Transportation

Barclay Damon's transportation attorneys routinely handle a wide variety of transportation issues in different contexts, including matters involving motor carriers, passenger carriers, rail carriers, transportation brokers, logistics, medical transport, and more. The multidisciplinary team features an experienced group of regulatory, insurance, tort, employment, energy, environmental, and appellate attorneys who deliver comprehensive legal services to clients. Our practice is national in scope, with many industry issues arising from federal law or reflecting nationwide concerns.

A representative sampling of our transportation work follows:

Coverage

Our transportation attorneys represent leading regional and national transportation insurers, prosecuting and defending declaratory judgment actions in matters pending across the country in state or federal courts and on appeal. The team has extensive experience drafting declination, reservation, and rights letters; drafting and updating policy forms and manuscript endorsements; and preparing opinion letters.

We frequently handle matters that involve:

- Commercial uninsured and underinsured motorists claims
- Contingent-coverage policies
- ISO commercial auto policy forms
- MCS-90 endorsement and state variations
- Primary and excess disputes
- The interplay of general liability and auto liability policies
- The scope of non-trucking policies
- UIIA endorsements

Contracts

We frequently draft and review contracts used in the transportation business, including shipper-broker contracts, broker-carrier contracts, owner-operator lease agreements, and more.

Defense

Our transportation attorneys regularly try cases, with multiple team members trying more than 100 cases individually. Defense is provided locally by experienced attorneys staffed in our offices across the Northeast who focus on defending tort actions. To provide the most accurate, relevant information for clients, we actively research the latest technological training and industry efforts to combat “reptile tactics” and prevent the misuse of CSA data.

Cargo Claims

We provide both defense and coverage services for matters that involve:

- Common-law defenses
- Limitations of liability, cargo, and contingent coverages
- Inland marine coverages, including riggers and warehouseman's coverages
- The difference between common-law carriage and contract carriage

Employment Issues

Barclay Damon clients and colleagues routinely indicate that the most pressing issues for many transportation entities are finding qualified drivers and classifying their status in a manner that doesn't

break the bank. Our attorneys work on the management side, helping clients craft contracts and respond to agency investigations and queries. We litigate issues such as the status of drivers as employees or independent contractors under federal and state law as well as compliance with state employment regulations.

Fracking and Energy

Our transportation attorneys work closely with our energy team on fracking claims, assisting trucking companies that are deeply involved in fracking logistics and get pulled into resulting lawsuits. We have also been involved in drafting special insurance endorsements in response to developments in this field.

Environmental

We also work closely with the firm's Environmental Practice Area attorneys, including the NYS Department of Environmental Conservation's former general counsel, to handle cases involving spills and other environmental claims.

Regulatory

Our transportation team works with clients to ensure they are in compliance with relevant regulatory requirements and have the appropriate authorization and insurance to conduct their business. We also help them respond to investigations by regulators or safety administrators.

Representative Experience

- 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.
- Obtained a highly favorable settlement for a coalition of NYS transportation-related businesses in a lawsuit against the NYS Workers' Compensation Board. The coalition was comprised of former members of a group self-insured trust that was fraudulently formed and unscrupulously managed, leading to the insolvency of the trust. The clients alleged the "deficit assessment" issued by the board against the members violated both procedural and substantive due process, several statutory provisions, and common law. Obtained successful motions for stay of enforcement and partial summary judgment and settled related third-party litigation with no exposure for the clients.
- Represented a specialized dairy transport company in its sale of stock to a large Malaysian trucking firm.
- Served as outside general counsel to a regional commercial trucking business and business owners in the $2 million sale of the business and handled the related real property and employment of the selling business owners.