Torts & Products Liability Defense

Our torts and products liability defense attorneys defend some of the most sophisticated and complex civil cases in the United States. We represent multinational corporations, utilities, nationally known educational institutions, common carriers, manufacturers, distributors, retailers, local businesses of all sizes, and individuals in a broad spectrum of tort and products liability cases. We additionally serve as designated panel counsel for many prominent insurance carriers and as approved counsel for several third-party administrators. Practice area members are admitted to and regularly appear before state and federal trial and appellate courts as well as arbitration panels.

Our team includes the former chair of the New York State Bar Association's Torts, Insurance, and Compensation Law Section, the former chair of the Fifth Judicial District Attorney Grievance Committee, former assistant district attorneys, and former law clerks for federal and state trial and appellate courts. Several of our attorneys have been recognized for their outstanding legal skills by preeminent ratings services and professional organizations such as Martindale-Hubbell, *The Best Lawyers in America*®, *Chambers USA*, and *Super Lawyers*.

Although our attorneys routinely try significant cases before juries and judges, they also advise and assist clients in negotiating and resolving disputes before they erupt into full litigation. Our attorneys frequently engage in all forms of alternate dispute resolution, including arbitration, mediation, and early neutral evaluation. Barclay Damon's commitment to technology also assists our team in providing the most efficient and cost-effective delivery of legal services, mindful of client expectations.

Litigation cannot always be avoided. Our attorneys have extensive experience in the defense of all types of torts and products liability cases.

Complex Tort and General Liability Cases

Our attorneys are experienced in the defense of personal injury and property-loss litigation based on both common-law theories and statutory violations, including cases involving:

- Catastrophic injury
- Civil rights claims
- Construction accidents
- Construction defects
- Deceptive business practices
- Dram Shop and tavern liability
- Educational institutions
- Electrocution and power-line injury
- Fire loss
- Hazardous materials
- Inadequate security
- Infliction of emotional distress
- Intentional torts
- Municipal liability
- Negligence
- Negligent misrepresentation
- Premises liability
- Products liability

- Property damage
- Scaffold law
- Sporting injuries
- Subrogation claims

Representative Experience

- Successfully obtained summary judgement in an asbestos products liability case with positive product identification and a $400,000 settlement demand. Worked with the client and former employees to extensively research and collect historical documents for the first time, drafted voluminous interrogatory responses that will be used to secure dismissals in future matters, conducted exposure-limiting cross-examination, and drafted a motion for summary judgment that the plaintiff chose not to oppose.
- Negotiated a settlement on behalf of a reputable law firm and attorney for 3 percent of the originally claimed damages after walking away from a mediation in which the mediator had recommended a settlement for a substantially greater value.
- Successfully obtained a summary judgment dismissal of a premises liability case arising from a trip and fall.
- Successfully obtained a summary judgment dismissal of a products liability case arising from a fall from a ladder sold by retail department store.
- Obtained a dismissal on summary judgment of toxic-tort claims by a worker claiming the need for a lung transplant against a property owner. Also successfully recovered attorney's fees from the tenant.
- Obtained dismissal on summary judgment of professional malpractice and intentional-tort claims against a university client related to student health services.
- Obtained dismissal on summary judgment of professional malpractice and intentional-tort claims against a university client related to student mental health services.
- Obtained dismissal on summary judgment of negligence and employer liability claims against a university client related to a sports club injury.
- Obtained summary judgment for a roofing manufacturer in a living mesothelioma case with only two viable defendants and a settlement demand of over $1 million, saving the client the cost of trial and a potentially large adverse verdict.
- Obtained summary judgment to dismiss the plaintiff's complaint in a lead poisoning case brought against an insured homeowner client based on the client's lack of notice of a potential hazard in the property. Following the dismissal of the complaint at the trial court level, successfully defended the plaintiff's appeals to the Appellate Division and NYS Court of Appeals.
- Secured a voluntary dismissal for a plumbing contractor in a mesothelioma case involving a young plaintiff with young dependents. The result was based on extensive research and analysis of historical government records to confirm the client was not involved in the construction project at issue and extensive negotiations with opposing counsel. Saved the client the cost of a dispositive motion and potentially dangerous trial verdict.
- Secured a voluntary dismissal for a school bus manufacturer in a mesothelioma case based upon extensive research and analysis of the company's complex corporate history and transactional documents, government sales records, and legal analysis to establish that the client was not liable for the product at issue. Avoided a costly summary judgment motion and established precedential discovery responses and materials for the client to use in defending future litigation.
- Successfully obtained summary judgment for a manufacturing client in an asbestos matter where the plaintiff sought to rely on inadmissible hearsay. The case decision is now routinely relied upon by defendants in NYS asbestos litigation.

- Defended a utility in a $1 million personal injury action allegedly resulting from a failure to provide municipal lighting.
- Successfully prosecuted appeals to the Appellate Division, Fourth Department and secured summary judgment in favor of an insurance company where the client did not owe any duty to the injured plaintiff.
- Successfully defended defendants in multiple complex construction-related accidents, including defending claims under Labor Law § 240, with verdicts taken through trial.
- Obtained a dismissal of a lawsuit by a student alleging 17 causes of medical malpractice and intentional torts against a private university and its health care center.
- Represented a building owner in a trip-and-fall case involving a 25-year patient of the tenant doctor who allegedly tripped over the hallway runner when exiting the building and whose last demand was for $250,000. The jury found the condition of the vestibule was safe, finding in favor of the client.
- Successfully defended a $170,000 claim by a utilities company for damage to equipment during a construction project.
- Successfully defended a supermarket chain in a premises liability claim for an injury in a grocery store that was affirmed on appeal.
- Successfully obtained a dismissal of a premises liability action against an insurance company after the trial in which the plaintiff sought over $1 million in damages.
- Obtained summary judgment in a toxic-exposure and NYS Labor Law case with significant injuries claimed.
- Obtained summary-judgment dismissal of a complaint against the county and district attorneys that sought $9 million in damages for malicious prosecution.
- Obtained an order dismissing the case with prejudice following a successful motion to dismiss under Rule 12 of the Federal Rules of Civil Procedure. The client successfully demonstrated that it had immunity from the majority of the plaintiffs' claims under the Protection of Lawful Commerce in Arms Act and that the plaintiffs were otherwise unable to state a viable cause of action on their remaining claims for breach of the Texas Deceptive Trade Practices Act and for breach of implied warranty of merchantability.
- 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.
- Settled a lawsuit against an energy client arising from alleged wrongful maintenance of a gas tank at the plaintiff's residence.
- Successfully defended at trial a propane gas distribution company from allegations of negligent maintenance and testing of a residential propane tank. The defendant allegedly improperly tested the gas line for leaks, permitting a build-up of propane gas, resulting in an explosion and the death of the occupant. At trial, through the use of a defense expert testimony and witnesses, the jury heard testimony that the fire was not started by an explosion but by another unknown source, which resulted in an explosion of combustibles. Further, the smell of propane, about which the decedent complained, was caused by the decedent’s improper use of the propane system but did not indicate a leak in the system. Two defendants resolved the matter prior to trial. The sole remaining defendant was found not negligent and a no cause was rendered by the jury.
- Prepared and orally argued the motion for summary judgment and prepared the appellate brief to the New York State Appellate Court, Fourth Department in *Gorzka v. Insulation Distributors, Inc., et al*, which ultimately made law in New York that a plaintiff’s failure to identify a defendant in responses to interrogatories is an admission that the plaintiff was not exposed to the defendant’s products. This is case law routinely relied upon by defendants in asbestos litigation.