Insurance & Reinsurance

Barclay Damon's multidisciplinary Insurance & Reinsurance Team represents insurance companies across the country as well as the interests of clients outside the insurance industry who opt to self-insure or include a self-insurance retention provision in a policy.

We have deep experience with all types of insurance lines. In addition to insurance and reinsurance, we are experienced with captives, syndicates, runoffs, and special-purpose vehicles. We are also experienced in all of the major industry segments, including property, casualty, professional liability, directors and officers, personal and commercial auto, life, health, construction, energy, cyber, employment liability, workers' compensation, disability, and long-term care coverage as well as facultative and treaty reinsurance. We handle the full range of insurance litigation, business transactions, regulatory issues, and other matters, from the most complex to routine.

Our understanding of the laws and regulations that affect the insurance industry is equaled by our understanding of its operations and interests. Our team's aim is always to help clients strategically operate and grow their businesses through innovation and well-informed decision-making and by proactively predicting and preventing problems from arising.

Self-Insured Retention

Barclay Damon has extensive experience protecting the interests of self-insured clients, providing counsel and representation in disputes involving self-insured retention, large proportion deductibles, claims of bad faith, and claims of insurance-contract breaches. We also defend clients against claims of personal injury, wrongful death, property damages, and business losses. These claims often involve issues of contractual liability, tort liability, and statutory liability, such as dram shop laws, copyright laws, state and federal discrimination statutes, environmental laws, transportation laws, and more. We are proud to advise self-insured private- and public-sector entities on the full range of their legal and business needs.

Representative Experience

- Defending a national insurer against claims by the insured for breach of contract and bad faith relating to underlying sexual abuse claims.
- Defended a national insurer against claims by additional insureds and their carriers concerning priority of coverage issues and estoppel arguments based on prior representations.
- Defending a national insurer against claims by the insured for breach of contract and bad faith for underlying personal injury claims stemming from a landslide.
- Secured summary judgment in favor of insurance broker where insureds alleged broker was negligent in failing to secure higher coverage limits for the subject property, which was affirmed by the Appellate Division, Third Department.
- Secured summary judgment in favor of the insurer where the insured disputed the extent of coverage as barred by the policy's limitations provision, which was affirmed by the Second Circuit.
- Successfully appealed a denial of summary judgment in favor of the insurer where the insured sought to challenge the insurer's actual cash value award after resolving the claim with the insurer. The Appellate Division, Third Department reversed the trial court's order and granted the insurer's motion for summary judgment dismissing the complaint.
- Successfully persuaded an appeals court to uphold summary judgment in favor of the client insurer, holding that exposure under the state financial responsibility filing was limited to statutory minimums and not the policy limit.

- Persuaded a federal district court that a loss arising out of negligence of the named insured's employee in operating a motor vehicle fell within several specific exclusions of the client insurer's commercial general liability policy.
- Persuaded a federal appeals court that the MCS-90 regulatory endorsement did not create a duty to defend a bodily injury action against an insured motor carrier where the policy itself provided no coverage.
- Successfully defended coverage action by persuading the federal appellate court that the client insurer's non-trucking exclusion barred coverage where a loss occurred while an insured driver was looking for a place to sleep between deliveries.
- Successfully defended coverage action by persuading the federal appellate court that the client insurer's non-trucking exclusion barred coverage where the loss occurred while the insured driver was returning home after multiple deliveries for a motor carrier.
- Successfully defended coverage action by persuading the federal appellate court that the client insurer's coverage for hired autos was excess.
- Persuaded a federal appeals court that an insurer's statutory duty under NYS law to disclaim coverage under the contingent policy was not triggered until the adversary produced a copy of the other policy in discovery.
- Assisted a mid-Atlantic property insurer in transitioning personal lines coverage to new products by drafting forms and liaising with the NYS Department of Financial Services.
- Successfully defended an insurance company in NYS court against a plaintiff alleging the insurer owed coverage for a water loss under a property insurance policy.
- Successfully represented an insurer in a nationally cited leading construction defect coverage decision that held that, without alleged damage outside the scope of the insured’s work product, faulty workmanship claims do not allege an "occurrence" as contemplated by a comprehensive general liability policy.
- Successfully defended an insurance company in federal court against a plaintiff alleging the insurer owed coverage under an insurance policy issued to a roofing contractor that performed allegedly defective work. The court agreed with the client's position that all claims should be dismissed pursuant to the “no direct action” doctrine.
- Successfully represented an insurer in an insurer versus insurer dispute involving a significant underlying construction accident and disputed issues of coverage for contractual and common-law indemnification claims. The NYS Appellate Division, Fourth Department agreed that the client's excess general liability policy was inapplicable, resulting in a high six-figure recovery.
- Successfully obtained a decision from the Appellate Division, Second Department affirming the trial court's denial of a municipality's motion to dismiss a $4 million cost-recovery action against them for damages arising from the destruction of a client's records-storage warehouse.
- Successfully convinced the Illinois Appellate Court to uphold summary judgment in favor of the insurer client, holding that exposure under the state financial responsibility filing was limited to statutory minimums and not the policy limit.
- Successfully defended a coverage action by persuading the US Court of Appeals for the Sixth Circuit that the client's non-trucking exclusion barred coverage where the loss occurred while the insured driver was looking for a place to sleep between deliveries.
- Successfully defended a coverage action, persuading the US Court of Appeals for the Sixth Circuit that the client's non-trucking exclusion barred coverage where the loss occurred while the insured driver was returning home after multiple deliveries for a motor carrier.
- Successfully defended a coverage action by showing the US Court of Appeals for the First Circuit that the client's insurer's coverage for hired autos was excess.
- Worked with a Lloyd's coverholder to develop and draft a cutting-edge line of specialty accident and disability income policies.

- Represented a large private university in Upstate New York on its rights to insurance coverage with regard to multiple sexual harassment claims.
- Obtained pre-answer dismissal of claims against a life insurance carrier that its agents had misrepresented the cost and probable return on flexible premium adjustable benefit life insurance policies.
- Defended a homeowner against claims he caused serious injuries to the plaintiff while operating his lawn mower. There was an ongoing boundary line dispute between the plaintiff and the defendant. Following a bifurcated jury trial, the jury returned a unanimous verdict in favor of the defendant, finding that he was not negligent.
- Successfully counseled an insurer-client and convinced insured's counsel regarding pursuit of coverage for a grave-injury suit under the opposing insurer's unlimited employer's liability coverage while successfully navigating anti-subrogation rule. Obtained an appellate-level decision affirming that this unlimited coverage had been triggered.
- Secured discontinuance of insurer's subrogation claim, alleging breach of contract, breach of duties under the Carmack Amendment (49 U.S.C. Sec. 14706), and breach of bailment for de minimis settlement based on role as freight co-broker, as evidenced by subject insurance policies, indemnity provisions, and certificates of insurance.
- Secured a dismissal of claims against an insurer by the contractor who performed services for the insured based upon the lack of any agreement between the insurer and contractor, which was affirmed by the Appellate Division, Fourth Department.