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# **COVID-19 - CARES Act and SBA Disaster Assistance Programs**

Mary Comazzi, Barnes & Thornburg LLP  
Jason Myers, Barnes & Thornburg LLP  
Jeremy Reidy, Barnes & Thornburg LLP  
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April 2, 2020



**Mary Comazzi learned precisely what direction she wanted for her career by taking the right steps on the right course at the right time, and she strives to do the same for her clients. Mary's general commercial and aviation clients appreciate her honesty, practicality and responsiveness in assessing their issues and helping address problems they are facing, in the air or on the ground.**

Mary helps clients craft, negotiate and document mergers, acquisitions, reorganizations, joint ventures, and other complex commercial transactions. She also has extensive experience structuring aviation transactions, including domestic and foreign-based aircraft purchases and sales, aircraft leasing agreements, timeshare and interchange agreements, joint and fractional ownership agreements, personal and executive use policies, FAA registrations, and Cape Town Convention and International Registry matters.

An experienced private practice attorney in Michigan, Mary also spent nearly six years as in-house counsel with CHI Aviation, a Michigan-based helicopter services company. There, she developed, implemented and managed programs involving virtually all aspects of its business including human resources, import/export regulatory compliance, Department of Transportation (DOT) and Federal Aviation Administration (FAA) compliance, and facility and employee security clearances. She also handled complex corporate transactions, namely asset purchases and sales, contract review and negotiation and finance matters.

When the stakes and goals are high, Mary leverages her natural determination with her in-house experience and ability to understand the intricacies of the matter at hand and the client's goals to work through a problem until she finds a solution.

Mary's passion, outside of her practice, is giving back to her community – focusing on the next generation. Her husband and her two children have been the impetus for Mary to volunteer her time and support two organizations that help children fighting devastating and life-altering afflictions and diseases, including the University of Michigan C.S. Mott Children's Hospital and St. Jude Children's Research Hospital.

## **Mary E. Comazzi**

### **Of Counsel**

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### **EDUCATION**

Ava Maria School of Law, (J.D.), Delta Theta Phi Alumni scholarship recipient, National Foundation Scholarship recipient, 2007

University of Missouri, (M.S.), agricultural economics, Department of Energy Fellow, 2004

University of Missouri-Columbia, (B.S.), agricultural economics, 2002

University of Missouri-Columbia, (B.S.), agribusiness management, 2002

### **BAR ADMISSIONS**

Michigan

Virginia (Inactive)

### **LANGUAGES**

English

### **PRACTICES**

Aviation and Unmanned Aerial Vehicles  
Corporate

## **Professional and Community Involvement**

Chair, State Bar of Michigan Aviation Law Section Council

Member, State Bar of Michigan Business Law Section

Member, National Business Aviation Association (NBAA)

Member, Charles Woodson Clinical Research Initiative Event on Main  
Host Committee



**Jason Myers' client-driven approach stems from having spent approximately half of his nearly 25-year career as a client himself. His in-house legal and business roles, coupled with his wide-ranging transactional experience, enable Jason to team with his clients to offer a thoughtful, multi-perspective, problem-solving approach to meeting their business objectives.**

Jason is a commercial attorney skilled in the areas of finance and real estate. Clients often turn to Jason for their most unique transactions requiring a combination of high-level legal skills and outside-the-box creativity.

For example, he served as the primary draftsman on behalf of a municipal client of the stadium lease for an NFL team; advised on the development, financing and leasing of a shopping center in Sarajevo, Bosnia-Herzegovina; and managed all real estate-related aspects of the acquisition of a crude oil refinery and the related acquisition and sale-leaseback of 166 convenience stores.\*

Before joining Barnes & Thornburg, Jason served as senior counsel and director of Hudson Advisors L.P., a globally integrated asset manager operating in the private equity space focused on real estate, credit, equity and other financial assets. He was head of its financial services legal team and provided coverage for the internal business groups handling credit facilities and derivatives transactions and related regulatory matters.

In addition, Jason's experience in private practice includes traditional real estate and finance transactions, as well as similar projects in the energy, public-private partnership, and M&A sectors, including representing an institutional lender in the organization and material modification of commercial real estate loans totaling in excess of \$1.5 billion.

Before practicing law, Jason served as vice president of asset management for a real estate developer and independent power producer with responsibilities that included financial modeling, regulatory and covenant compliance, and investor relations.

## Jason B. Myers

### Partner

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### EDUCATION

Southern Methodist University School of Law, (J.D.), cum laude, Order of the Coif, 2001

University of Illinois at Urbana-Champaign, (M.A.), political science, 1991

Illinois State University, (B.S.), political science, cum laude, 1989

### BAR ADMISSIONS

Texas

### LANGUAGES

English

### PRACTICES

Commercial Transactions and Contracts

Corporate

Real Estate Finance

Structured Finance

Venture Capital and Private Equity

*\*These matters occurred prior to joining Barnes & Thornburg.*

## **Professional and Community Involvement**

Member, Southwest Association of Bank Counsel

Member, CRE Finance Counsel

Member, Texas Bar Association

Member, Business Law Section of the Texas Bar Association

Member, International Law Section of the Texas Bar Association

Member, Real Estate, Probate and Trust Section of the Texas Bar Association

## **Honors**

Chambers USA, 2009-2012



**Jeremy Reidy counsels businesses in mergers, acquisitions and other corporate law matters. Jeremy embraces a legal project management framework designed to better enable the firm and his clients to plan, manage, facilitate and effectuate transactions. He remains committed to going beyond the closing of the business transaction and provide guidance regarding the integration and other transition issues.**

Jeremy works with business owners on M&A transactions and other corporate and commercial matters with a focus on outlining clear communication channels for more effective collaboration, monitoring and coordination during the course of the transaction. He works with clients to create a framework for accountability, transparency, consistency and predictability. He also seeks to allocate resources efficiently and establish accurate budgeting, scheduling and periodic reporting at key intervals during the course of a project to avoid surprises.

In addition to his M&A practice, Jeremy counsels clients on the spectrum of business transactions and general business matters, including joint ventures, corporate finance transactions, restructurings, intellectual property licensing and corporate governance. He is dedicated to working with clients to help find innovative solutions to achieve their strategic objectives involving structuring acquisitions and other growth strategies. Jeremy also works closely and collaborates with his clients to meet their business objectives in a creative, efficient and cost-effective manner.

Jeremy is involved with clients from a range of industries, such as manufacturing, financial services, information systems, healthcare, construction and retail, to name a few. His approach to client service is focused on gaining a sound understanding of his clients' businesses. He identifies global, legal, economic and political trends that may present challenges to and opportunities for his clients' businesses. He strives to offer clients what they value most: high-caliber legal representation in the context of a relationship built on trust.

## Jeremy L. Reidy

### Partner

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### EDUCATION

University of Dayton School of Law,  
(J.D.), executive editor of University of  
Dayton Law Review, 2004

Indiana University-Fort Wayne, (M.B.A.),  
2010

Indiana University-Fort Wayne, (B.S.),  
2000

### BAR ADMISSIONS

Indiana

### LANGUAGES

English

### PRACTICES

Commercial Transactions and Contracts  
Community Development and Tax Credit  
Financing  
Construction  
Corporate  
Corporate Counsel Services  
Entrepreneurial and Emerging  
Companies  
Intellectual Property  
Internet and Technology  
Joint Ventures  
Licensing  
Mergers and Acquisitions  
Mergers and Acquisitions - Intellectual  
Property  
Real Estate

## **Professional and Community Involvement**

Member, Indiana State Bar Association

Member, Allen County Bar Association

Member, American Bar Association Business Law Section Mergers and Acquisitions Committee

Member, American Bar Association Section of Taxation

Former volunteer intake lawyer, Neighborhood Christian Legal Clinic

Former board president, Redeemer Radio

Board member, St. Thomas More Society of Fort Wayne

Athletic director, Our Lady School

Review board member, Catholic Diocese of Fort Wayne-South Bend

Graduate, Leadership Fort Wayne

Former board chair, Literacy Alliance

## **Honors**

Nominee, Foellinger Foundation Stewardship Award for his board service to the Literacy Alliance, 2015

Tax

Technology Transactions

Trademarks

Venture Capital and Private Equity

## **INDUSTRIES**

Bank/Thrift/Credit Union Regulatory Practice

Corporate Governance and Sarbanes-Oxley

Financial Services

Manufacturing



Through over a decade of practice, Jenni Tausel has focused on leveraging her background in finance and accounting to the benefit of her clients. She represents public and private entities, primarily in the energy and professional services industries, with virtually all matters of capital raising, debt financing, commercial transactions, mergers and acquisitions, outsourcing, and restructuring.

Jenni represents multiple investor groups, private equity founders, issuers, REITs, and a range of professionals with organization, formation, capitalization and reorganization issues.

She also has experience representing buyers and sellers in mergers, acquisitions, and divestitures of stock and assets. Her experience also includes representing lenders and borrowers in secured financing arrangements and alternative debt structures.

In addition, Jenni is a licensed Certified Public Accountant.

## Professional and Community Involvement

Member, Junior League of Dallas

Volunteer, CASA (Court Appointed Special Advocates)

Director, Chi Omega Educational Corporation

Member, College of the State Bar of Texas

Alumna, T. Boone Pickens Leadership Institute

Fellow, Dallas Bar Foundation

## Jenni Tausel

### Partner

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### EDUCATION

Southern Methodist University Dedman School of Law, (J.D.), cum laude, business manager for the SMU International Law Review, 2006

Southern Methodist University, (M.S.), accounting with a concentration in finance, 2003

Southern Methodist University, (B.B.A.), financial consulting, magna cum laude, Student Body Secretary of Student Body Senate, 2002

### BAR ADMISSIONS

Texas

### LANGUAGES

English

### PRACTICES

Corporate

Entrepreneurial and Emerging Companies

Financial Institutions

Mergers and Acquisitions

Securities and Capital Markets

Venture Capital and Private Equity

### INDUSTRIES

Banking and Financial Institutions - Securities

Financial Services

Lending and Structured Finance

## Topics to Be Covered:

- Passage of the CARES Act that included \$349 billion allocated for loans guaranteed by the SBA
- New Paycheck Protection Loans (“PPP Loans”)
- Loan Forgiveness and Deferral
- Economic Injury Disaster Loans made easier under CARES Act
- Economic Injury Disaster Relief Advances

## The CARES Act

- President Trump signed the CARES Act on March 27, 2020, providing emergency assistance and health care response for individuals, families, and businesses affected by the 2020 coronavirus
- The Act allocated \$349 billion to the SBA for guaranteed loans to small businesses and other businesses and nonprofits with fewer than 500 employees
- The SBA’s allocated funds will run through the SBA’s existing Section 7(a) business loan program

## The CARES Act – Paycheck Protection Program

- On March 31, Treasury and the SBA set out guidelines and application procedures for PPP Loans, including information for both lenders and borrowers
- The application form is now available via the SBA website (SBA Form 2483)
- Per Treasury guidance, small businesses and sole proprietorships can apply for and receive loans starting April 3
- Independent contractors and self-employed individuals can apply for loans beginning April 10

## Paycheck Protection Program

- Loan terms are very favorable:
  - 2 year term loan at low interest rate
  - Deferral of interest for 6 months
- Can be fully forgiven when used for authorized expenses
- Anticipated that 75% of loan proceeds must go to payroll costs (and not other authorized expenses such as rent/utilities)

## PPP Loans: Eligibility

- Small businesses, non-profit organizations, veterans' organizations, and Tribal businesses wholly owned by 1 or more tribal governments, in each case with 500 employees or fewer
- Businesses that meet the applicable size standard for their industry as provided by the SBA if this number is greater than 500 employees or a revenue-based size standard
- Sole proprietors, independent contractors, and other self-employed individuals
- Businesses in the Accommodation and Food Services Industries with more than one physical location so long as that business does not have more than 500 employees per physical location

## PPP Loans: Eligibility (con't)

- The business seeking a PPP Loan must have been in operation on February 15, 2020, and must have paid employees or independent contractors during operation
- SBA affiliation rules apply when determining size of the business
  - Affiliation is based on a wide-range of methods of control, including 50%+ ownership; significant minority ownership vis-à-vis other minority owners; certain voting/contractual rights; or managerial control

## PPP Loans: Loan Size

- The lesser of:
  - An amount of 2.5x the average of the business's monthly payroll costs; or
  - \$10,000,000
- Payroll costs are defined in the Act to include:
  - Salary, wages, commission or similar compensation (Note: \$100,000 cap)
  - Payment of cash tips or equivalent
  - Payment for vacation, parental, family, medical or sick leave;
  - Payments for providing group health care benefits, including insurance premiums
  - Payments for retirement benefits
  - Payments of State or local taxes assessed on the compensation of employees

## Average Monthly Payroll

- Application form gives guidance regarding monthly payroll calculations
  - Most applicants will use the average monthly payroll for 2019
  - Seasonal businesses may elect to use average monthly payroll during the period from February 15-June 30, 2019
  - New businesses may calculate payroll using the time period from January 1, 2020-February 29, 2020
- Issue: Payroll costs versus compensation for employees who make over \$100,000

## Use of PPP Loans

- The business may only use PPP Loan proceeds to pay:
  - Payroll costs, including commissions and benefits;
  - Interest on mortgage obligations, incurred before February 15, 2020;
  - Rent, under lease agreements in force before February 15, 2020; and,
  - Utilities, for which services began before February 15, 2020
- If the business already received an EIDL on or after January 31, 2020, it may refinance and convert the EIDL to a Section 7(a) loan

## PPP Loans: Loan Terms

- PPP Loans will have 2-year terms with a fixed interest rate of 0.5%
- All interest payments are deferred for 6 months, but interest will accrue
- The Act waives the requirements for business owners to provide personal guarantees and to provide collateral to secure the PPP Loan
- The Act eliminates the “credit elsewhere” underwriting test with respect to PPP loans
- The Act protects individual business owners by eliminating any personal recourse that the SBA may have against any individual owners except to the extent the funds are used for an unauthorized purpose

## Loan Forgiveness

- A business receiving a PPP Loan is eligible for forgiveness of the loan in an amount equal to:
  - Payroll costs,
  - Interest on a mortgage,
  - Rent, and,
  - Utility paymentsincurred during the eight-week period starting from the origination date of the loan
- The amount forgiven will not create income tax
- The amount of forgiveness may be reduced due to reductions in the number of employees or salary as compared to a specified pre-COVID period
- If a business re-hires or restores salaries before June 30, 2020, to pre-COVID levels, the amount of forgiveness will be determined without regard to the previous reduction

## Loan Forgiveness (con't)

- Borrowers will submit a request for loan forgiveness to the lender servicing the loan
- Must provide documentation to verify the number of full-time equivalent employees and pay rates and support for mortgage interest, lease and utility payments
- Must certify such documentation is accurate and true
- Lender must make a decision on forgiveness within 60 days

## How to Apply for PPP Loans

- Treasury Department has published an application form and guidance for lenders and borrowers, but process is subject to change

## Where to Apply

- Any existing SBA lender or any federal insured depository institution, credit union or Farm Credit System institution that is participating
- Other regulated lenders will be available once they are approved and enrolled in the program
- Several lenders have indicated that they will start processing applications with their current customers, then gradually expand to new clients as they are able

## Application Procedures

- Lenders are permitted to start accepting applications as early as Friday, April 3, but have heard reports that some lenders will not be able to accept applications until the week of April 6
- As the amount allocated for these loan programs is finite, we encourage potential applicants to start the process now if they have not already done so

## Application Form



### Paycheck Protection Program Application Form

OMB Control No.: 3245-  
Expiration Date: 06/30/2020

<input type="checkbox"/> Non-Profit <input type="checkbox"/> Vet Org <input type="checkbox"/> Tribal <input type="checkbox"/> Ind. Cont. <input type="checkbox"/> Self Employed		DBA or Tradename if applicable	
Business Legal Name			
Business Primary Address		Business TIN (EIN,SSN)	Business Phone
		( ) -	
		Primary Contact	Email Address

Average Monthly Payroll:	\$	X 2.5 equals Loan Amount:	\$	Number of Jobs:	
Purpose of the loan (select more than one):					
<input type="checkbox"/> Payroll <input type="checkbox"/> Rent / Mortgage Interest <input type="checkbox"/> Utilities <input type="checkbox"/> Other (explain):					

#### Applicant Ownership

List all owners of Applicant with greater than 20% ownership stakes. Attach a separate sheet if necessary.

Owner Name	Title	Ownership %	TIN (EIN,SSN)	Address

## Application Form (con't)

- Must list all owners of the business with greater than 20% ownership
- Each 20% owner must affirm that it is a U.S. citizen or lawful permanent resident

## Application Form (cont'd)

- Representations and authorizations include:
  - Compliance with all applicable civil rights and limitations
  - All SBA loan proceeds will be used only for authorized business purposes
  - “To the extent feasible, I will purchase only American-made equipment and products”
  - Business is not engaged in any activity that is illegal under federal, state or local law

## Certifications by Business and Owners

- The business and each 20% owner must certify in good faith by initialing each of the following certifications:
  - Economic uncertainty makes the loan request necessary
  - Funds will be used to retain workers and maintain payroll or make authorized payments and if funds are used for unauthorized purposes, there may be criminal fraud charges
  - Documentation verifying the number of full-time equivalent employees on payroll as well as payroll costs, mortgage payments, rent payments and covered utilities for the 8-week period following the loan will be provided to lenders

## Certifications (con't)

- Loan forgiveness will be provided, but “due to likely high subscription, it is anticipated that not more than 25% of the forgiven amount may be for non-payroll costs”
- Affirmation that the tax documents provided and used by the lender are identical to those filed with IRS
- Acknowledgement that the SBA will share the information with SBA authorized representative, including the SBA Inspector General

## Certifications (con't)

- Borrower has not and will not receive another loan under the Paycheck Protection Program (from February 15 – December 31)
  - Note that businesses may apply for and receive funds from the EIDL program in addition to PPP loan proceeds
  - However, the proceeds from the PPP and EIDL loans may not be used to pay the same costs (i.e., no double-dipping)

## Economic Injury Disaster Loans (EIDLs)

- Working capital loans provided directly by the U.S. Treasury
- Maximum of 30 year term
- Interest rate based on formula but will not exceed 3.75% (2.75% for nonprofits)
- Applicants have up to 9 months after the date of declaration to apply
- EIDL terms allow for deferment of payments for one-year (interest continues to accrue). Payments on existing EIDLs have automatically been deferred through December 31, 2020

## EIDLs: Eligibility

- Traditionally: EIDLs are available to small businesses (based on SBA Size Standards), small agricultural cooperatives, and private nonprofit organizations of any size
- CARES Act expanded eligibility to include all businesses (including ESOPs, cooperatives, and tribal small business concerns) with 500 or fewer employees, sole proprietors, and independent contractors
- A private non-profit organization is a non-governmental agency or entity that currently has an effective ruling letter from the IRS granting tax exemption under sections 501(c),(d), or (e) of the Internal Revenue Code of 1954, or satisfactory evidence from the State that the non-revenue producing organization or entity is a non-profit one organized or doing business under State law, or a faith-based organization

## EIDLs: Eligibility (con't)

- Must show that it has suffered substantial economic injury as a direct result of COVID-19 (i.e., loss of revenues)
- Eligible businesses include those
  - Directly affected by the disaster
  - That offer services directly related to the businesses in the declaration
  - Indirectly related to the industry that are likely to be harmed by losses in their community (Example: Manufacturer may be eligible as well as the wholesaler and retailer of the product)

## EIDLs: Eligibility (con't)

- SBA will review credit history
- Applicants must show the ability to repay the loan
- Collateral is required for all loans over \$25,000
  - SBA prefers real estate as collateral, but will accept whatever collateral is available
  - SBA will not reject an application for EIDLs solely on the basis of lack of collateral
- SBA may require applicants to obtain and/or maintain appropriate insurance to protect both the SBA and the applicant

## EIDLs: Loan Amount

- Amount of loan proceeds is limited to amount of economic injury less business interruption insurance and other recoveries
- Cap of \$2,000,000
- If a business is a major source of employment, \$2,000,000 cap can be waived

## EIDLs: Use of Funds

- Funds are to be used to meet financial obligations that cannot be met as a direct result of COVID-19
  - Fixed Debts
  - Payroll
  - Accounts payable
  - Other bills that can't be paid because of the disaster's impact
- EIDLs cannot be used to refinance long-term debts
- EIDLs cannot be used for expansion of any kind or infrastructure improvements
- EIDLs are not intended to replace lost sales or profits

## EIDLs: Loan Terms

- Up to a maximum of 30 years for repayment
  - Repayment terms are determined on a case-by-case basis based on borrower's ability to repay
- Interest Rates:
  - Small businesses and small agricultural cooperatives: not more than 3.75%
  - Private nonprofit organization: not more than 2.75%
- Rate is fixed over the life of the loan

## Other Issues

- SBA loans may impact an applicant's eligibility for other assistance programs, or tax credit opportunities under the CARES Act and businesses should review the other programs before applying for an EIDL
- If your loan is approved you are not obligated to accept the funds
- There is no cost to apply for an EIDL

## Economic Injury Disaster Loan Application Process

- Online at <https://disasterloan.sba.gov/ela/>
- By Mail  
U.S. Small Business Administration  
Processing and Disbursement Center  
14925 Kingsport Road  
Fort Worth, TX 76155
- SBA has not provided any public indication of how long an applicant may have to wait to receive funds if selected
- Expect millions of applications to be filed with the SBA
- Following Hurricane Harvey, approximately 350,000 applications filed and responses to completed applications were received in 18-21 days on average

## EIDLs and The CARES Act

- The CARES Act eliminated the SBAs “credit elsewhere” requirement for EIDLs during the covered period
- The CARES Act eliminated the SBAs guaranty requirement for EIDLs of \$200,000 or less during the covered period
- An applicant for an EIDL can request an immediate emergency advance of up to \$10,000. The amount of the advance does not need to be repaid even if the EIDL is ultimately denied.
  - The SBA is obligated to fund the \$10,000 within three (3) days of its receipt of the application

## Other Issues Related to PPP & EIDL Loans

- If an applicant has other credit facilities or loans in place, there may be a limitation or prohibition on additional indebtedness. In this case, you may need to get a consent or waiver to accept the SBA disaster assistance loan
- “Should I apply”

## COVID-19 Resources at B&T



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Visit the link that sits on the homepage of [btlaw.com](https://www.btlaw.com) to get updated information about how the firm is supporting its clients during the pandemic.



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