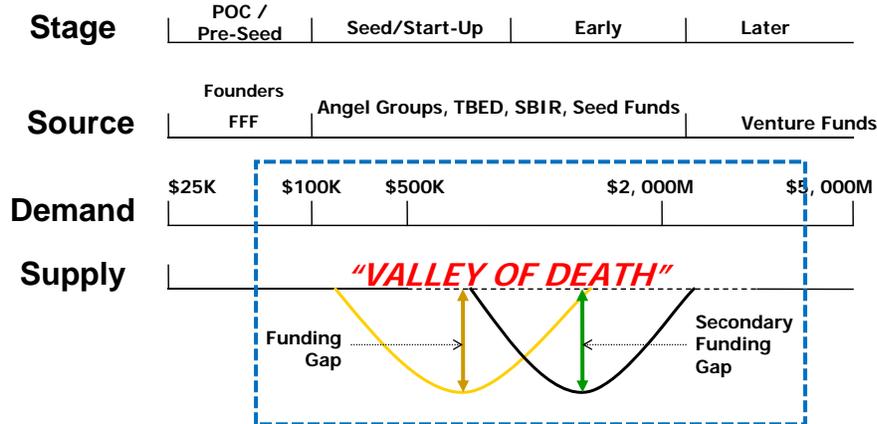
## Introductions

Show others you can be ***clear*** and ***concise***  
in 15 seconds or less

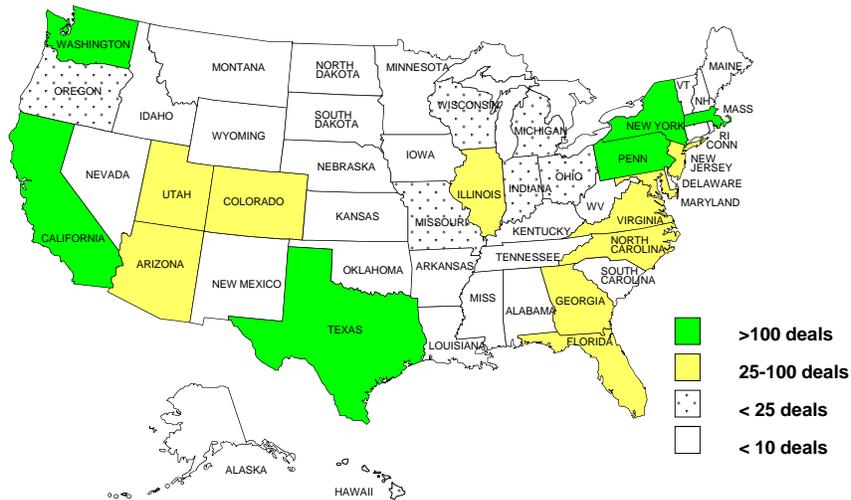


- ▣ Revenue
- ▣ Reduction in Overhead
- ▣ Equity for services
- ▣ Research Grants – NIH, SBIR/STTR
- ▣ Specialty Loans – SBDC, Self-Help, Local
- ▣ Licensing
- ▣ Partnerships/Strategic Investors
- ▣ Banks/Loans – guaranteed by you or others
- ▣ Angel, VC Funding





National Association of Seed and Venture Funds



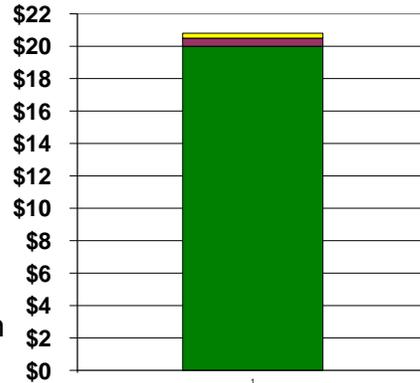
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Sources of Start-up  
Funding

Venture Capital ~\$.3 billion  
 State Funds ~\$.5 billion  
 Angel Investors ~\$20 billion

**Angels: 90% of outside equity for start-ups?**

Friends & Family ~\$60 billion



Sources: MoneyTree, NASVF, multiple studies on informal capital

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ANGEL FUND

Companies Backed by  
Angels



**A really great angel helps an entrepreneur:**

1. See around the corner
2. Gain a sober second opinion
3. Network with people who can help build the business
4. By being an ambassador
5. Gain credibility in a field

- ▣ Individuals
- ▣ Private Groups
- ▣ Networks
- ▣ Funds

- ❑ Investment Return
  - Funds are invested only after an extensive due diligence indicates a good chance of target return / time.
- ❑ Economic Development
  - There is a strong sense of satisfaction from aiding entrepreneurs and the local economy. All investments are typically within a limited geographic area.
- ❑ Tax Incentives
  - Investment in angel funds may qualify for state tax credits.
    - ❑ Most states have some type of tax credit for angel investing.
    - ❑ Louisiana Digital Interactive Media Tax Credit Program
- ❑ Social
  - Members enjoy meeting and working together. Participation in the screening, due diligence or monitoring teams is an enjoyable, educational and rewarding experience.

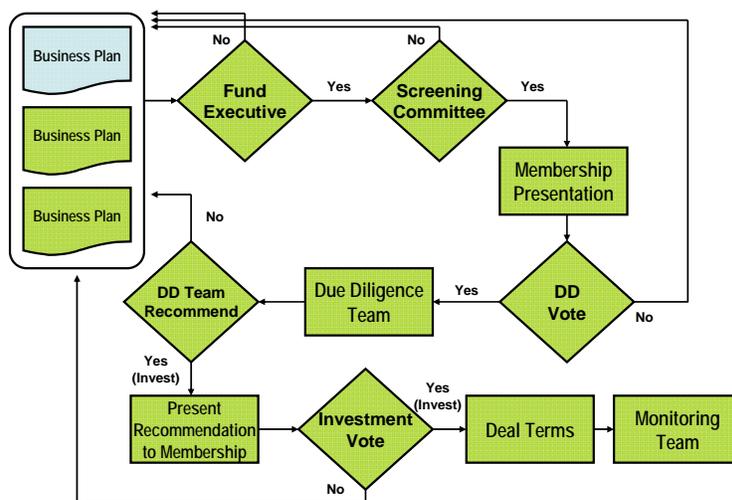
- ❑ Angel investing is VERY risky
  - 1 or 2 of every 10 investments brings most of return
  - Hard to tell which companies will return
- ❑ Current return estimates for portfolios:
  - Annual IRR of 27% - 2.6X in 3.5 years\*
- ❑ If business gets VC funding later, angel investment is often diluted
- ❑ Some really great angels therefore looking for 10 to 30X potential
  - Wide variety of expectations, depending on mix of motivations to be an angel
- ❑ Correct valuation is critical

\*Source: Rob Wiltbank, Willamette University, November, 2007 paper

- ❑ Management team
- ❑ Is the plan Clear, Concise, Compelling?
- ❑ Can you communicate it?
- ❑ Does it grab attention or capture the imagination?
- ❑ Is your idea truly unique? (this is rare)
- ❑ Is it high growth - scalable?
- ❑ Is there a way out?

- ❑ Different angel groups have varied criteria for investment.
  - Make sure you find criteria that match your opportunity.
- ❑ Typical - South Coast
  - Prefers to be the first institutional investor in seed to early stage ventures seeking value added capital to achieve an acquisition, licensing, or public offering exit within five years.
- ❑ Criteria – Looking for companies that:
  - Are headquartered within Louisiana
  - Are seeking investment of \$1 million or less
  - Are in a technology sector
  - Can match at least 50% of requested funding (from principals or other previous/current investors)
  - Are seeking to close their first round of investment with a professional group
  - Have a personal referral from a member of South Coast Angels or another angel group

- ❑ How much is needed?
- ❑ Use of funds - with timeframe
  - Alternatives
- ❑ Time to *cash flow positive*
- ❑ Overly optimistic sales projections lead to:
  - Worst case → perceived as unsophisticated, unrealistic
  - Best case → missed milestones, disappointed investors
- ❑ Understand realistic exit issues



- ❑ Angel funds will tell you their criteria for investment
  - Address those criteria
- ❑ Must be concise
  - 100+ page business plans will **NOT** be read
- ❑ Provide a range of financial outcomes (low to high)
- ❑ Make the plan realistic and believable
- ❑ Know the dynamics – what affects your plan?
- ❑ Addressable market – know it from the bottom up
- ❑ Positioning and competition – where and who?
- ❑ Backup plan – Survival is the key
- ❑ Exit plan – Where do you get off the train?

- ❑ Acts as a first-line filter
- ❑ Reviews business plans:
  - Completeness
  - Against general criteria
- ❑ Coordinates all presentations to screening committee and membership presentation
- ❑ Coordinates due diligence process

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*The Night Before the Big Meeting Frank  
Receives a Visit from the PowerPoint Fairy.*

**Clear – Concise – Compelling**

- It starts with your executive summary
- You have one chance to make your first impression
- Introduce yourself
- State the problem, pain or opportunity - This sets the context for everything else you present
- Test your opening statement - Do friends, family, and others understand the opportunity?

- Initial Presentation
- 5-6 people
- 15 minute presentation
- 15 minutes of questions
- One of three or four presentations
- Requires approval of screening committee to make it to membership meeting

- YOU MADE IT THROUGH SCREENING
- Present to full membership
- 15 minute presentation
- 15-30 minutes of questions
- Probably the only presentation
- Requires approval of membership to go to due diligence

- Non-exclusive list
  - Management Team
  - Marketing
  - Uniqueness
  - Competition / Barrier to Entry
  - Intellectual Property
  - Market
  - Valuation
  - Potential
  - Failure Risk
  - Existing Investors
  - Exit Strategy

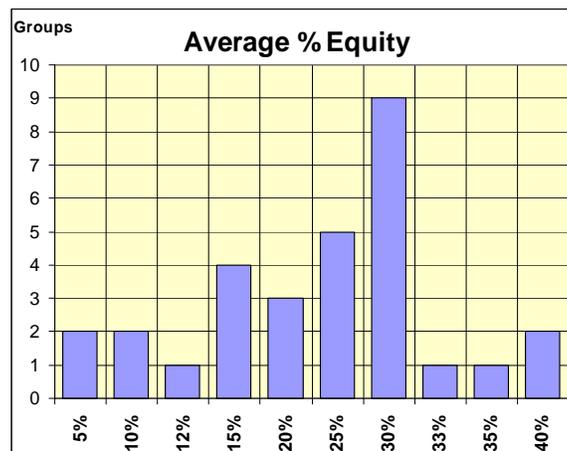
|                       |        |
|-----------------------|--------|
| Management Team       | 0-30%  |
| Size of Opportunity   | 0-25%  |
| Product or Service    | 0-10%  |
| Sales Channels        | 0-10%  |
| Stage of Business     | 0-10%  |
| Size of this round    | 0 - 5% |
| Need for more funding | 0 - 5% |
| Quality of plan       | 0 - 5% |

**WHY ARE DEALS TURNED DOWN ?**

- ▣ Quality of Management
- ▣ Unprepared for presentations
- ▣ Size of Opportunity
- ▣ Rate of Market Growth
- ▣ Product Quality
- ▣ Competition
- ▣ Barriers to Entry
- ▣ Stage of Development

- ▣ Funds likely have template – individuals may or not
- ▣ Negotiations will determine ultimate structure
- ▣ The stronger the critical factors (mgt team, proven market, etc.) the stronger the negotiating position
- ▣ Remember that investors think early about exit strategy, and it's *not* likely an IPO
- ▣ Familiarize yourself with deal structure concepts **before** approaching investors – *Preparation* is key to negotiating successfully

- *Moving toward "vanilla" term sheets with:*
- Preferred stock
- Liquidation preference
- Board & information rights
- Anti-dilution
- Participation rights



39 groups reporting (Caution: source data is incomplete & unverified)

- Read how angel groups work
  - (*Cutting-Edge Practices in American Angel Investing* J. May & E. O'Halloran, U of VA)
- Look on the website of your local group
- Network with those familiar with the process
- Know what to expect
- Be open and honest with investors
- Remain patient

- Start-up funding terms are unique
- Study these terms
  - Read *Term Sheets & Valuation* (A. Wilmerding - \$15)
  - Talk to your advisors
  - Consult with experience entrepreneurs
- Stay flexible on terms, especially valuation
- Understand common practice (your region and business vertical)



- Kauffman Foundation
  - eVenturing.com
  - angelcapitaleducation.org
- Angel Investor News
- Inc Magazine (and Web site)
- Books
  - *Term Sheets & Valuation – A Line by Line Look at the Intricacies of Venture Capital Term Sheets & Valuation*, A. Wilmerding (2003) \$10 from [www.amazon.com](http://www.amazon.com)
- Top level entrepreneurial support orgs

## The Investor Ready Entrepreneur



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## **Alton E. Bayard**

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Alton "Biff" Bayard, a shareholder in the Firm's Baton Rouge office, concentrates his practice in the areas of tax, estate planning and business law. Mr. Bayard has experience in estate planning, tax planning, family business planning, probate, estate disputes, audits, succession matters, and business acquisitions and break ups. He received his LL.M. from Southern Methodist University in 1980, is Louisiana board certified in tax law since 1985 and in estate planning since 1997, and is recognized in *Best Lawyers in America*® since 1996 in the areas of Trusts and Estates, Non-Profit/Charities Law, Closely Held Companies and Family Businesses Law.

### **Representative Matters**

- Advised a commercial and industrial service company and its sole owner on personal estate planning and business transition planning, including selecting the appropriate entities, creating operating agreements, preparing personal planning documents and consideration of transition plans including an ESOP, potential sale to an outside entity and sales of business interests to family members.
- Represented an executrix in litigation concerning the validity of testamentary dispositions.
- Defended the executor of an estate in litigation invalidating an attempted amendment to a trust document upsetting the decedent's testamentary transfer plan.
- Represented the executrix of an estate in the negotiating, drafting and closing the sale of the estate's interest in a limited liability company to the surviving member.
- Converted a C corporation to a limited liability company to be taxed as an S corporation for federal purposes free of state franchise tax.
- Assisted two related corporations in the liquidation and distribution of its remaining assets to its shareholders.

### **Publications & Speaking Engagements**

- Speaker – "The Estate Tax under the 2010 Tax Relief Act," the Baton Rouge Chapter of the Financial Planning Association, May 12, 2011
- Speaker – "Estate Tax Changes and Planning," the Baton Rouge Chapter of the Financial Planning Association, June 2010
- Speaker – "Estate Tax... Where Are We Now?" Baton Rouge Estate and Business Planning Council, April 2010

- Co-Chair – "Estate Planning: Back to Basics," Louisiana State Bar Association seminar, March 2010
- Speaker – "Living Wills & Other Directives," 2006 Recent Developments in Legislation & Jurisprudence, LSU Law School, September and November 2006
- Speaker – "Incapacity Planning," Elder Law Seminar, LSU Law School, March 2006
- Speaker – "Elder Law," 2005 Recent Developments in Legislation & Jurisprudence, LSU Law School, September 2005
- Speaker – "Living Wills and Other Advance Directives," 2005 Recent Developments in Legislation & Jurisprudence, LSU Law School, September 2005
- Speaker – "Elder Law," 2004 Recent Developments in Legislation & Jurisprudence, LSU Law School, September 2004

### **Professional Honors & Activities**

- Listed in *Best Lawyers in America*® since 1995 in the areas of Trusts and Estates, Non-Profit/Charities Law, Closely Held Companies and Family Businesses Law
- Listed in *Louisiana Super Lawyers* since 2007
- American Bar Association
- Louisiana Bar Association – Past Chairman of Estate Planning and Administration Advisory Commission
- Baton Rouge Bar Association
- Baton Rouge Estate and Business Planning Council
- Board Certified Tax Law Specialist, certified by the Louisiana Board of Legal Specialization, 1985-Present
- Board Certified Estate Planning and Administration Specialist, certified by the Louisiana Board of Legal Specialization, 1997-Present
- Fellow – The American College of Trust and Estate Counsel
- AV® Preeminent™ Peer Review Rated by Martindale-Hubbell

### **Admissions**

- Louisiana, 1977

### **Education**

- Southern Methodist University, LL.M. in Taxation, 1980
- Paul M. Hebert Law Center at Louisiana State University, J.D., 1976



## **Warner Joseph Delaune, Jr.**

Of Counsel  
Baton Rouge  
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wdelaune@bakerdonelson.com

Warner J. Delaune, of counsel in the Firm's Baton Rouge office, is a member of Baker Donelson's Intellectual Property Group.

Through representation of both large and small companies, he has written and prosecuted numerous patent applications across a wide variety of technologies, including medical devices, sporting goods, firearms, watercraft, computer networking, wastewater treatment, recycling processes, metal cleaning and coating, electromechanical control systems, oil and gas extraction, and manufacturing equipment. Mr. Delaune also counsels clients in transactional matters involving intellectual property, including license agreements, joint ventures, and mergers and acquisitions. In addition, he handles intellectual property litigation matters in both federal and state court. He is a registered patent attorney licensed to practice before the United States Patent and Trademark Office in patent cases.

Mr. Delaune received his undergraduate degree from Louisiana State University in mechanical engineering, and he was employed with Texas Instruments, Inc., in the Defense Systems and Electronics Group, where he designed infrared systems for use on military vehicles. He also participated in flight testing of those systems on both fixed wing aircraft and helicopters.

### **Representative Matters**

- Counsel to software company sold to global CAD/CAM developer.
- Management of international patent portfolios for clients in recycling, rotary seals, shipbuilding, and construction equipment.
- Counsel to universities in wide range of research and development projects.
- Counsel to pharmaceutical startup in technology license and private placement.
- Counsel to technology companies in equity investment transactions involving license agreements, joint development agreements, and supply agreements.

### **Professional Honors & Activities**

- AV<sup>®</sup> Preeminent<sup>™</sup> Peer Review Rated by Martindale-Hubbell
- Listed in *The Best Lawyers in America*<sup>®</sup> in the areas of Intellectual Property Law since 2009 and Technology Law (2009 – 2010, 2012)
- Member – Advisory Board, Louisiana Business and Technology Center at Louisiana State University (2006 – 2008)
- Member – Louisiana Technology Council

- Member – Louisiana State Bar, Section on Intellectual Property
- Member – American Bar Association, Section on Intellectual Property
- Member – American Intellectual Property Law Association
- Recipient – Baker Donelson's 2011 Baton Rouge Office Pro Bono Award
- Past Assistant Instructor – Engineering Graphics, Louisiana State University

### **Admissions**

- Louisiana, 1991
- U.S. District Courts, for the Middle, Eastern, and Western Districts of Louisiana
- U.S. Patent and Trademark Office

### **Education**

- Paul M. Hebert Law Center at Louisiana State University, J.D., 1991
- Louisiana State University, B.S., 1986. Received Outstanding Senior Design Project award for a veterinary spinal testing device, 1985.



**Steven F. Griffith, Jr.**

Shareholder  
New Orleans  
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sgriffith@bakerdonelson.com

Steven F. Griffith Jr., shareholder in the New Orleans office, practices in the area of business litigation with a focus on clients in the construction, hospitality and maritime industries. He focuses on the unique wage and hour issues in these industries and defends nationwide collective actions brought under the Fair Labor Standards Act, as well as related class actions across the country. His practice includes defending and counseling clients with respect to Chinese Drywall and other toxic gypsum claims, as well as defending and pursuing complex antitrust, trade secret and unfair trade practice claims.

Mr. Griffith's experience also includes the negotiation and drafting of non-competition and non-solicitation agreements both here in the United States and internationally. His experience also includes extensive litigation experience on civil rights claims, Title VII, the ADA, FMLA, and ADEA. And, he has represented clients before the Louisiana Department of Insurance, Louisiana Department of Justice, United States Department of Labor, and the EEOC.

Prior to practicing, he served as judicial clerk for Chief Justice Pascal F. Calogero Jr., in the Louisiana Supreme Court from 2000 to 2001.

Being based out of the New Orleans office, and in the wake of the tragedies incident to Hurricanes Katrina and Rita, Mr. Griffith's practice includes counseling his clients on the unique legal problems presented by large-scale disasters such as Hurricanes Katrina and Rita. That advice includes navigating complex regulatory and statutory obligations, disaster planning, response and relief efforts, housing and workforce issues, and the investigation and defense of both civil and criminal claims related to events occurring during and after the storms.

### **Publications & Speaking Engagements**

- "Ten Employment Pitfalls Faced by Start-Up Companies," Collaborative for Enterprise Development, Idea Village, New Orleans, Louisiana, November 16, 2011
- "[Fourth Circuit Draws a Line for Retaliation Suits under the FLSA](#)," Baker Donelson Employment Alert, August 17, 2011
- "Privacy and Social Media in the Workplace," National Association for Women in Construction, Region 5 Annual Forum, New Orleans, Louisiana, April 15, 2011
- "Top Ten Mistakes by Contractors," National Association for Women in Construction, Region 5 Annual Forum, New Orleans, Louisiana, April 15, 2011

- "[General Contractor Liable for Jobsite Harassment](#)," Baker Donelson Construction and Employment Alerts, April 11, 2011
- "The Nuts and Bolts: FLSA/Wage and Hour Critical Update," 5th Annual Fundamentals of Employment Law, Sterling Educational Series, February 23, 2011
- "Privacy and Social Media in the Workplace," 5th Annual Fundamentals of Employment Law, Sterling Educational Series, February 23, 2011
- "The Cutting Edge - Chinese Drywall: The Homeowner Carriers' Perspective," 15th Annual Texas Insurance Law Symposium, South Texas College of Law, January 20, 2011
- "Top Ten Ways to Reduce the Risk of Employment Litigation," Baker Donelson Emerging Company Boot Camp, November 18, 2010
- "Class Certification Hearings and Decisions," Chapter 4, *A Practitioner's Guide to Class Actions*, published by the American Bar Association, TIPS Section on Class Actions, 2010
- "[The Payroll Risk From Within](#)," Baker Donelson Labor and Employment News, March 12, 2010
- "[The Elephant in the Room: Understanding the FLSA in the Construction Industry](#)," National Teleconference, Lorman Educational Services, September 18, 2008
- "The Principal/Subcontractor Relationship: Wage/Hour Issues Post-Katrina," presented to the ABA Committee for Liaison with EEOC, OFCCP and Department of Justice, April 16, 2008
- "[Can a General Contractor Get More Than It Bargained For? The Risk of Subcontractors' Wage Law Violations](#)," presented to ABA Regional Conference, Affordable Housing Lessons from Katrina, New Orleans, February 8, 2008
- "Taking and Defending Effective Depositions," Lorman Education Services, New Orleans, September 20, 2007
- "The General Contractor's Gamble: the Risk of Subcontractors' Wage Law Violations," *Construct!*, Vol. 16, Issue 3, Summer 2007
- "Fifth Circuit Holds Assignment Statutes Not Preempted by ERISA," *Impact Law Brief*, Vol. 21, No. 10, October 27, 2006
- "The Fifth Circuit Continues the Trend of Scaling Back ERISA Preemption," *Health Law Litigation*, Vol. 6, Issue 1, Fall 2006
- "*Confidentiality and Choice*: Application of the Attorney-Client Privilege in the Corporate Context in the Fifth, Sixth and Eleventh Circuits," *Baker Donelson Litigation News*, December 2006
- "*Force Majeure* in Louisiana in the Wake of Hurricanes Katrina and Rita," *Baker Donelson Litigation News*, Spring 2006
- "*Nevada v. Hibbs*: An Unsound Departure From the States' Rights Trend," *Engage: The Journal of the Federalist Society's Practice Groups*, Vol. 4, Issue 2, October 2003

- "The Impact of the Sarbanes-Oxley Act of 2002 on Employers and the Employment Lawyer," presented to the ABA Committee for Liaison with EEOC, OFCCP and Department of Justice, March 19, 2003
- "Recent State and Federal Court Employment Decisions Approving Substantial Front Pay Awards," presented to the ABA Committee for Liaison with EEOC, OFCCP and Department of Justice, March 20, 2002
- "If You Scratch My Back, I'll Scratch Yours: Mary Carter Agreements in Louisiana," 45 *Loyola Law Review* 725, 1999
- "Porteous v. St. Ann's Café & Deli: 'If You Shuck Enough Oysters, You Will Find a Pearl,'" 44 *Loyola Law Review* 811, 1998

### **Professional Honors & Activities**

- Listed in The Best Lawyers in America® in Labor & Employment Litigation (2012)
- Listed in *Chambers USA: America's Leading Business Lawyers* as a leading Labor & Employment lawyer (2010 – 2011)
- Member – Federal Bar Association (Board Member, New Orleans Chapter)
- Member – Louisiana State Bar Association
- Member – American Bar Association
- Member – Fifth Circuit Bar Association
- Member – New Orleans Bar Association
- Member – Thomas More Inn of Court
- Recipient – Baker Donelson Louisiana Pro Bono Attorney of the Year (2007)

### **Civic Activities**

- Volunteer – New Orleans Pro Bono Project
- Fellow – Louisiana Bar Foundation (Member, Grants Committee)
- Member – Louisiana Supreme Court Historical Society
- Member – Save Our Cemeteries
- Member – Hurstville Neighborhood Association
- Volunteer and Firm Liaison – Habitat for Humanity
- Board Member and Former President – St. Martin's Episcopal School Alumni Association

### **Admissions**

- Louisiana
- Texas, *pro hac vice*
- United States Supreme Court
- United States Fifth Circuit Court of Appeals
- United States District Courts, Eastern, Middle and Western Districts of Louisiana

- United States District Court, Middle District of Florida, *pro hac vice*
- United States District Court, Southern District of Florida, *pro hac vice*
- United States District Court, Eastern District of Michigan, *pro hac vice*
- United States District Court, Southern District of Mississippi, *pro hac vice*
- United States District Court, Eastern District of Missouri, *pro hac vice*
- United States District Court, Northern District of Ohio, *pro hac vice*
- United States District Court, Eastern District of Oklahoma, *pro hac vice*
- United States District Court, Southern District of Texas, *pro hac vice*

### **Education**

- Loyola School of Law, J.D., 2000, magna cum laude
  - William L. Crowe Sr. Scholar
  - *Law Review*
  - Moot Court
- Rhodes College, B.A., 1997, cum laude
  - Dean's list



## **Chris Sloan**

Shareholder  
Nashville  
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[csloan@bakerdonelson.com](mailto:csloan@bakerdonelson.com)

Mr. Sloan is a corporate and intellectual property lawyer who represents entrepreneurs, start-ups and other emerging businesses, handling complex software and other IT transactions for both small and large companies alike. He helps many early-stage, high-growth businesses with business planning and formation, venture capital funding, drafting and negotiating vendor and customer agreements, strategic contract negotiations, mergers and acquisitions, intellectual property protection and other general business law and intellectual property law issues. He often serves as outside general counsel for these types of companies.

Mr. Sloan regularly represents both technology and brick-and-mortar clients in connection with software, IT and other vendor contract negotiations, including software and health care IT transactions valued as high as \$100 million. He regularly counsels hospitals and other health care providers on IT and intellectual property issues. Mr. Sloan takes pride in providing his clients with practical, cost-effective advice tailored for each client's unique business objectives. He is actively involved in the technology and entrepreneur communities, and he is a frequent author, speaker, board member and leader in that community.

Mr. Sloan routinely advises clients on such intellectual property law issues as trademark selection and protection, copyright protection, nondisclosure agreements, trade secret protection and domain name disputes. He is a recognized authority on intellectual property licensing, and is the author of the licensing chapter of both editions of the American Bar Association's book *Intellectual Property Deskbook for the Business Lawyer*. He has handled a variety of website-related disputes, including privacy policies, terms of use, click-wrap, browsewrap, and similar online agreements, the Digital Millennium Copyright Act and domain name disputes under the Uniform Domain Name Dispute Resolution Policy. In the entertainment law sector, Mr. Sloan regularly represents book publishers in connection with a variety of domestic and foreign publishing and licensing matters.

He is actively involved in the Nashville Technology Council, serving on the board of directors and Executive Committee as well as acting as their Chairman Elect and General Counsel. Mr. Sloan was a member of the Nashville Chamber's Partnership 2010 Entrepreneurship Task Force and serves on the advisory board for the Nashville Entrepreneur Center. Mr. Sloan is a long-standing member of the Executive Committee of the Tennessee Bar Association's Intellectual Property Law Committee.

Mr. Sloan is a frequent speaker and contributor to CLE seminars, Nashville Area Chamber of Commerce, Nashville Technology Council events and other similar events. Follow him on Twitter [@casloan](#) and LinkedIn [@chrissloanesq](#).

### **Professional Honors & Activities**

- Listed in *The Best Lawyers in America*® in Intellectual Property Law (2005 – 2006, 2009 – 2010), Information Technology Law (2007 – 2012) and Copyright Law (2012)
- Listed as a Rising Star in *Mid-South Super Lawyers* (2011)
- Chairman of the Board, Member of Board of Directors and Executive Committee – Nashville Technology Council
- Board of Directors – Life Science Tennessee
- Advisory Board – Nashville Entrepreneur Center
- Listed – *Nashville Post* "In Charge" list - Technology (2011)
- Named – "Power Leaders in Technology for 2011" by the *Nashville Business Journal* (August 2011)
- Executive Committee and Intellectual Property Committee – Tennessee Bar Association
- Founding Board of Directors – Nashville Preparatory Charter School
- Member – Nashville, Tennessee and American Bar Associations
- Member – Partnership 2010 Entrepreneurship Task Force
- Member – American Health Lawyers Association
- Mentor – JumpStart Foundry

### **Publications & Recent Speaking Engagements**

- Speaker – "Law of Technology: What You Need to Know," Tennessee Bar Association, September 22, 2011
- Panelist – "Venture Capital 101," Tennessee Governor's Conference, September 22, 2011
- Judge – TechVenture Challenge, Nashville, Tennessee, April 5, 2011
- Judge – Belmont Business Plan Competition, Nashville, Tennessee, April 1, 2011
- Moderator – "Negotiating a Term Sheet," Nashville Technology Council's Entrepreneurial Series, Nashville, Tennessee, February 15, 2011

- Speaker – Owen Entrepreneurship Center Breakfast, Nashville, Tennessee, September 24, 2010
- Panel member – "Panel Discussion: IT License Agreements," 2010 Mississippi Software Institute, Jackson, Mississippi, February 26, 2010
- Speaker – "Top 10 Issues for Software Companies," 2010 Mississippi Software Institute, Jackson, Mississippi, February 16, 2010
- Speaker – "Capital Formation," Nashville Technology Council's Entrepreneurial Series, Nashville, Tennessee, December 3, 2009
- Speaker – "Doing Business in China," North Alabama International Trade Association, Huntsville, Alabama, September 1, 2009
- Speaker – "IP for Small Businesses," Green Hills Rotary Club, Nashville, Tennessee, August 7, 2009
- Panel Member – "China—Still the Land of Opportunities for U.S. Businesses," Nashville Area Chamber of Commerce's China Business Group, Nashville, Tennessee, January 13, 2009
- Speaker – "Service Level Agreements: Tricks and Traps for the Unwary," Tennessee Bar Association's "The Law of Technology: What You Need to Know" seminar, Nashville, Tennessee, September 26, 2008

### **Admissions**

- Tennessee

### **Education**

- Vanderbilt University Law School, J.D., 1999
- University of Virginia, B.A., 1996

### **Interests**

Chris is actively involved in many conservation organizations locally, nationally and internationally. He is one of the more widely recognized regional experts on bird identification and distribution, and he co-authors a quarterly column on birds of Tennessee & Kentucky for *North American Birds*. Several of his papers on birds have been accepted and published in scientific journals. Chris is also an avid nature photographer and has sold photos to publications in North American and Europe. Some of his pictures can be found at [www.chrissloanphotography.com](http://www.chrissloanphotography.com).



**Robert L. Wollfarth, Jr.**

Of Counsel  
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Robert "Rob" Wollfarth practices in the Firm's New Orleans office representing private and publicly-held companies located across the country. As a member of the Firm's M&A and Tax Groups, he concentrates his practice on assisting large and small companies with a wide variety of business transactions including, but not limited to, start-up, tax planning, acquisitions of tax and economic incentives, business combinations, acquisitions and sales, contractual relationships, financing of projects and operations, restructuring, buy-outs and dissolution. Rob prides himself on providing his business clients with creative solutions rather than just answers to their questions. His focus is always on helping his clients attain their goals, rather than merely a legal result, and doing so in a cost-effective manner.

## **Representative Matters**

### Business Formations

- Minimized foreign corporation's tax and other liabilities by structuring its ownership in the U.S. of \$1.5 billion of oil and gas assets.
- Successfully negotiated llc operating agreement between privately-held Louisiana company and non-Louisiana publically-traded partnership in connection with their formation of a marine towing business consisting of \$70 million of assets.
- Guided non-Louisiana oil and gas drilling company through a maze of Louisiana licensing and tax filing requirements to qualify the company to conduct business in Louisiana.
- Assisted numerous tax exempt organizations, including one of the first charter school associations formed in Louisiana after Hurricane Katrina, with forming legal entity to engage in tax exempt activities and preparing and filing federal tax exemption applications.

### Acquisitions and Sales

- Represented ship building company in connection with acquisition of tens of millions of dollars of ship building assets from seller in bankruptcy proceeding.
- Negotiated and closed sale by clients of their privately-held offshore diving company for over \$50 million.
- Negotiated and closed client's acquisition of multi-million dollar landfill business.

### Contractual Relationships

- Helped municipality stimulate economic growth by preparing and successfully negotiating on its behalf an agreement with foreign airline providing for the only direct flight between municipality and foreign business destination.
- Assisted numerous clients with preparing and negotiating employment agreements, independent contractor agreements, settlement agreements, indemnity agreements, confidentiality agreements, brokering agreements, option agreements and other kinds of agreements.

#### Tax and Economic Incentives

- Represented Fortune 100 film and television production company in connection with earning and selling tens of millions of dollars of Louisiana Motion Picture Investor Tax Credits.
- Represented clients in connection with development of multi-million dollar real estate projects utilizing Federal and Louisiana New Markets Tax Credits, Historic Tax Credits and other incentives.
- Advised numerous clients in connection with earning and obtaining the benefit of Federal and Louisiana tax and economic incentives including, but not limited to, Research and Development Tax Credits and Digital Interactive Media and Software Tax Credits.

#### Financing Transactions

- Prepared documentation needed by national charitable organization for making grants to other charitable organizations and individuals.
- Acted as bank counsel in connection with large lending transactions.
- Represented film studio clients in connection with film finance transactions.
- Assisted clients with obtaining equity financing through private placement transactions.

#### Recent Publications & Speaking Engagements

- Presenter – "Navigating Louisiana Sales and Use Taxation," NACM-Louisiana Inc. Education (November 18, 2011)
- Presenter – "Company Formation and Taxation," Baker Donelson Emerging Company Boot Camp at Idea Village (March 2011)
- Author – "[Spotlight on Louisiana: An Overview of Louisiana's Motion Picture Investor Tax Credit](#)," Baker Donelson Tax Alert (May 2011)
- Author – "[Spotlight on Louisiana: Revival of State's Angel Investor Tax Credit Program](#)," Baker Donelson Tax Alert (June 2011)
- Author – "[Spotlight on Louisiana: Experimentation Results in Less Taxation](#)," Baker Donelson Tax Alert (September 2011)
- Author – "[Spotlight on Louisiana: A Digitally Enhanced Incentive](#)," Baker Donelson Tax Alert (October 2011)
- Lecturer – "Hiring a Lawyer in Connection with your Film Production," University of New Orleans Entertainment Law Class (October 2011)

- Presenter – "Tax Incentives for Emerging Companies," Baker Donelson Emerging Company Boot Camp at Louisiana Technology Park (November 2011)

### **Professional Honors and Activities**

- Listed as a Louisiana Rising Star by *Louisiana Super Lawyers*, 2012
- Member – Leadership Jefferson Class of 2011
- Member – Urban Land Institute, Louisiana Chapter (Sponsorship Committee Member, Advisory Board Member)
- Member – Louisiana Industry for Film & Entertainment
- Member – Louisiana Technology Council
- Member – Baker Donelson Emerging Company Institute
- Member – Baker Donelson Legal Opinion Committee
- Member – Baker Donelson Economic Development Team

### **Admissions**

- Louisiana, 1997

### **Education**

- New York University School of Law, J.D. and LL.M, Taxation, 1997
- Tulane University, B.S., Mathematical Economics, 1994



## **David C. Rieveschl**

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David C. Rieveschl concentrates his practice in the areas of securities, corporate, mergers and acquisitions, and banking law. His practice includes structuring public and private sales of equity and debt instruments and advising clients on compliance with federal and state securities laws. In addition, Mr. Rieveschl regularly counsels emerging enterprises on issues affecting legal structure, intellectual property rights and venture capital financing, with particular focus on technology, health care and renewable energy companies. Mr. Rieveschl also represents publicly traded and privately held clients (as buyers and sellers) in complex merger, stock and asset purchase transactions.

### **Recent Representative Matters**

- Advised gaming company in: (1) restructuring of Louisiana subsidiaries through multi-step process of mergers, conversions and liquidations, producing projected Louisiana tax savings of approximately \$3 million per year; (2) issuance of \$500 million worth of senior notes in connection with corporate refinancing; and (3) amendment of credit facility extending existing facility by \$1.5 billion.
- Represented retirement community in connection with \$30 million revenue bond issuance by St. Tammany Public Trust Authority to finance construction of new facilities.
- Represented oil and gas exploration company in acquisition of multiple offshore oil leases located in Gulf of Mexico and production payment purchase financing arrangement to fund workovers of existing wells in Gulf of Mexico.
- Represented wine company through negotiation of wine supply agreement and trademark cross licensing agreements with Chilean wine company.
- Represented publicly traded health care company, including its \$106 million acquisition of leading competitor and \$76 million initial public offering.
- Represented leading global provider of on-demand electronic messaging and transaction services, including its \$67 million acquisition of major competitor and \$70 million senior convertible debt offering.
- Represented telecommunications holding company, including its \$201 million senior convertible debt offering and \$81 million acquisition of group of Louisiana based cellular tower companies.
- Guided publicly traded energy company through tax-driven corporate restructuring.

- Counseled specialized supplier of biofuel energy systems engaged in the design, manufacture and construction of biofuel combustion plants for the production of heat or combined heat and power for clients in North America.
- Counseled startup venture engaged in the production and distribution of cellulosic ethanol.
- Advised developer of clean combustion technologies for biosolids and other organic wastes in its offering and sale of up to \$42 million of Series B Preferred Stock to group of United States and international investment funds.
- Represented company engaged in the importation, distribution, marketing and sale of wine, including its initial rounds of financing and trademark protection of brands created.
- Guided leading provider of automated wide-area surveillance through its sale to leading provider of energy and environmental solutions, building controls, fire safety and security systems.
- Oversaw bank holding company's \$48 million sale to publicly traded strategic acquirer.
- Represented publicly traded bank holding company, including its \$23 million acquisition of strategic target.
- Guided publicly traded bank holding company through its going private transaction.
- Represented multiple non-profit educational institutions in Louisiana government bond financing transactions.

### **Publications & Speaking Engagements**

- Organizer and Presenter – Baker Donelson Emerging Company Boot Camp, New Orleans Entrepreneur Week, New Orleans, Louisiana (March 25, 2011)
- Panelist – The Idea Village Entrepreneurship 101 Series, New Orleans, Louisiana (January 5, 2011)
- Organizer and Presenter – Baker Donelson Emerging Company Boot Camp, Baton Rouge and New Orleans, Louisiana (November 16 & 18, 2010)
- Panelist – Technology Issues in Acquisitions, 23rd Annual Technology Law Institute, Institute of Continuing Legal Education in Georgia, Atlanta, Georgia (October 16, 2008)

### **Professional Honors & Activities**

- AV<sup>®</sup> Preeminent<sup>™</sup> Peer Review Rated by Martindale-Hubbell
- Member – Board of Tulane Association of Business Alumni
- Member – Louisiana Technology Council
- Member – Louisiana State Bar Association
- Member – State Bar of Georgia
- Member – Bar Association of the District of Columbia
- Member – New York State Bar Association

- Member – American Bar Association

### **Civic & Community Activities**

- Member – Audubon Nature Institute
- Member – USA Triathlon
- Member – Tulane Association of Business Alumni
- Member – Tulane Law Alumni Association
- Member – Duke Alumni Association and Duke Club of Louisiana
- Member – Lawrenceville Alumni Association

### **Admissions**

- Louisiana, 2003
- Georgia, 2007
- District of Columbia, 1998
- New York, 1998

### **Education**

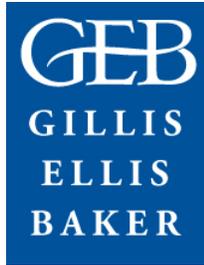
- Tulane Law School, J.D., *magna cum laude*, 1997
  - Managing Editor, *Tulane Law Review*
- A.B. Freeman School of Business, M.B.A., 1997
- Duke University, B.A., 1991



**Rob Johnson**  
**New Orleans**  
**+1 504 592 4874**  
**robert.johnson@ey.com**

Rob is a Partner in the New Orleans office of Ernst & Young with 16 years of public accounting experience. Currently, he primarily serves insurance industry clients and health care clients, including, life insurers, property casualty insurers, health insurers provider care companies. Rob has been involved in initial public offerings, mergers and acquisitions and provider care debt offerings. Current clients include Universal American Corp., Pan-American Life Insurance Group, Blue Cross Blue Shield of Louisiana, Amerisafe, Inc., Peoples Health, Louisiana Workers' Compensation Corporation, Tulane University Hospital and Clinic, and North Oaks Health System.

Rob received a BS degree from the University of New Orleans and is a certified public accountant in Virginia, Louisiana, Texas and Mississippi. He is a member of Healthcare Financial Management Association, American Institute of CPA's and the Louisiana Society of CPA's.



**Parke Ellis**

Parke has been with the agency since 1981. As a producer, Parke focuses on the entire spectrum of insurance and risk management for his client base. The result is a large, well balanced book of business which includes commercial lines, personal lines and benefits. Parke holds the Chartered Property Casualty Underwriter (CPCU) designation.

A graduate of St. Martin's High School in Metairie, LA and Washington & Lee University in Lexington, VA, Parke has also served the insurance industry in the following capacities:

- President – Independent Insurance Agents of Greater New Orleans
- President – Associated Risk Managers (ARM) of Louisiana
- Board Member – Associated Risk Managers (ARM) International
- Secretary Treasurer/Board Member – Independent Insurance Agents & Brokers of Louisiana

Parke is a very active volunteer in the New Orleans community, including both in a civic capacity and with his church. He has served as a board member with the local chapter of the Red Cross and currently is a member of Friends of the Cabildo.

A native of New Orleans, Parke continues to call the Crescent City home with his wife, Nancy, and their two daughters.



**Rodrick T. Miller**

Rodrick T. Miller is the president and CEO of the New Orleans Business Alliance, the official economic development organization responsible for driving long-term economic vitality of the City of New Orleans. Miller arrives at the NOLA Business Alliance, after having served as the Executive Vice President of the Baton Rouge Area Chamber for the last year. In that role, he managed the day-to-day operations, strategic planning, and coordinated efforts for the firm's \$20M capital campaign. Previously, Miller was Vice President of International Economic Council (GPEC) where he lead international economic development activities which encompassed foreign direct investment (FDI) attraction, deepening relationships with foreign markets, and increasing international competitiveness of the region. Miller was instrumental in crafting the Arizona Global Network, a statewide collaboration of economic development organizations. Through his development of GPEC's action plan, Miller delivered 9,600 jobs in just two years through his leadership in the areas of competitiveness practice and public policy efforts. Before GPEC, Rod held a myriad of positions in the public and private sectors with the City of Glendale, Infrastructure Management Group, Ernst & Young, and CEMEX.

Miller has a Master of Public Policy degree from Harvard University's Kennedy School of Government and a Bachelor of Science degree in international business from St. Augustine's College. He also gained a Graduate Diploma in Finance from the Monterrey Institute of Technology (ITESM) in Mexico while completing a Fulbright Fellowship there. Rodrick was a Woodrow Wilson Fellow and a Fellow at the International Career Advancement Program at the Aspen Institute. Miller was recognized by *Ebony Magazine* as a rising young leader under 30, the *Phoenix Business Journal* as one of the "Forty Leaders in Arizona under 40", *The Phoenix Business Journal* as a "Global Power Player" and the *Arizona Republic* as the "Executive of the Week".

Miller is an intellectually curious professional whose interest lie at the intersection of economic development, international commerce, innovation, and community action. A scholar practitioner, he is a sought after lecturer and contributes to various publications on diverse topics including the economy, education, and diversity. He enjoys playing the piano, reading, and spending time with his family. Miller is fluent in Spanish and proficient in Portuguese.



## SouthCoast ANGEL FUND

The South Coast Angel Fund LLC (South Coast) is a member-managed angel capital fund designed to utilize the capital, resources, and expertise of its members to invest in entrepreneurial, early-stage companies, primarily within Louisiana and the Gulf Coast community. The Fund seeks to involve a broad base of successful entrepreneurs, business executives, and professionals to create profits for its members by investing its funds as well as the business expertise, contacts, and resources of its members. More information on South Coast Angel Fund can be at [www.southcoastangelfund.com](http://www.southcoastangelfund.com)

Clayton White has over 25 years of experience in legal, finance, budgeting, management and strategic planning for start-up and early-stage companies. His background includes organizational structure, mergers and acquisitions, financial management and controls, capital structure, and corporate governance. He has taken companies through the venture capital process and successful exits. His education includes a B.S. in Physics, an MBA—Management and Finance, and a Juris Doctor – he is licensed to practice law in Louisiana and Alabama.



**Dr. Ralph Maurer** is a principal of EMH Strategy and is responsible for the strategy, culture, and engagement methodologies of the firm. He is also the Executive Director of the Family Business Center at Tulane University and the former executive director of the New Orleans Startup Fund. Ralph's work and consulting experience includes time with the Rank Group, Apple, and Daimler-Benz Research and Development. He received a BS in History and Communication Studies from Northwestern University, an MBA in Technology Management and Entrepreneurship from the University of Florida and a PhD in Strategy and Organizations from Stanford University in the department of Management Science and Engineering. While at Stanford he was a member of the Center for Work, Technology and Organization and the Stanford Technology Ventures Program.

**EMH Strategy** is a strategy and management consulting firm, founded by John Elstrott, Ralph Maurer and Jeremy Hunnewell. Our consultants offer customized solutions to assist businesses experiencing periods of profound change or grappling with complex and ambiguous issues. Our mission is to provide our clients with the expertise and knowledge of a large business consulting firm combined with the superior customer service, rigorous methodologies, and sensitivity to local context made possible in a boutique firm.

Through the use of proven methodologies and a collaborative, process-oriented engagement style that emphasizes a deep understanding of the client's business environment, we produce valued results for each unique project that we undertake.

**EMH Strategy** provides management consulting services in the following vertical markets:

- Family Businesses
- Private—Public
- Venture Capital
- Consumer Experience

Each project we undertake is approached and executed differently, according to the client's unique needs. However, at the core of each project, our business consulting services focus on our clients' most critical issues and opportunities:

- Organizational Assessment
- Strategic Planning
- Continuity Planning
- Financial Services
- Business Design
- Economic Impact Analysis
- Implementation



**Lester F. Alexander, III**

Mr. Alexander is an experienced private equity investor, mezzanine lender, corporate executive and investment banker. As a Managing Director with MSB Fairway Capital Partners, he raises funds, makes subordinated debt and equity investments in growing middle market companies in a variety of industries and also provides a range of investment banking services to his clients.

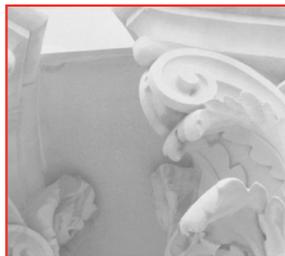
Prior to joining MSB Fairway Capital Partners, Mr. Alexander was a Senior Vice President with Advantage Capital Partners, a \$1.3 billion private equity and venture capital firm. While at Advantage, he completed 13 investments totaling approximately \$30 million. Mr. Alexander served on the board of directors of several portfolio companies including Current Solutions, Niagara Dispensing Technologies, Safety Tubs and Selltis, and was a board observer of ArcMail Technology.

Mr. Alexander was president of Ferrara Fire Apparatus, Inc., a leading fire truck and emergency response vehicle manufacturer. At Ferrara, he was responsible for a workforce of 450 employees producing over 300 vehicles annually for its domestic and international customers at its 300,000 square foot manufacturing facility in Hammond, Louisiana.

Mr. Alexander has 15 years of investment banking experience. He was a Managing Director with Howard Weil in New Orleans, Louisiana and Houston, Texas and also worked for LeCorgne Loewenbaum & Co., Southcoast Capital, and J.C. Bradford & Co. in Nashville, Tennessee. As an investment banker, he completed over 50 capital markets transactions totaling more than \$7 billion for public and private companies in a wide range of industries including energy, healthcare, technology, industrial manufacturing and business services. He has advised companies on initial public offerings and secondary offerings of debt and equity securities, completed private placements for early and later stage growth companies and participated in a number of merger and acquisition transactions.

Mr. Alexander earned his MBA degree from the University of North Carolina and his bachelor's degree in commerce from the University of Virginia. He serves as Chairman of Finance on the global board of the Association for Corporate Growth (ACG) and he founded, was president and currently serves as a director of the Louisiana chapter of ACG. He is also a former member of the Young Presidents' Organization. Mr. Alexander is a frequent speaker at local, regional and national conferences on various financial and investing topics and has participated as a guest lecturer at Tulane University and other universities.

# BAKER DONELSON'S FIRM PROFILE



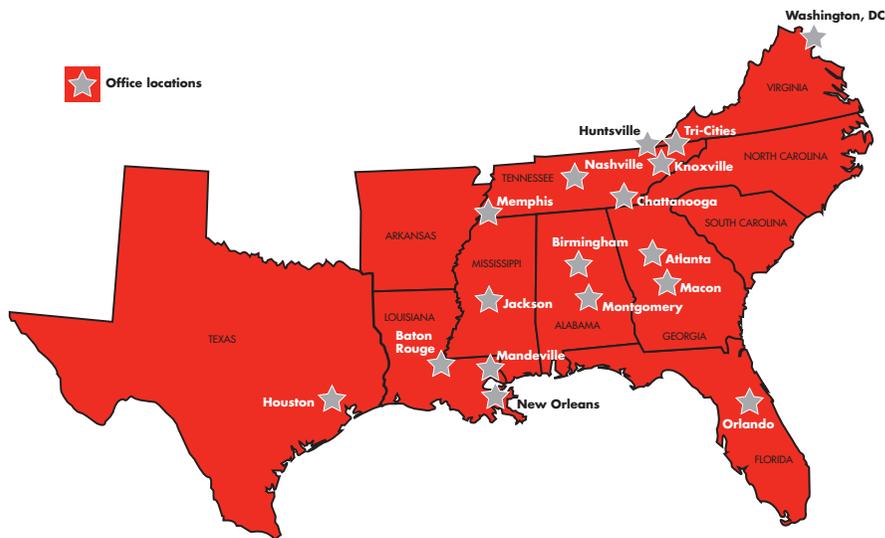
**BAKER DONELSON**  
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Since our beginnings in 1888, Baker Donelson has built a reputation for achieving results for our clients on a wide range of legal matters. While providing legal services is our focus, it is how we deliver them that sets us apart. Our goal is to provide clients with more than what they have come to expect from a law firm.

Baker Donelson commits to a deep understanding of a client's business, to enable us to anticipate clients' needs and assist in their decision making processes. Because we offer consistent, knowledgeable guidance based on their specific goals and objectives, clients view us as a valued business partner. This allows them to focus on the growth and success of their business, confident their legal issues will be handled by an attentive, responsive team.

Our unique approach to providing legal services is enabled by our extensive support structure. As the 73rd largest law firm in the U.S., Baker Donelson gives clients access to a team of more than 600 attorneys and public policy advisors representing more than 30 practice areas, all seamlessly connected across 18 offices to serve virtually any legal need. Clients receive informed guidance from experienced, multi-disciplined industry and client service teams. Our diversity and women's initiatives ensure diversity in our people, perspectives and experiences. Technology helps us operate more effectively and efficiently by providing instant access to client-specific information and other key resources.



#### States of Licensure

- Alabama
- Arkansas
- California
- Colorado
- Connecticut
- Delaware
- District of Columbia
- Florida
- Georgia
- Illinois
- Indiana
- Kentucky
- Louisiana
- Maryland
- Massachusetts
- Michigan
- Minnesota
- Mississippi
- Missouri
- Montana
- Nebraska
- New Jersey
- New Mexico
- New York
- North Carolina
- Ohio
- Pennsylvania
- Rhode Island
- South Carolina
- Tennessee
- Texas
- Virginia
- West Virginia
- Washington
- Wisconsin

## Firm Recognition

- Named as 73rd largest law firm by *National Law Journal* in 2011.
- Ranked by FORTUNE as one of the “100 Best Companies to Work For” in 2010, 2011 and 2012.
- 182 Tier 1 metropolitan rankings in 2011 *U.S. News – Best Lawyers “Best Law Firms”* list.
- Consistently ranked in the “Top 100 U.S. Law Firms For Diversity” by *Multicultural Law* magazine since 2005.
- Ranked in the “Top 100 Law Firms For Women” since 2008 by *Multicultural Law* magazine.
- Since 2006, listed as a “Go-To Law Firm” in the *Directory of In-House Law Departments* of the Top 500 Companies produced by *Corporate Counsel* and *American Lawyer Media*.
- 69 attorneys in *Chambers USA: America’s Leading Business Lawyers* in 2011.
- 196 attorneys in *Best Lawyers In America®* in 2012 edition. Based upon total number of attorneys listed, we rank first in the nation in the areas of Banking and Finance Law, Business Organizations, Closely Held Companies and Family Businesses Law, Commercial Finance Law, Commercial Transactions/UCC Law, Mass Tort Litigation/Class Actions, Personal Injury Litigation, Privacy and Data Security Law, Product Liability Litigation, Medical Malpractice Law and Transportation Law.
- 81 attorneys in *Mid-South Super Lawyers* and 23 attorneys in *Mid-South Rising Stars* – covering Arkansas, Mississippi and Tennessee; 17 attorneys in *Louisiana Super Lawyers*; 13 attorneys in *Alabama Super Lawyers* and 7 attorneys in *Alabama Rising Stars*; 7 attorneys in *Georgia Super Lawyers*; 7 attorneys in *Georgia Rising Stars*; 2 attorneys in *Florida Super Lawyers*; and 1 attorney in *Texas Super Lawyers* (all 2011 lists).
- Ranked in Tier 1 nationally in transportation Law in 2011 *U.S. News – Best Lawyers “Best Law Firms”* list.
- Ranked as one of the top ten Labor and Employment Litigation firms in the nation by *Employment Law 360* (2006, 2007).
- Ranked among the top bond counsel firms in Mississippi by *The Bond Buyer* (2007, 2008).
- Ranked by *Modern Healthcare* as the fifth largest health law practice in the U.S. (2011).
- Named by *Health Lawyers News* (June 2009) as one of the top ten health law practices in the nation.
- Named by *Nightingale’s Healthcare News* (May 2006) as one of the nation’s largest health care law practices.
- Selected by *Chambers USA: America’s Leading Business Lawyers* (2010) as one of the nation’s leading health law practices.
- Ranked by *Intellectual Property Today* since 2007 as one of the top 100 trademark firms in the country.
- Named by *Benchmark: Litigation* (2009) as a Recommended Firm in Louisiana, Mississippi and Tennessee.
- Ranked by FORTUNE as one of the top ten public policy firms in Washington, D.C. in its most recent survey of this kind.

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The Rules of Professional Conduct of the various states where our offices are located require the following language: THIS IS AN ADVERTISEMENT. Ben Adams is Chairman and CEO of Baker Donelson and is located in our Memphis office, 165 Madison Avenue, Suite 2000, Memphis, TN 38103. Phone 901.526.2000. No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers. FREE BACKGROUND INFORMATION AVAILABLE UPON REQUEST. © 2012 Baker, Donelson, Bearman, Caldwell & Berkowitz, PC *The Best Lawyers in America*® 2012, Copyright 2011 Woodward/White, Inc., Aiken, S.C.

# BAKER DONELSON'S EMERGING COMPANIES PRACTICE



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## Emerging Companies

Baker Donelson's Emerging Companies Team is a multidisciplinary group of attorneys focused on representing the unique interests of high-growth start-up companies and other emerging businesses. Our attorneys are proactive in understanding our clients' businesses and the communities necessary to support them. This helps us provide practical, timely legal advice to meet our clients' needs.

Emerging companies take many shapes and forms. Many in their early stages have significant legal needs that can be critical to their long-term success. But these companies often lack sufficient resources to afford legal advice under the traditional, hourly-rate model. To address these challenges, the Emerging Companies Team has embraced the use of fixed-fee legal services as well as educational programs to provide affordable and effective legal services for early stage, high-growth companies.

We partner with emerging companies through all stages of their development, providing innovative solutions for the legal and business challenges they face.

- Formation – Entity formation is a crucial stage for companies, as it sets the foundation for a business' future.
  - We advise on business strategy and planning, assembling the founding management team, selecting and forming the appropriate business entity, and raising necessary capital from investors who can support and accelerate emerging company growth.
- Capital – Capital is a precious resource and the lifeblood for emerging companies.
  - We have extensive relationships with investors who can assist emerging companies at various stages of maturity, including growth stage venture capital funds, strategic investors, and private equity funds, in addition to experience with various forms of debt and mezzanine financing and initial public offerings that we leverage to help our emerging business clients grow.
- Intellectual Property – Emerging companies rely on the potential of their ideas, which means IP must be protected to confidently move forward.
  - Our team includes experienced patent lawyers with deep experience developing and protecting emerging clients' intellectual property rights. In addition, we work with clients to leverage their IP through licensing, development, reseller, distribution, and other strategic agreements that generate revenue streams and other business opportunities.
- Compliance – Emerging businesses have numerous legal and regulatory compliance risks to consider.
  - Members of our team provide counsel regarding taxation and regulatory compliance at the local, state, federal and international levels. We also regularly assist our clients with

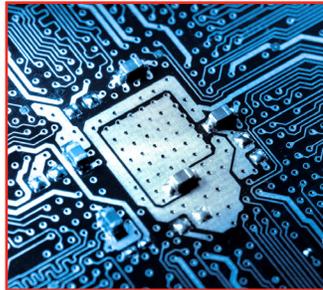
structuring stock option and other employee incentive plans and preparing employment, consulting, confidentiality, HIPAA and proprietary information agreements.

- Deals – As emerging businesses grow, many pursue deals to expand operations, acquire other companies or secure new revenue streams.
  - We have experienced corporate attorneys on our team to ensure that the deals we do for clients are not only legally and technically sound, but that they also fit with the company's strategic objectives. Our focus is always on doing the deal that helps our clients meet their goals.

The members of our Emerging Companies Team are not only seasoned legal professionals, but they also possess deep experience in the industries they serve. They provide a range of legal services that focus on the strategic business goals of our clients. We work with all types of rapid-growth companies operating in a wide range of industries, including information technology, digital media, life sciences, health care, alternative energy/cleantech, telecommunications and technology-enabled services.

From idea to IPO, the Baker Donelson Emerging Companies Team is here to support your business.

BAKER DONELSON'S  
**CORPORATE**  
PRACTICE



**BAKER DONELSON**  
BEARMAN, CALDWELL & BERKOWITZ, PC

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Clients choose Baker Donelson for their corporate work because they know we can service their entire company. We learn and understand their businesses and industries so that we can be in a position to respond to their legal needs. Our more than 150 business attorneys partner with all types of clients, whether publicly or privately held, local, state, federal or global, to give them thoughtful and effective solutions. We address even the most complicated business matters in an interdisciplinary way, channeling the Firm's knowledge and experience to achieve the desired result. Business practice areas include securities, corporate governance, mergers and acquisitions, corporate finance, business planning, entity formation and commercial and international transactions.

Baker Donelson's clients include hospitality, financial services, drug/biomedical, aviation, gaming, transportation, retail, manufacturing, construction, energy and real estate development companies, and a wide variety of service industries and ecommerce and technology companies.

Our primary goal is to be our clients' strategic partner in developing solutions to critical problems and, ultimately, to help clients achieve their business goals.

### **Advice & Board Representation**

Baker Donelson attorneys advise on all types of day to day matters for clients, and routinely serve as outside general counsel when needed. Clients include public and private companies, management, boards of directors, independent board committees and stockholders. We work closely with our clients to provide strategic advice on corporate structuring and reorganization, joint ventures,

buy-sell agreements, partnership issues, leases and contracts, employment agreements and more. We also advise on liability issues, compliance and disclosure duties, and fiduciary duties among others.

### **Compliance**

We give our clients practical advice on compliance issues even as the statutory and regulatory approaches to the responsibility and liability of our clients are changing. We assist our clients in complying with new standards of information-gathering and reporting, including contract compliance plans, internal disclosure controls and inquiries from customers in the ordinary course of business, as well as inquiries from oversight agencies during investigations.

We also help with internal compliance processes for companies subject to regulatory requirements, and assist with external compliance for (i) non-regulated vendors providing products and/or services to regulated companies, or (ii) regulated companies that are providing products and/or services to customers outside of their own regulatory environment.

### **Finance**

Baker Donelson's Corporate Finance practice is one of the most active and highly regarded in our region. Our corporate finance lawyers have served as counsel for issuers, underwriters, placement agents and investors in a full range of financial transactions. We have extensive experience in initial and secondary public offerings, 144A offerings, shelf registrations and takedowns, Regulation S and Regulation D private placements for public and private companies, debt offerings, registered exchange offers, equity linked

securities, mezzanine finance and other capital raising transactions. Our securitization group can assist with transactions involving asset-backed securities as well as sophisticated real estate financing transactions. We negotiate intercreditor arrangements and subordination agreements, handle letter of credit issues, bond financings, factoring and security documents, and assist in the creation and perfection of liens and security interests in all manner of collateral.

We regularly represent private companies in their legal needs in raising capital and in debt financing. We also represent sponsors and investors to help establish private equity investment vehicles, including leveraged buy-out funds and venture capital funds, and are regularly involved in structuring and negotiating the funds' investments. We oversee buyouts and recapitalizations

We have extensive experience in SEC and other regulatory compliance matters that could affect a transaction, including the rules and processes of the National Association of Securities Dealers and of stock exchanges such as the New York Stock Exchange and the NASDAQ Stock Market, as well as the various state securities regulators. Members of our Group have served as general counsel to private and public companies and have acquired unique knowledge and insight as to the issues and concerns that affect public companies and their general counsel.

### **Mergers & Acquisitions**

We assist clients in a range of transactions, such as stock and asset acquisitions, mergers, going-private

transactions, corporate spin-offs and joint ventures. Acting as counsel to both buyers and sellers, we have significant experience representing clients in many different industry segments and have dedicated resources to make sure that we understand every aspect of our client's business.

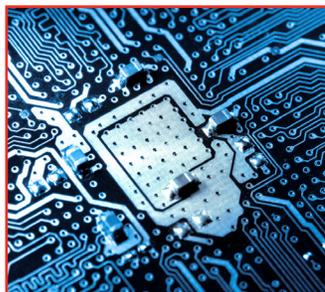
Our team of corporate, transactional and M&A attorneys know that clients expect their lawyers to provide strategic counsel and practical solutions delivered on time and on demand. Some transactions require a cross-disciplinary but unified approach to complex transactions that draws from attorneys with deep industry knowledge across several legal areas. Our experience includes representing clients from a wide spectrum of industries such as technology, hospitality, financial services, energy, manufacturing, drug/biomedical, retail, aviation, gaming and transportation.

### **Technology & IT Procurement**

One of our key strengths lies in our experience with both vendors and purchasers of technology, products and services. With more than 150 years of cumulative experience within the Business Technology Group, we understand the business drivers on both sides of a technology purchase or sale transaction and use this knowledge to achieve the most favorable result for our clients.

Clients are serviced in areas including IT procurement; information privacy and security management; joint ventures and alliances; and all types of contracts and agreements.

BAKER DONELSON'S  
**CORPORATE FINANCE**  
PRACTICE



**BAKER DONELSON**  
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## Corporate Finance

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We are committed to understanding our clients' businesses so we can assist them in assessing various financing options and choose the ones that will best satisfy their business needs and complement their strategic objectives. Our corporate finance attorneys apply their legal and practical experience

in structuring, negotiating and closing transactions in ways that maximize the goals of the Firm's clients. They regularly work with lawyers in other practice groups such as commercial lending, litigation and intellectual property, to incorporate their knowledge into the transactions.

Our corporate finance lawyers have extensive experience in SEC and other regulatory compliance matters that could affect a transaction, including the rules and processes of the National Association of Securities Dealers and of stock exchanges such as the New York Stock Exchange and the NASDAQ Stock Market, as well as the various state securities regulators. Members of our Group have served as general counsel to public companies and have acquired unique knowledge and insight as to the issues and concerns that affect public companies and their general counsel.



## Representative Matters

- Cement manufacturer – \$17 million initial public offering
- Medical Properties real estate investment trust – \$127 million initial public offering
- Agricultural products company – \$64 million tender offer
- Regional airline – \$110 million senior convertible note offering
- National bank – \$5 billion bank note program
- Personal automobile insurance company – \$130 million follow-on offering
- Regional airline – \$271 million initial public offering
- Internet company – \$15 million common stock PIPE
- Bank holding company – \$400 million subordinated debt shelf registration takedown
- Chemical manufacturing company – \$90 million private placement of senior notes
- Fabrics and home furnishings retailer – \$110 million secured financing
- Manufacturer – \$200 million subordinated note offering
- Internet company – Sale and license of image management system
- Personal automobile insurance company – \$170 million initial public offering
- Mutual fund – \$485 million registration statement/proxy statement
- Bank holding company – \$100 million subordinated debt shelf registration takedown
- National bank – \$250 million subordinated debt offering
- Barge company – \$65 million public tender offer for preferred ship mortgage bonds
- Oil and gas company – \$80 million senior credit arrangement
- Oil and gas company – \$120 million public exchange offer of debt for equity and debt
- Pharmaceutical products manufacturer – \$1.5 billion shelf registration
- Banks – Formation of new banks in Clarksville, Nashville, Murfreesboro, Greeneville, Shelbyville, Cleveland, Franklin, Memphis and Lebanon, Tennessee: \$5 – 11 million capital raises and secondary offerings
- Retailer – \$46 million secondary offering
- Fund manager – \$50 million private placement
- Technology infrastructure company – \$30 million private placement
- Merchant banking fund – \$50 million private placement
- Telecommunications company – \$150 million Regulation S private placement
- Fund manager – \$15 million private placement
- Assisted living facility provider – \$542 million private debt placement and restructuring
- Pharmaceutical products manufacturer – \$110 million shelf registration takedown
- Internet product company – \$72 million follow-on stock offering
- Pharmaceutical products manufacturer – \$165 million secondary offering (shelf)
- Internet product company – \$72 million initial public offering

## Representative Matters and Experience

- Retained as “preferred vendor” to the technology law unit of a Fortune 100 financial services company to provide assistance in negotiating technology (and other) procurement transactions and create template contract forms (with instruction manuals) for technology procurement transactions.
- Represented one of the largest Internet hardware and technology service providers in the world in revising and standardizing its worldwide technology services agreements and development of “playbooks” for contract negotiations.
- Regularly work with corporate clients to develop template documents for vendors and purchasers such as Master Agreements, Services Agreements, Equipment Agreements, License Agreements, Software Development Agreements, Maintenance Agreements and Outsourcing Agreements.
- Represented Fortune 50 company in negotiating a license of software for the secure transfer of files among all of its worldwide locations.
- Represented largest Internet hardware and services provider in selling Voice Over IP and related hardware, software, and services to Fortune 50 company and in selling Internet hardware, routers, and switchers to various Fortune 200 companies.
- Developed strategy and drafted electronic contracts for ISP company to govern all online services.
- Designed and implemented information privacy and security compliance program for Fortune 100 company. Program encompassed all of the company’s worldwide (more than 30) offices and addressed the European Union Data Protection Act as well as the laws and regulation of several other countries.
- Created document retention program and policy for international electronic parts distributor.
- Prepared Gramm-Leach-Bliley policies and procedures for Fortune 500 company.
- Developed appropriate service level agreements for mission critical service provider in financial industry.
- Represented regional hospital in outsourcing of entire IT department, including transitioning of employees.
- Revised large pharmaceutical company’s Employee Information Technology Practices and presented seminars for all company locations and sales force.
- Represented software development company in software transaction with national entertainment lighting company.
- Acted as outside general counsel to IT development and managed services outsourcing companies.
- Represented Internet company in negotiating and documenting more than 100 strategic alliance, image marketing, distribution, licensing, service, technology, non-disclosure, product purchase, architecture program and other agreements with “best in class” customers and service providers.
- Represented a large Internet computer reseller and refurbisher in preparing terms and conditions of sale agreements, privacy statements and hyperlinking agreements.
- Documented the transfer of ownership of computer files and assignment agreements for a large telecommunications software/hardware corporation.

Since 1888, Baker Donelson has built a reputation for achieving results for our clients on a wide range of legal matters. While providing legal services is our focus, it is how we deliver them that sets us apart. Our goal is to provide clients with more than what they have come to expect from a law firm.

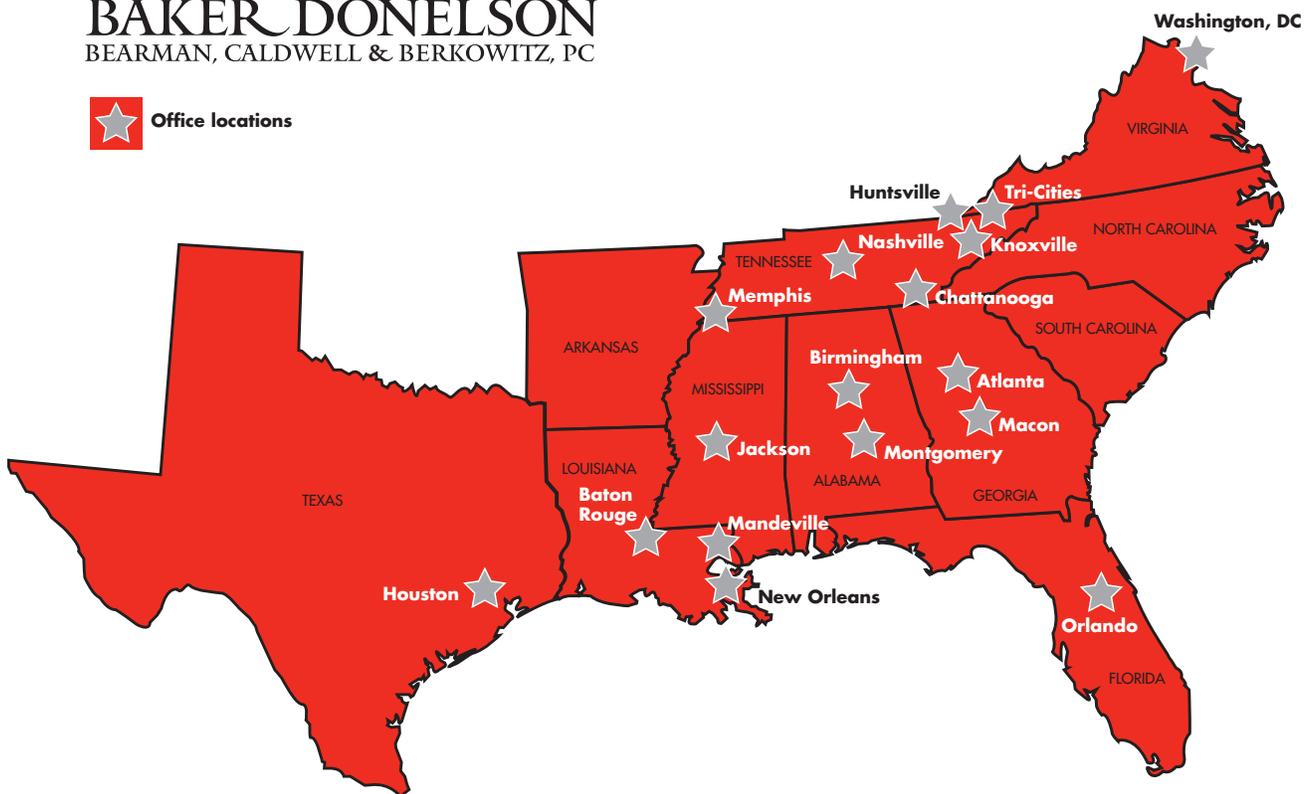
Our unique approach to providing legal services is enabled by our extensive support structure. As the 73rd largest law firm in the U.S., Baker Donelson gives clients access to a team of more than 570 attorneys and public policy advisors representing more than 30 practice areas, all seamlessly connected across 15 offices to serve virtually any legal need. Clients receive informed guidance from experienced, multi-disciplined industry and client service teams. Our diversity and women's initiatives ensure diversity in our people, perspectives and experiences. Technology helps us operate more effectively and efficiently by providing instant access to client-specific information and other key resources.

The experience, integrity and commitment we bring to our clients have earned Baker Donelson numerous distinctions, including:

- 71 attorneys recognized by *Chambers USA* as leaders in their field (2011).
- 198 attorneys in *Best Lawyers in America*® 2012 edition
- 129 attorneys recognized as *Super Lawyers*.

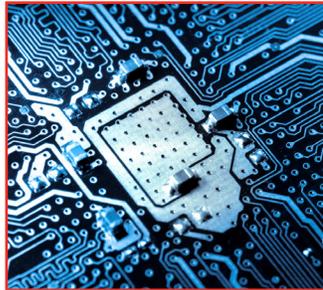
## BAKER DONELSON

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BAKER DONELSON'S  
SECURITIES AND CORPORATE  
GOVERNANCE  
PRACTICE



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The Baker Donelson Business Department covers the full spectrum of corporate transactions important to domestic and foreign businesses. Business attorneys at Baker Donelson address even the most complicated business matters in an interdisciplinary way, channeling the Firm's knowledge and experience to achieve the desired result. Business practice areas include securities, corporate governance, mergers and acquisitions, corporate finance, business planning, entity formation and commercial and international transactions.

Baker Donelson has more than 150 business attorneys who provide timely, thoughtful and effective solutions to business clients, whether publicly or privately held. The business attorneys work in concert to address all aspects of client needs, be they local, state, federal or global. The Firm's primary goal in working with clients is to be a strategic partner in developing solutions to critical problems and, ultimately, to help clients achieve their business goals.

### **Corporate Finance**

Our corporate finance lawyers have served as counsel for issuers, underwriters, placement agents and investors in a full range of financial transactions. We have extensive experience in initial and secondary public offerings, 144A offerings, shelf registrations and takedowns, Regulation S and Regulation D private placements for public and private companies, debt offerings, registered exchange offers, equity linked securities, mezzanine finance and other capital raising transactions.

Our corporate finance lawyers have extensive experience in SEC and other regulatory compliance matters that could affect a transaction, including the rules and

processes of the National Association of Securities Dealers and of stock exchanges such as the New York Stock Exchange and the NASDAQ Stock Market, as well as the various state securities regulators. Members of our Group have served as general counsel to public companies and have acquired unique knowledge and insight as to the issues and concerns that affect public companies and their general counsel.

### **Corporate Compliance**

With more than 60 years of cumulative corporate compliance experience within the Group, Baker Donelson draws upon lessons learned from a wide range of business environments involving not only "internal compliance" for companies subject to regulatory requirements, but also "external compliance" for (i) non-regulated vendors providing products and/or services to regulated companies, or (ii) regulated companies that are providing products and/or services to customers outside of their own regulatory environment.

One of our key strengths lies in our experience across the spectrum of compliance environments, from SOX, GLB and HIPAA to OFAC, PATRIOT Act and EU schemas with regulated entities and the vendors that sell into regulated industries. We understand the regulatory and the business drivers on both sides of compliance-related requirements, and can use this knowledge to achieve the most favorable result for the client. This breadth of experience allows us to avoid unnecessary roadblocks and to fashion creative compliance solutions within the specific operating environment of the client.

## Private Companies

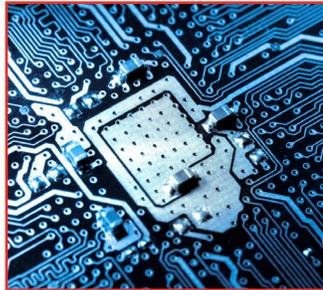
Baker Donelson attorneys provide counsel on a full range of corporate issues relating to privately held companies of any form. Baker Donelson's clients include retail, manufacturing, construction, energy and real estate development companies, and a wide variety of service industries and ecommerce and technology companies.

Baker Donelson also has extensive experience in working with family management transitions, wealth restructurings and difficult ownership issues. Our full-service law firm resources provide a full range of experience and service to the private company, including capital formation.

## Public Companies

The Securities Group represents publicly held companies in connection with a wide variety of matters governed by the federal securities laws. As a central part of our public company representation, we regularly advise our clients on the applicable requirements of the Securities Exchange Act of 1934, the rules and regulations of the Securities and Exchange Commission (SEC), and the listing standards of the NYSE, NASDAQ and AMEX. Moreover, due to the substantial experience of our attorneys (a number of whom are former general counsels of public companies), we are able to go beyond technical compliance and identify for our clients the "best practices" among public companies across the spectrum of corporate conduct. To best represent our clients, we learn and understand their businesses and industries so that we can be in a position to respond promptly, expertly and effectively to their legal needs.

BAKER DONELSON'S  
**BUSINESS TECHNOLOGY**  
PRACTICE



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## **Business Technology**

Baker Donelson maintains a multi-disciplinary group of lawyers to assist clients with the wide-ranging issues of business technology law. With more than 150 years of cumulative experience within the Business Technology Group, Baker Donelson draws upon all types of business transactions involving the purchase, sale and licensing of technology products and services.

One of our key strengths lies in our experience with both vendors and purchasers of technology, products and services. We understand the business drivers on both sides of a technology purchase or sale transaction and will use this knowledge to achieve the most favorable result for our clients.

## **Representative Experience**

- Corporate/IT Procurement
- Information Privacy and Security Management
- Outsourcing and Offshoring
- Emerging Companies
- eHealth/HealthIT
- Patent and technology licenses
- Intellectual property and technology acquisitions and divestments
- Joint ventures and strategic alliances
- Collaboration agreements
- Development, manufacturing and commercialization agreements
- Distribution, supply and OEM agreements
- Software licensing
- Internet law/E-Commerce
- Network agreements, including telecom, voice, data and related technologies
- Consulting agreements, including project management and labor related services
- Subscription service agreements (ASP/Software as a Service)

Baker Donelson has assisted in educating thousands of its clients' employees in relevant aspects of business technology law. In addition to providing continuing education materials and extranet resources, we have created forms and manuals for legal staff and procurement executives. Baker Donelson attorneys also routinely act in a mentoring capacity to their clients' junior in-house legal and procurement staffs, which help those clients maximize their in-house capabilities to reduce the need for outside legal services for routine/repetitive business technology matters.

## Special Recognition in Technology Area

Our Business Technology Group is recognized by academics, trade and professional directory authorities as having expertise in intellectual property and technology law. Our attorneys have been listed in Best Lawyers in America® since 2006 for the categories of Information Technology and Technology. They are often invited to develop continuing legal education programs on business technology transactions and to act as officers/directors of international consortia dealing with new issues created by the evolving digital environment. The Firm's attorneys have been at the forefront of the IT evolution, representing the first "IBM-PC clone" manufacturer in the United States in the 1980s and creating the first digital rights licensing system in the 1990s.

Examples of recognition of Baker Donelson experience within this practice area:

- Senior attorneys within Baker Donelson's Business Technology Group took leadership responsibility for production of the ABA's Model Website, which provides forms and accompanying commentary for transactions involving the sale of goods, services and software via the Web.
- A major legal publisher selected a lead attorney from the Baker Donelson Business Technology Group to author its seminal publication in information technology. The work is the template

for the publisher's "Technology Transactions and Intellectual Property – Forms and Practice Manual" series.

- Baker Donelson attorneys regularly teach technology law issues as adjunct professors or guest speakers at Vanderbilt Law School and The University of Tennessee College of Law and speak at seminars nationally on technology law issues.
- One of Baker Donelson's attorneys has been the chair of the Business and Technology Law Program for the Tennessee Bar Association for the last 10 years.
- Baker Donelson's attorneys are involved in training members of the judiciary in technology law issues.
- Senior attorneys within Baker Donelson's Business Technology Group have been selected by Thomson Reuters publishers to author texts on Application Service Provider/Software as a Service Agreements and Patent Licensing Agreements.

The Firm currently serves the ever-expanding business technology needs of large corporate clients such as Cisco Systems, The Hartford Financial Services (IT and Procurement Department), Hilton Hotels, Hunter Fan, King Pharmaceuticals.



## Representative Matters and Experience

- Retained as “preferred vendor” to the technology law unit of a Fortune 100 financial services company to provide assistance in negotiating technology (and other) procurement transactions and create template contract forms (with instruction manuals) for technology procurement transactions.
- Represented one of the largest Internet hardware and technology service providers in the world in revising and standardizing its worldwide technology services agreements and development of “playbooks” for contract negotiations.
- Regularly work with corporate clients to develop template documents for vendors and purchasers such as Master Agreements, Services Agreements, Equipment Agreements, License Agreements, Software Development Agreements, Maintenance Agreements and Outsourcing Agreements.
- Represented Fortune 50 company in negotiating a license of software for the secure transfer of files among all of its worldwide locations.
- Represented largest Internet hardware and services provider in selling Voice Over IP and related hardware, software, and services to Fortune 50 company and in selling Internet hardware, routers, and switchers to various Fortune 200 companies.
- Developed strategy and drafted electronic contracts for ISP company to govern all online services.
- Designed and implemented information privacy and security compliance program for Fortune 100 company. Program encompassed all of the company’s worldwide (more than 30) offices and addressed the European Union Data Protection Act as well as the laws and regulation of several other countries.
- Created document retention program and policy for international electronic parts distributor.
- Prepared Gramm-Leach-Bliley policies and procedures for Fortune 500 company.
- Developed appropriate service level agreements for mission critical service provider in financial industry.
- Represented regional hospital in outsourcing of entire IT department, including transitioning of employees.
- Revised large pharmaceutical company’s Employee Information Technology Practices and presented seminars for all company locations and sales force.
- Represented software development company in software transaction with national entertainment lighting company.
- Acted as outside general counsel to IT development and managed services outsourcing companies.
- Represented Internet company in negotiating and documenting more than 100 strategic alliance, image marketing, distribution, licensing, service, technology, non-disclosure, product purchase, architecture program and other agreements with “best in class” customers and service providers.
- Represented a large Internet computer reseller and refurbisher in preparing terms and conditions of sale agreements, privacy statements and hyperlinking agreements.
- Documented the transfer of ownership of computer files and assignment agreements for a large telecommunications software/hardware corporation.

Over the past 121 years, Baker Donelson has built a reputation for achieving results for our clients on a wide range of legal matters. While providing legal services is our focus, it is how we deliver them that sets us apart.

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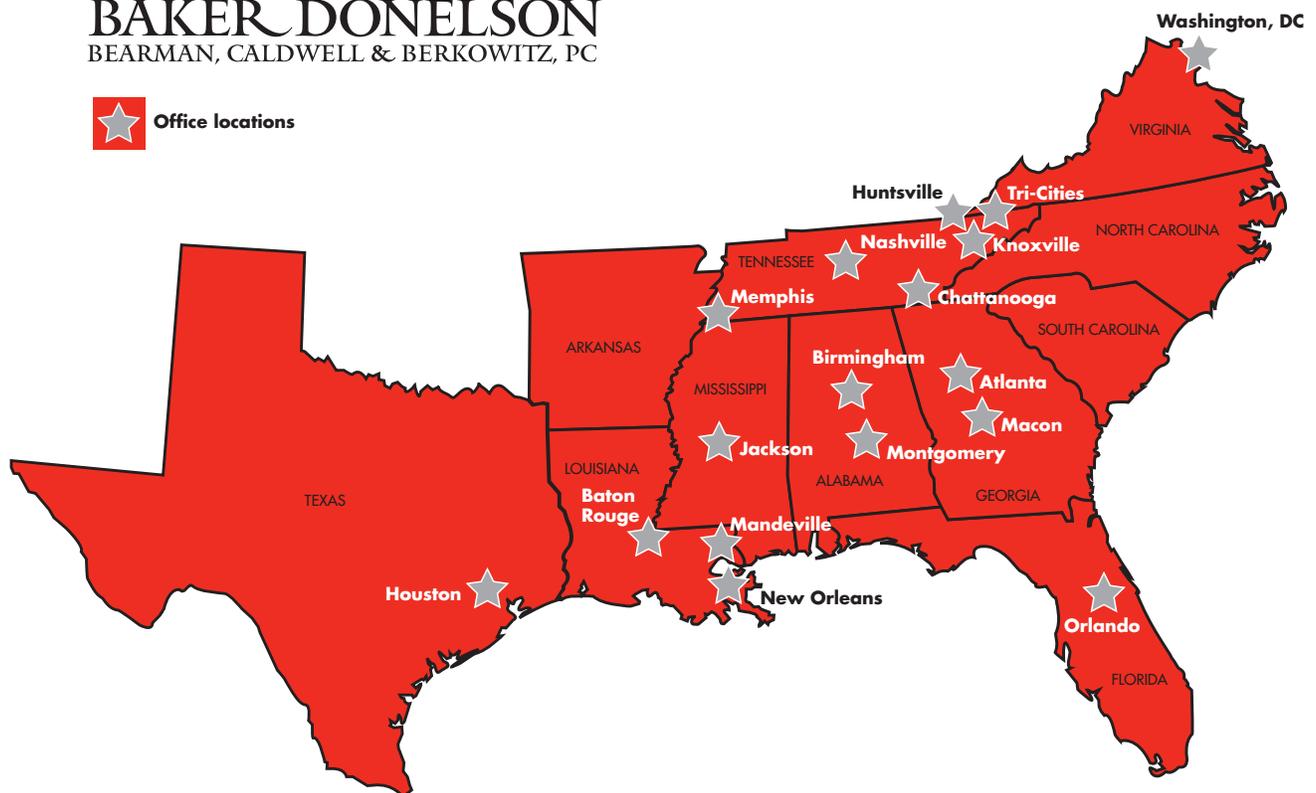
- 71 attorneys recognized by *Chambers USA* as leaders in their field (2011).
- 198 attorneys in *Best Lawyers in America*® 2012 edition
- 129 attorneys recognized as *Super Lawyers*.

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Office locations



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# BAKER DONELSON'S INTELLECTUAL PROPERTY PRACTICE



**BAKER DONELSON**  
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## Intellectual Property

The Intellectual Property Group undertakes responsibility for the protection of inventions and other forms of intellectual property for clients ranging from start-ups to Fortune 500 companies. We obtain, defend and enforce patents, trademarks and copyrights in the United States and throughout the world. The Firm has developed relationships with intellectual property lawyers in many major foreign countries, and has facilitated applications, patents and registrations of trademarks in over 80 foreign jurisdictions.

Our attorneys have established a reputation for practical, common-sense business approaches to client concerns, as well as sophistication in dealing with a range of intellectual property issues for firms of all sizes. We have broad experience in patent representation, trademark disputes and branding concerns for our clients whether an emerging company or a Fortune 500. We help our clients manage their intellectual property assets as an integral part of a comprehensive business and competition strategy. Our attorneys are experienced in formulating overall intellectual property strategy, including substantive analysis and recommendations for branding protection of intellectual property interests. Our work includes branding audits for clients as well as brand protection work for international companies, including name dispute proceedings. We are able to offer strategy for resolving difficult freedom-to-operate obstacles, negotiating licensing agreements, and effectively utilizing existing intellectual property portfolios to strengthen clients' competitive positions. Our attorneys also have handled several hundred complex intellectual property litigation matters in numerous jurisdictions in the United States

and overseas, as well as before the U.S. International Trade Commission.

The Group's attorneys are experienced in mechanical, electrical, chemical and biochemical technologies. We have secured patents in a broad array of technologies, products and services, including industrial processes and equipment; chemical compositions and processes; biomedical and chemical technologies, including peptide transporters, DNA sequences, pharmaceutical compositions and methods, stem cells, medical therapies for treatments of diseases, medical research tools and devices; electronic circuits and devices; ceiling fans, electronic programmable thermostats, lighting fixtures and optical devices; packaging and related components; rehabilitation and mobility apparatus; control systems for processes and equipment; telecommunications systems and products; electric transmission and distribution apparatuses; computer hardware and software; ecommerce applications and business methods; fishing products; beverages; textiles; financial and banking services; and various consumer products.

### **Biotechnology, Pharmaceuticals, and Medical Devices**

The Intellectual Property Group has a core group devoted solely to this industry, with experience representing clients in matters related to medical systems, medical devices, chemical, biotechnological, and pharmaceutical patents. This includes fermentation and extraction of proteins, food additives and processes, small molecule pharmaceuticals, metallurgy, packaging materials, electronic materials and associated methods of manufacture and use, electrolysis, as well as polymeric processes and

applications. In the biotechnology field, in particular, this includes immunology, gene therapy, genomics, bioinformatics, plant biotechnology, fermentation, cancer therapy, small molecule pharmaceuticals, and biotechnology research tools.

### **Intellectual Property Services for the Energy Industry**

Our attorneys have hands-on experience in the energy industry and have worked with some of the world's

largest oil companies and service companies in patent matters which include geomechanical modeling, drill bit design, well injectivity analysis, "smart well implementation," maritime vessel designs, downhole production tools and methods, offshore drilling tools - just to name a few. Baker Donelson attorneys understand the issues from the client's perspective, having worked in the industry as engineers and consultants.

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### **Representative Matters**

- Secured portfolio of U.S. and foreign patents for startup drug-testing company that is now the exclusive testing facility for three state governments.
- Obtained patent for biosensors comprising a covalently attached monomolecular biological conjugate layer and a transducing device.
- Obtained patent for process for decellularizing soft-tissue engineered medical implants, and decellularized soft-tissue medical implants produced.
- Obtained patent for transplantable recellularized and reendothelialized vascular tissue graft.
- Obtained patent for pharmaceutical composition for treating angiocardopathy and the method of producing thereof.
- Obtained patent for intraocular multifocal lens.
- Obtained patent for use of high frequency ultrasound imaging to detect and monitor the process of apoptosis in living tissues, ex-vivo tissues and cell-culture.
- Prosecuted patent application directed to optical sensor based on surface electromagnetic wave resonance in photonic band gap materials.
- Prosecuted patent applications directed to surgical instruments and method for corneal reformation.
- Prosecuted patent application directed to RFID-based system and method for tracking patient flow.
- Prosecuted patent application directed to system and method for human gait analysis.
- Prosecuted patent application for provisional percutaneous pedicle markers and methods of use thereof in spinal implants.
- Successfully invalidated patent by proving the claimed tool did not work as represented to the patent office or in the patent itself and obtained costs for defendant accused of infringement.
- Obtained product exclusion order from the United States International Trade Commission (ITC) against foreign and domestic companies importing into the United States products that infringed two U.S. patents of the client.
- Obtained consent judgment and withdrawal of trademark application by defendant in trademark and trade dress infringement action relating to 4 x 4 truck tires.
- Obtained trademark registrations for client's scent-emitting products and obtained patent coverage directed to company's primary product.
- Prepared and prosecuted patent applications directed to video imaging devices used in police vehicles.
- Successfully argued and won reversal on appeal

of copyright infringement claim brought against client publishing a directory of factual information about cable systems throughout the country.

- Secured portfolio of U.S. and foreign patents for a start-up manufacturer of flexible containers that has secured production contracts with a major international foods company.
- Secured portfolio of U.S. patents for start-up manufacturer of asbestos abatement products that now has annual sales in excess of \$25 million.
- Secured important U.S. patent directed to packing for high temperature, high pressure valves.
- Prosecuted U.S. patents for corrugated paperboard containers providing increased shipping and handling protection for products, including containers for outboard motors.
- Successfully enjoined competitor from copying designs of commercial refrigeration parts embodying trade dress of client.
- Successfully enjoined competitor from copying consumer packaging designs embodying trade dress of client.
- Defended and prosecuted trademark registrations and oppositions at the Trademark Trial and Appeal Board of the U.S. Patent and Trademark Office, including oppositions concerning trade

dress for thermoformed consumer food packaging products, concerning trademark for tobacco products, and concerning trademark for beverage for dogs.

- Successfully litigated domain name registrations that infringed clients' marks.
- Enjoined infringing use of client's trademark and trade dress for firearms.
- Prepared and prosecuted patent applications for apparatus and method for earth-retaining walls made of cementitious blocks and soil reinforcement sheets.
- Obtained patent coverage directed to small aperture sheets for stabilization of earthen slopes.
- Successfully defended foundation against copyright infringement, RICO, fraud and implied trust claims concerning rights of alleged visionary to publications and assets of nonprofit organization.
- Obtained monetary relief from defendant in patent infringement action concerning improved template technology for "instant-photo"-type cameras.
- Handled patent infringement action concerning apparatus for dispensing checks, money orders and other negotiable instruments.

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## Representative Clients

- American Contract Bridge Company
- Arcade Marketing, Inc.
- Arre Industries, Inc.
- Bayer AG
- Casablanca Fan Company
- Chattanooga Orthopaedic Group
- First Tennessee Bank
- Frontier National Corporation
- Gordon Biersch Brewery
- Hunter Fan Company
- Life Care Centers of America
- Mid-South Milling Company
- Morgan Keegan & Company
- North American Container Corporation
- Regal King
- Rexel, Inc.
- Stewart Water Solutions
- Thiele Kaolin Company

BAKER DONELSON'S  
**TAXATION — FEDERAL  
INCOME, EMPLOYMENT AND OTHER  
PRACTICE**



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Baker Donelson's tax attorneys are knowledgeable and experienced in a wide range of federal tax law matters. Our tax attorneys regularly provide clients with sophisticated federal tax advice covering matters such as individual income tax planning; business tax planning; employment classifications and tax compliance, audit preparation and representation within the IRS administrative appeals process; tax litigation with the IRS; and enforcement actions by the IRS. We stay informed of significant IRS rulings and notices, proposed regulations, court decisions and related procedures affecting federal tax law, and put that knowledge to use for our clients. The Tax Department regularly updates our clients on current and proposed legislation, with detailed analysis and direct contacts for clients needing more information.

### **Individual Tax Planning**

We have considerable experience advising individual clients with respect to income tax planning, such as compensation issues, stock options, real estate and other investment considerations, among many other tax areas of interest to individuals. Our tax attorneys are knowledgeable in a wide range of individual income tax matters and we assist clients in arranging their affairs in the most tax efficient manner. Additionally, our attorneys draw on a wealth of federal tax experience, including audit preparation and tax litigation, to provide advice that is uniquely informed and beneficial to clients.

### **Business Planning, Mergers and Acquisitions**

At every stage of the business life cycle, companies need experienced professionals to help minimize their tax burden. Our tax attorneys assist clients from the formation of

the business entity to the company's operations and growth strategies, including acquisitions, mergers and reorganizations.

At the beginning of the life cycle, we assist business clients in the choice and formation of the most appropriate business entity for their particular business and tax needs. Clients are advised on the relative advantages and disadvantages of using a partnership, limited partnership, limited liability company, corporation or S corporation, and the most advantageous state in which to form the business entity. On the operational side, clients regularly consult with members of the Tax Department about matters such as employment agreements, non-compete agreements, deferred compensation agreements, stock options, accounting methods and retirement plans.

During the growth stage of a client's business, our attorneys assist clients as they plan for acquisitions and mergers. The Firm has considerable experience in sophisticated acquisition techniques, including tax-favored acquisitive reorganizations, leveraged buy-outs and ESOP acquisitions. In reorganizations, we seek to achieve our clients' goals whether it's strengthening the business financials, divesting a subsidiary or selling a division. If clients decide to close a particular venture, we assist in the liquidation and termination process.

### **Ruling Requests**

Our tax attorneys have extensive experience seeking private letter rulings and transaction-specific guidance from the IRS on behalf of clients when circumstances warrant. We most often make those requests when a business transaction requires IRS approval prior to implementation.

## **Tax Credits and Special Incentives**

We regularly advise on the utilization of and conditions for numerous types of credits that are available under the Internal Revenue Code. In particular, the Firm's tax attorneys advise financial institutions, investors, businesses and many other interested parties with respect to the new markets tax credit, low-income housing credits, various energy related credits, the rehabilitation tax credit and conservation easements. When catastrophes occur, Congress often responds by creating new incentives to encourage redevelopment and promote commerce – such as the Gulf Opportunity Zone Act of 2005 following Hurricanes Katrina, Rita and Wilma – and we have routinely consulted clients on the special bonus depreciation deduction within the GO Zone Act.

## **Employment Tax Classification and Compliance**

Worker classification has recently become an area of focus for the IRS. In light of this focus, businesses must be mindful of how workers should be classified and how and when wages should be reported. Baker Donelson's tax attorneys work closely with our clients to advise them on the various classification factors used by the IRS in ascertaining whether to treat a worker as an employee or independent contractor. We also assist clients in structuring employment arrangements that reflect the client's business needs and comply with federal tax law. Additionally, attorneys in the Tax Department frequently represent clients before the IRS in a wide variety of employment tax disputes, including employment tax audits, worker classification audits, responsible person inquiries, and trust fund penalty assessments.

## **Employee Benefits/ERISA**

See our practice area description on Employee Benefits and Executive Compensation for an overview of our broad experience in this very important area of federal tax law.

## **Tax Controversies**

Our tax attorneys regularly represent clients during audits, administrative appeals, and trial and appellate litigation with the IRS. Attorneys in the Tax Department are experienced in representing clients before the United States Tax Court, federal district courts and federal appellate courts.

## **Enforcement Actions**

In addition to handling tax controversy issues before the IRS, we also have considerable experience representing clients on a wide range of federal tax enforcement actions undertaken by the IRS. Attorneys in the Tax Department regularly represent clients in preparing offers in compromise, installment agreements, penalty and interest abatement requests, and collection due process requests. Additionally, we have successfully petitioned the IRS for removal of federal tax liens and levies on behalf of our clients.

## **International, Excise and Other Tax Matters**

Clients routinely turn to us for consultation on the domestic tax effects of various foreign country income tax treaties, and we have addressed permanent establishment issues under many of them for clients whose activities may be subject to the treaties. In addition, we consult with our clients regarding the necessity for disclosure of foreign accounts, as well as advice concerning participation in voluntary disclosure programs offered from time to time by the IRS with respect to such accounts. Further, our tax attorneys deal with various other types of taxes imposed through the Treasury Department, including the highway excise tax, firearm and ammunitions excise tax, and a variety of other such taxes.

## Representative Tax Matters

- Tax and corporate representation of company in \$2 million redemption of hostile investors.
- Represented company in \$1 billion proposed assessment of IRS. Settled case for less than \$3 million tax paid.
- Represented management in formation of captive insurance companies and alternative risk management vehicles.
- Represented taxpayers in preservation of net operating losses during corporate acquisitions.
- Tax representation of financial institutions in \$500 million credit to insurance acquisition and holding company.

## Representative Clients

- BellSouth Corporation
- Cracker Barrel Old Country Stores, Inc.
- Edwards & Associates, Inc.
- Exide Corporation
- FedEx Corporation
- First Tennessee Bank
- Hunter & Lords Visiting Tailors
- Internet Pictures Corporation
- John H. Daniel Clothing Manufacturing Company
- J.R. Hyde, III
- Level 3 Communications Corporation
- Medical Properties Trust, Inc.
- Piedmont Natural Gas
- Quality Restaurant Concepts
- Rivana Foods, Inc.
- ServiceMasters
- Star Printing Company
- Vining Sparks IBG, Ltd.

BAKER DONELSON'S  
**TAXATION — STATE AND LOCAL**  
PRACTICE



**BAKER DONELSON**  
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## **Controversy and Planning Representation**

Current economic conditions have forced state and local governments to continue their aggressive search for additional revenues. We know that our clients remain focused on managing their exposure to tax pressures. Our state and local tax (SALT) attorneys are dedicated to providing the comprehensive, realistic and value-added services to our clients throughout the United States in dealing with those pressures.

Our SALT group includes 15 attorneys who provide consultation and advocacy for a broad array of clients regarding income, franchise, sales and use, gross receipts, property and other taxes imposed by state and local governments. Our tax attorneys have represented clients with SALT matters not only in all the southeastern states and in Washington, D.C. where our offices are located, but also in a multitude of other states – such as California, the Carolinas, Colorado, Florida, Illinois, Kansas, Maine, Maryland, Michigan, Minnesota, New Hampshire, New York, Oklahoma, Ohio, Pennsylvania, Texas, Virginia, Washington and Wyoming – more than 30 states and Washington, D.C. in total. We have also litigated SALT cases for our clients and defended collection and enforcement actions, and have done so successfully in substantially all of those states.

We guide, advise and represent our clients throughout all stages of any tax disputes

before state and local administrative agencies, and represent our clients in seeking relief within available amnesty, voluntary disclosure, and penalty waiver programs. Additionally, our SALT attorneys regularly advise clients regarding complex transactional issues, planning structures and multi-state opportunities, including tax incentives and credits.

In addition to our traditional representation of clients in SALT matters, our tax attorneys also represent clients with respect to unclaimed property issues. Clients consult with us regarding the planning and defense of unclaimed property audits, whether instituted by the state department of revenue, secretary of state or other offices of state government, including multistate unclaimed property audits involving third-party contract auditors. We also represent clients in unclaimed property administrative or judicial controversies, as well as negotiate voluntary disclosure agreements on their behalf.

Our Tax Department is comprised of attorneys located throughout the Firm's offices in Alabama, Georgia, Mississippi, Louisiana, Tennessee and Washington, D.C. Our tax attorneys have a broad range of practice, including experience with federal, state and local taxation issues, exempt organizations, ERISA and estate planning.

## Representative SALT Matters

- Regularly represent clients in all types of tax audits, before state and local taxing authorities.
- Successfully concluded a multi-million dollar Tennessee sales and use tax audit.
- Successfully represented bottling company in regard to Tennessee franchise and excise tax litigation and in privilege tax audits.
- Represented clients in petitions to waive penalties imposed on Tennessee and Mississippi taxes.
- Represented numerous and varied public utility clients in contesting property tax valuation and other issues.
- Represented common carrier client in contesting state motor fuel taxes.
- Successfully represented client in significant petroleum tax dispute with state department of revenue.
- Successfully challenged in federal court a Wyoming statute that discriminatorily taxed railroads. Ongoing savings to clients exceeds \$7 million annually.
- Retained as appellate counsel in U.S. Fifth Circuit Court of Appeals in case involving taxation of labor support company.
- Successfully overturned trial court's grant summary judgment against client.
- Obtained decision from Alabama Supreme Court declaring city licensing ordinance unconstitutional as an invalid tax in interstate commerce.
- Represented a coalition of Tennessee public utilities in state-wide personal property equalization relief resulting in more than \$10 million in annual savings.
- Represented a major railroad in a property tax valuation case in New York State. Client obtained a 25 percent reduction in taxes for all years at issue and obtained a settlement for four additional years with savings amounting to more than \$50 million.
- Successfully defended automobile dealership in class action litigation involving collection of local taxes on vehicle sales.
- Won appellate case for pipeline companies operating in Tennessee, which will save our clients millions of dollars in property taxes in the coming years.
- Represented publisher of telephone directory in unitary income dispute involving state income tax treatment of dividends from foreign subsidiary. Dividends of \$18 million excluded from taxable income.
- Represented quarry operator taxpayer in severance tax litigation in overturning adverse position asserted by state department of revenue, where adverse decision would have caused a termination of the business.
- Obtained an injunction in federal district court in Kansas on behalf of a private container and automobile rack rail car company enjoining the state from assessing and collecting half of the Kansas gross receipts tax. The suit filed on behalf of our client under §11501 claimed that the gross receipts tax at a 2.5% rate greatly exceeded what the tax liability would be under a properly applied property tax. After significant negotiations, the state consented to a permanent injunction enjoining it from collecting a tax any higher than 1.25% of the Kansas gross receipts.

*continued*

- Represented publisher of telephone directory in unitary income dispute involving state income tax treatment of dividends from foreign subsidiary. Dividends of \$18 million excluded from taxable income.
- Successfully defended automobile dealership in a class action in which plaintiffs claimed that these dealerships had illegally collected the Tennessee Business Tax in association with vehicle sales.
- Secured a full dismissal of taxes owed for national railroad's Chief Transportation Officer, after taking over case from a Big 4 accounting firm. The officer had received a six figure income tax assessment from the Commonwealth of Virginia for his 2005 and 2006 years while he was with another railroad, due to residency versus nonresidency issues.
- Successfully challenged in court the constitutionality of a county privilege tax.
- Regularly negotiate tax incentives at the state and local level for clients throughout the Southeast.
- Represented an architectural metals company in establishing a business location in East Tennessee and secured favorable tax incentives from Tennessee Department of Revenue and non-tax incentives from the Tennessee Department of Economic and Community Development.
- Negotiations on behalf of various clients with the states of Tennessee, Alabama, Louisiana, and Mississippi in regard to tax incentives available through the tax statutes of each state, and negotiations on behalf of clients for non-tax incentives available through state economic development programs.
- Successfully completed sales and use tax audits in Tennessee, Georgia, Louisiana, Pennsylvania, North Carolina, Texas, Florida, Alabama, Mississippi, and Ohio.
- Represented automobile finance/lease companies in contesting application of Tennessee sales tax laws and overturning adverse ruling by department of revenue through enactment of new legislation.
- Represented affiliate companies in contesting nexus asserted by the state of Pennsylvania.
- Represented various clients in regard to completing nexus questionnaires received from various foreign state jurisdictions.
- Represented clients in real and personal property tax disputes, including appraisal and classification disputes.
- Represented clients in obtaining amnesty on voluntary disclosure relief in numerous states.
- Represented cell tower applicants before municipal councils, commissions and boards of zoning appeals for the placement of wireless towers.

# BAKER DONELSON VENTURE CAPITAL PRACTICE



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## Venture Capital

Baker Donelson's Venture Capital Group provides sophisticated counsel to both venture capital and private equity funds and to emerging companies seeking venture capital financing. We represent venture capital clients in their formation and fund raising activities, as well as with all phases of their venture investment activities. We also represent emerging companies who seek venture capital financing as a means to expand their business or exploit other opportunities. With our balanced experience representing both constituents in the venture capital community, we have developed a thorough understanding of the issues and concerns of all parties in a venture capital financing.

Baker Donelson's representation of venture capital and other private equity funds has included funds focused on specific business plans such as biotechnology, to funds focused on specific investment strategies such as mezzanine capital. Our representation of these clients has given us an intimate understanding of private equity funds, their goals and their limitations. We utilize Firm specialists in the critical areas of securities, tax, ERISA, intellectual property and banking regulatory fields to ensure that we have addressed every important issue.

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## Representative Matters

- Photographic film processor — \$2 million mezzanine capital investment
- Environmental remediation company — \$2 million of Series A preferred stock
- Software technology company — \$2 million of preferred stock to angel investors
- Restaurant brewery company — Sale of \$23 million of mezzanine notes and \$12.5 million of Series B and Series C stock
- Internet provider of medical supplies and equipment to hospitals — Private placement of preferred stock to venture capital funds and private investors
- Medical imaging company — Private placement of preferred stock to venture capital funds
- Independent filmmaker — Private placement of equity to fund production and distribution of two documentary films
- Venture capital firms — Facilitated investment in software development and biotechnology startup companies
- Represented wastewater treatment company in connection with fund raising and general business matters
- Assisted in \$10 million of investments by a client venture capital fund in six companies (March 2002 through July 2003)

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## Private Equity Fund Representation

- Private equity fund — Organization of fund and \$12 million private placement offering
- Private equity fund — \$15 million mezzanine capital fund
- Private equity fund — \$30 million mezzanine capital fund
- Private equity fund — \$1.5 million mezzanine capital investment
- Biotechnology venture fund — \$25 million capital raise
- Biotechnology venture fund — \$10 million of multiple investments in target industry

Over the past 121 years, Baker Donelson has built a reputation for achieving results for our clients on a wide range of legal matters. While providing legal services is our focus, it is how we deliver them that sets us apart.

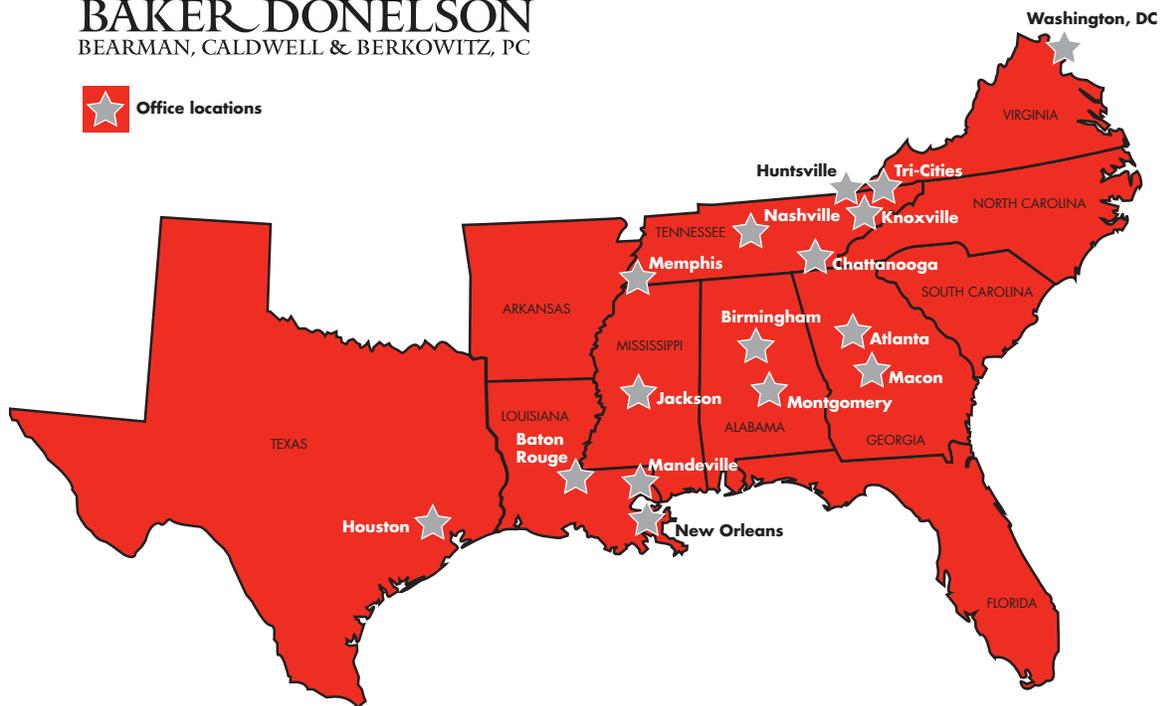
Our goal is to provide clients with more than what they have come to expect from a law firm. Our unique approach to providing legal services is enabled by our extensive support structure. As the 73rd largest law firm in the U.S., Baker Donelson gives clients access to a team of more than 600 attorneys and public policy advisors representing more than 30 practice areas, all seamlessly connected across 17 offices to serve virtually any legal need. Clients receive informed guidance from experienced, multi-disciplined industry and client service teams. Our diversity and women's initiatives ensure diversity in our people, perspectives and experiences. Technology helps us operate more effectively and efficiently by providing instant access to client-specific information and other key resources.

The experience, integrity and commitment we bring to our clients have earned Baker Donelson numerous distinctions, including:

- 71 attorneys recognized by *Chambers USA* as leaders in their field (2011).
- 198 attorneys in *Best Lawyers in America*® 2012 edition
- 129 attorneys recognized as *Super Lawyers*.

## BAKER DONELSON

BEARMAN, CALDWELL & BERKOWITZ, PC



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# BAKER DONELSON'S LABOR & EMPLOYMENT PRACTICE



**BAKER DONELSON**  
BEARMAN, CALDWELL & BERKOWITZ, PC

EXPAND YOUR EXPECTATIONS

# BAKER DONELSON'S LABOR & EMPLOYMENT PRACTICE

With more than 70 attorneys, our L&E team has extensive experience helping clients sort through the complexities of labor and employment issues, helping them succeed.

When you have labor and employment needs, you want a firm that understands and services your entire business. Baker Donelson gives you what boutique labor and employment firms can't: a set of attorneys who are not only dedicated to the practice of labor and employment issues, but who can also tap into an integrated and experienced team of professionals to assist you in every other aspect of your legal business needs. We set ourselves apart by valuing your entire company – not only your employees but also your intellectual property, your shipping and logistics systems, your real estate and equipment assets, your corporate structure and everything that makes your company what it is. And when it comes to your company's most valuable asset – your employees – our labor and employment attorneys are committed to counseling with and advocating for you every step of the way. Our attorneys are experienced in all phases of the employer-employee relationship.

Much of the Firm's labor and employment practice is aimed at litigation avoidance, through working with our clients to ensure their compliance with employment-related laws and regulations such as Title VII of the Civil Rights Act of 1964, Americans

with Disabilities Act of 1990, Age Discrimination in Employment Act, Family and Medical Leave Act, Equal Pay Act of 1963, Work Adjustment and Retraining Notification Act, Drug Free Workplace Act of 1988 and Fair Labor Standards Act, as well as numerous state fair employment practice acts. As another element of the litigation avoidance strategy, our labor and employment attorneys have developed extensive training programs for client supervisors and managers in the areas of union avoidance, workplace harassment prevention, FMLA management and drug-free workplace, among others.

Baker Donelson customarily represents clients in their dealings with labor unions during the election phases of union campaigns and the negotiation of any labor agreements. For clients who have unions already representing their workforce, we pursue management's interests in all phases of the grievance and arbitration process.

Our attorneys have extensive experience in state and federal courts throughout the country defending wrongful discharge claims, various employment-related tort actions and state and federal claims of unlawful discrimination. Clients



are represented before all governmental bodies charged with the enforcement of employment statutes and policies, such as the Department of Labor, National Labor Relations Board and the Equal Employment Opportunity Commission. In response to the significant complications that the Americans with Disabilities Act and the Family and Medical Leave Act have brought to state workers' compensation claims, the Firm has also developed an extensive workers' compensation defense practice.

The Labor & Employment group has been ranked as one of the top ten Employment Litigation firms in the nation by Employment Law 360. In addition, we stand among the *Best Lawyers in America's*<sup>®</sup> top ten firms in the nation for number of attorneys listed in Employee Benefits Law and Workers' Compensation Law, and in the top fifteen for Labor and Employment Law. Our labor and employment attorneys belong to numerous nationally recognized organizations, and we regularly organize and conduct industry-specific seminars and roundtables on relevant topics in the labor law arena. The Group also regularly publishes and distributes legal alerts and industry updates to clients and potential clients. And we don't just talk about best practices – we live it. Baker Donelson is consistently ranked as a "Best Place to Work" in many of our cities, and we place among the top 100 firms for diversity and women in *MultiCultural Law* magazine.

Our experience, reputation and proven cost-effective representation of our clients' labor and employment matters is well-known, and our ability to deliver more than just labor and employment services to our

clients is one more way we have your company's best interests at heart.

We provide counseling, strategy and litigation defense on these and many other labor and employment-related issues:

- ADA/ADAA
- EEO and Title VII
- Employee Benefits and ERISA
- FMLA
- HIPAA
- Immigration
- Labor Law
- OFCCP/Affirmative Action Plans
- OSHA
- Policies and Training
- Reductions in Force
- Restrictive Covenants
- Wage and Hour
- Workers' Compensation

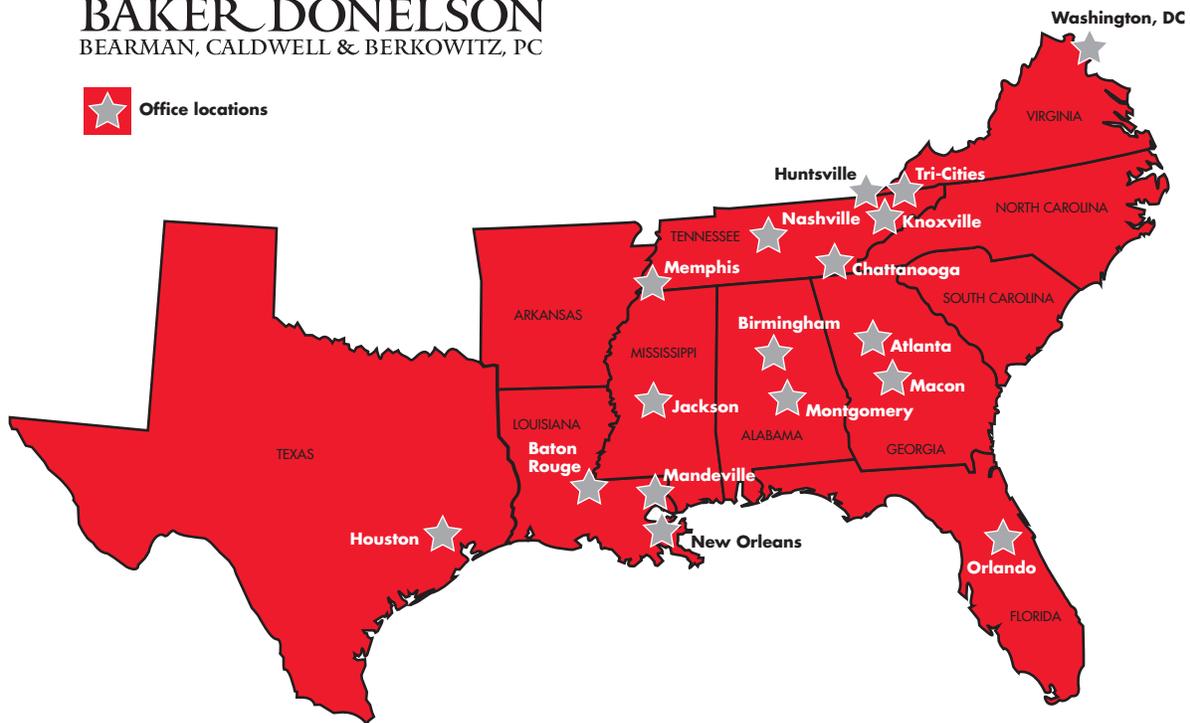
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For more information, contact:

Steve Griffith, [sgriffith@bakerdonelson.com](mailto:sgriffith@bakerdonelson.com), 504.566.5225

Or go to the Labor & Employment area of [www.bakerdonelson.com](http://www.bakerdonelson.com) to review our in-depth experience.

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