bodman

# Banking and Finance

# perfect the details

## Knowledge is power. In the banking and financial services industries, knowledge separates those who falter from those who prosper. Bodman is an unparalleled source of knowledge and experience in Michigan's complex and competitive market.

Our group's members have over 700 years of combined experience counseling banks, credit unions, savings and loan associations, and a variety of non-depository financial institutions, including equipment leasing companies and mortgage lenders. As one of Michigan's largest law firms, we leverage our experience and resources to offer financial institutions advice across many practice areas.

With access to the firm's substantial intellectual property, mergers and acquisitions, tax, environmental, and real estate practices, Bodman offers financial institutions comprehensive legal advice and solutions that are sophisticated and practical.

### SERVICES

## We represent financial institutions in every aspect of the credit cycle and in all aspects of their business. As one of Michigan's largest and most successful law firms, we can leverage our experience and resources to offer financial institutions advice across many practice areas.

With access to the firm's substantial intellectual property, mergers and acquisitions, tax, environmental, and real estate practices, our banking lawyers can offer financial institutions legal advice and solutions that are both sophisticated and practical. Our Banking Practice Group offers:

- **Loan structure advice and documentation, review, and negotiation of secured and unsecured commercial loans, industrial revenue and other tax exempt bond transactions, letters of credit, bankers acceptance and other credit facilities**
- **Representation of financial institutions as lead bank in multi-bank credit facilities**
- **Workout and bankruptcy services, including counseling lenders on loan structure and lender liability issues, especially those relating to the covenant of good faith and fair dealing, fiduciary duties, equitable subordination, and fraudulent transfer**

- **Formation of de novo banks and bank holding companies**
- **Advice on federal and state regulatory matters; legal analysis and updates of legislative and regulatory developments; opinions; and in-house and group seminars**
- **Litigation, including lender liability matters**
- **Environmental counsel on legislative and regulatory developments and compliance**
- **Employment issues, including wrongful discharge claims**
- **Advice on the role of banks as corporate trustees under bond indentures and other debt issues**
- **Derivative transactions including ISDA documentation, master agreements, interest rate swaps, currency swaps and other foreign exchange transactions (FX transactions), and options**
- **Review and negotiation of equipment leasing transactions, including equipment lease originations, purchase and sale of equipment leases, non-recourse and other financing related to equipment leases, and remarketing of off-lease assets**

## REPRESENTATIVE MATTERS

### AIRCRAFT LOANS

- We have broad experience representing financial institutions in aircraft finance transactions. Our services include negotiating and documenting loans to finance the acquisition of aircraft and engines. We have particular experience with transactions involving fleet financing, fractional interests in helicopters and corporate jets, airlines, cargo carriers, medi-vac helicopter companies, and companies that buy and sell aircraft engines and engine parts.
- In addition to single bank aircraft loans, we have also represented a lender, as agent, in syndicated loans secured by aircraft. Since the ratification by the United States of the Cape Town Convention on International Interests in Mobile Equipment in 2006, we have also advised and assisted lenders with taking the steps necessary to perfect a lien against qualifying airframes and engines, including registering interests with the International Registry.

### AUTOMOTIVE FINANCE

- We represented the administrative agent in a $235 million syndicated secured credit facility for a major sub-prime automobile finance company with nationwide operations.

### BOAT LOANS

- We document and negotiate all aspects of boat loan transactions including acquisition financing of new or used commercial and pleasure vessels that are nationally registered with the United States Coast Guard or state registered, and non-acquisition financing for which a vessel serves as part of the collateral pool.
- We have experience preparing, reviewing and negotiating Coast Guard documents, including preferred ship mortgages, abstracts of title, vessel registration documentation, builder's certifications and title transfers.

- We have expertise closing multi-jurisdiction, international transactions.

**BOND WORK**

- We advise on the role of banks as corporate trustees under bond indentures and other debt issues.
- We represented a lender in its purchase of a $200 Million Revenue Bond issued by the City of Detroit Downtown Development Authority to finance the construction of the multi-use Events Center Project in Detroit's entertainment district, including a new arena for the Detroit Red Wings hockey team.

**CROSS-BORDER TRANSACTIONS**

- We give cross-border financing advice and provide documentation with expertise in a wide range of secured and unsecured financing, including syndications, acquisition and recapitalization financing, asset-based lending, aircraft and specialized collateral.
- We advise on the tax rules in Canada and the United States providing lenders with a competitive advantage.
- We represented a national bank as administrative agent and lender on a $100 million senior secured credit facility to a Canadian public company with subsidiaries in Canada and the United States.
- We represented a national bank as administrative agent and lender on a $74 million senior secured credit facility to a US public company with subsidiaries in Europe and Canada. The credit facilities were documented with split collateral supporting separate facilities.
- We represented a bank's international lending group in structuring and documenting a $50 million credit facility secured by classic cars located in the United States, Canada and Europe.
- We represent banks in lending transactions involving companies providing services in the oil and gas industry.

**DEBTOR IN POSSESSION LENDING**

- We have negotiated and documented cash collateral orders and DIP financing facilities for our lender clients in numerous Chapter 11 bankruptcies. We are also experienced in negotiating intercreditor agreements entered into in connection with such facilities.
- We represented a bank as agent and lender in a $150 million revolving DIP loan facility to a Tier-1 automotive supplier. We represented the same bank as agent and lender in a $150 million revolving exit facility that closed on the effective date of the company's confirmed Chapter 11 plan of reorganization. We negotiated the financing, documented the facilities, negotiated intercreditor agreements with the company's term lenders and also negotiated the lenders' issues in accommodation agreements with the company's major customers (GM, Ford, Chrysler, Nissan

and BMW).

### ENVIRONMENTAL SERVICES / RENEWABLE ENERGY

- We represent banks in documenting and negotiating loan documentation for borrowers in the environmental services industry, including waste management and solar segments.
- Represented a bank, as administrative agent on behalf of several financial institutions, in a $1.1 billion facility for a renewable natural gas producer.

### EQUIPMENT LEASE FINANCING

- We document and negotiate equipment leasing transactions, including equipment lease originations, purchase and sale of equipment leases, non-recourse and other financing related to equipment leases, and remarketing of off-lease asset transactions.

### HEALTHCARE AND EDUCATION LENDING

- As counsel to a bank's Healthcare and Nonprofit lending group, we structured, documented and negotiated a syndicated (multi-lender) construction loan facility for the construction and equipping of a 105-unit, 160-bed skilled nursing facility in the City of Detroit.
- We represented a lender in structuring, documenting, and negotiating the direct purchase of $53.4 million in tax-exempt bonds issued by a municipal conduit. The proceeds were used to acquire, construct, and equip an assisted living and skilled nursing facility and to refund and retire prior bonds.
- We represented lenders in connection with loans secured by Medicare and Medicaid receivables.
- We represented a lender in structuring, documenting, and negotiating a direct purchase of $75.5 million in tax-exempt bonds issued by a municipal conduit for the benefit of a not-for-profit provider of continuing-care retirement communities and services.
- We represented the administrative agent in a $100 million senior secured credit facility to a healthcare billing provider.

### INTEREST RATE AND COMMODITY SWAPS

- We represent banks in derivative transactions including ISDA documentation, master agreements, interest rate swaps, currency swaps and other foreign exchange transactions, and options.

### LENDER LIABILITY

- We defend financial institutions in lender liability claims.
- We have resolved many matters in favor of financial institutions, including:

- A foreclosure proceeding where the borrower and guarantors counterclaimed, alleging breach of contract, fraud and breach of fiduciary duty.
- A claim by a personal representative of an estate that a lender breached a loan agreement and acted unreasonably when it sold shares of stock pledged as collateral security.
- A claim by a borrower that a lender breached a contract, breached its fiduciary duties and committed fraud when it refused to renew a line of credit.

**MORTGAGE WAREHOUSING AND MORTGAGE LOAN REPURCHASES**

- We represent banks in structuring, documenting, negotiating and closing direct and syndicated mortgage warehousing lines of credit and repurchase facilities, and mortgage loan servicing secured credit facilities. We also have extensive experience with intercreditor and account control agreements and custodial agreements entered into in connection with such facilities.
- As national lead counsel to a large bank in connection with substantially all direct and syndicated mortgage warehousing lines of credit, we negotiate and document the origination and amendment of more than 100 mortgage warehousing lines of credit in a typical year with an aggregate value of more than $2 billion
- We represented a lender, as administrative agent and a purchaser, in the negotiation and documentation of a $200 million mortgage loan repurchase facility.

**NATIVE AMERICAN GAMING FINANCING**

- We regularly represent banks and other commercial lenders in connection with loans and other credit facilities to Native American tribes and enterprises. These transactions have often (though not always) involved working capital facilities to support gaming enterprises subject to the federal Indian Gaming Regulatory Act, and have included borrowing programs for tribal entities that have no recourse or limited recourse to the tribe itself.
- We recently represented a major commercial bank in a $10 million working capital facility in favor of the gaming enterprise of a major tribe in Minnesota.

**PRIVATE EQUITY / M&A FINANCING**

- We represent national and regional financial institutions in a variety of bilateral and syndicated leveraged and acquisition financings.

**REAL ESTATE FINANCE**

- Bodman represented a bank as administrative agent, arranger, documentation agent and syndication agent (and a lender), on a large syndicated construction loan facility. The transaction involved a $131.6 million multi-bank syndicated construction loan to finance the construction of a 22 story luxury condominium high-rise tower in Naples, Florida.

- We represented the administrative agent in a $37.3 million syndicated credit facility secured by warehouse and retail office building portfolios in four different states. We have documented a luxury residential condominium project in Colorado, apartment complexes in Illinois and North Carolina, a 521-unit condominium project in Florida, a 179-site manufactured housing community in Pennsylvania, and commercial mortgages for a large brokerage firm in ten states.
- We represented a lender in the negotiation and documentation of loans totaling $35 million to a real estate holding company to finance the acquisition and improvement of three auto dealerships in the Chicago area.
- We represented a lender in connection with real estate loans totaling $39 million to various entities owned by one of the nation's largest real estate investment and property management firms. The proceeds financed the purchase of nine apartment projects in Florida.

#### TECHNOLOGY AND LIFE SCIENCES LENDING

- We represent banks in lending transactions involving venture capital-backed emerging and established companies in the technology and life science industries.