Commercial Litigation & Complex Trials

Know-How and Proven Results in Complex Business Disputes

Barclay Damon's litigation team has a deep understanding of the complex business challenges our clients face. In courtrooms across the country, our trial attorneys represent a wide-ranging clientele, from multinational corporations to emerging start-ups, in virtually every industry, including tech, health care, biosciences, education, manufacturing, finance, e-commerce, construction, and hospitality. Our team handles the full spectrum of complex business disputes, whether the subject matter involves multimillion dollar contract claims; intellectual property litigation, including technology and licensing issues; unfair competition; corporate governance and control issues; partnership disputes; mergers and acquisitions; large construction projects; real estate and development contracts; or other complicated issues. *Chambers & Partners* ranks Barclay Damon's Commercial Litigation & Complex Trials Practice Area among top general commercial litigation practices, noting, “Barclay Damon LLP has a strong civil litigation practice . . . advising on a range of commercial disputes for public and private companies. The firm covers a range of cases encompassing payment issues, contracts, construction, and energy. It is also regularly called upon for its strengths in representing corporations of all sizes as well as individuals, before the courts in alternative dispute resolution.”

A Winning Approach

A Highly Skilled Team: Our 90-plus trial lawyers include industry veterans, former state and federal prosecutors and judicial law clerks, regulatory agency counsel, and business leaders.

Early Assessment and Proactive Communication: We go beyond simply responding to disputes. We proactively assess potential issues, provide transparent cost estimates, and offer strategic planning to shape a favorable record and maximize outcomes. And because we understand the financial burden of litigation, we explore creative strategies to resolve disputes outside of court whenever possible.

Trial-Ready Excellence: But when a trial is needed to secure a win, our litigators are skilled trial lawyers known for delivering compelling arguments and achieving favorable trial verdicts.

Proven Success: Delivering Wins

Examples of our winning approach include:

- Successful representation of a major general contractor in a fiercely contested and highly publicized case involving the Silver Spring Transit Center project in Montgomery County, Maryland, where after four weeks of trial, the county dropped its multimillion-dollar claims and instead agreed to pay our client $3 million on the client's affirmative claims.
- Successful defense of a multinational corporation in a lawsuit claiming the operation of a 13,000-plus-acre underground mining operation had not been subjected to an adequate environmental impact review.
- Successful representation of a power-company owner of a $533 million power-plant construction project in a series of complex arbitration proceedings against one of the world's largest contractors, which sought more than $94 million in additional compensation. After 53 days of testimony from several dozen witnesses, arbitrators rendered decisions in favor of the client's counterclaims, awarding the client nearly $30 million in liquidated damages.

- Successful representation of an investment advisor and its officers and directors over a five-year period following losses arising out of the Madoff Ponzi scheme. The representation included successfully resolving issues identified in an investigation by the Securities and Exchange Commission and settling—after years of hard-fought litigation—claims lodged in multiple securities class action matters as well as ERISA claims brought by the Department of Labor.
- A dismissal obtained with prejudice of Federal Defend Trade Secrets Act (DTSA) claims in a $200 million action against a client in the US District Court for the Southern District of New York.
- Successful defense of a California company against an investment group attempting to dismantle $300 million of student loan bonds.
- Successful representation of the State of New Jersey in a $60 million lawsuit brought by a major international contractor on a large Superfund remediation project, counterclaiming for millions of dollars in liquidated damages due to project delay, and obtaining a highly favorable settlement on the eve of trial after effective motions for partial summary judgment and expert testimony showing the contractor underbid by millions.
- Representation of a leading California-based biotechnology company as co-counsel in establishing exclusivity of a university gene-sequencing patent license, following successful trial of declaratory judgment action against an inventor-professor and the university brought in the Massachusetts Superior Court's complex business litigation session.
- Successful representation of a historic hotel in achieving the settlement of disputes related to the construction of the hotel, including 25 mechanic's lien claims brought by the general contractor and subcontractors.
- Summary judgment won for a third-party benefits provider for self-funded health- and risk-management plans in a pair of federal civil-rights actions challenging the manner in which medical benefits were paid.
- Effective representation of a developer in two related lawsuits involving a tenants association's assignment of its rights to purchase a $40 million high-rise residential apartment building, first obtaining both a temporary restraining order and preliminary injunction barring the tenants association from assigning rights to purchase the building to anyone other than our client and then successfully negotiating a court-approved settlement.

AFAs and Litigation Financing

Barclay Damon offers a range of alternative fee arrangements (AFAs) that have been successfully implemented for our clients in a variety of circumstances. We also help clients secure financing through third-party funding companies for high stake, costly litigated matters. Barclay Damon will be pleased to collaborate with you to evaluate the most effective fee structure and financing for your matters.

Barclay Damon: Your Trusted Partner in Complex Litigation

Our team is results-driven, with a proven track record of winning complex cases. Trust Barclay Damon's litigation team to deliver success for your business.

Representative Experience

- Negotiated payment schedule regarding employee's tolling and forbearance agreement with Splashlight
- Represented a former telecommunications services provider in a six-day trial seeking to collect payment for telecommunications services provided and accepted under the terms of a services contract. The matter involved various breach of contract claims, resulting in damages in excess of $1.5 million to the client, plus statutory interest at 9 percent per annum.

- Represents an out-of-state business in staying the enforcement of judgment and ultimately vacating the entry of judgment on grounds of breach of contract and improper business practices after the merchant advance lender improperly entered the judgment by confessing against an out-of-state defendant.
- Represents siblings in breach of fiduciary duty litigation stemming from the co-trustee siblings' misuse of family assets for over two decades.
- Represented a fashion manufacturer in a partnership dissolution arbitration against a former design-related business partner, obtaining a $350,000 judgment. The matter also included litigation surrounding a breach of contract for violating a noncompetition clause, breach of fiduciary duty, and piercing the corporate veil claims, which have not yet been finally determined by the court, but withstood the test of an early motion to dismiss.
- Obtained a consensual dismissal of interpleader action against a real estate developer client.
- 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.
- Represented an animal-health business in a lawsuit seeking immediate injunctive relief regarding control of manufacturing acquired by an industry competitor. Identified mediation as the best route to restore the client's supply, and, following 20 hours of mediation, reached an approved creative resolution that achieved the client's objectives.
- Obtained summary judgment for a third-party benefits provider for self-funded health- and risk-management plans in a pair of federal civil-rights actions commenced by retired disabled police officers who were challenging the manner in which their medical benefits were paid under Section 207-c of the NY General Municipal Law. The decision granting summary judgment was affirmed by the US Court of Appeals for the Second Circuit. One of the plaintiffs then commenced a near-identical action in NYS Supreme Court against the client. Obtained dismissal of most of the claims in an initial motion, and then obtained summary judgment dismissing the remaining claims. The decision granting summary judgment was then affirmed by the Appellate Division, Fourth Department.
- Successfully defended an adversaries' appeal of a lower court's denial of an Article 78 petition that sought to reverse the Public Service Commission's denial of retroactive reimbursements to a group of residential developers for certain trenching work used to install utility service. The Appellate Division's decision to affirm the lower court order was particularly important to the utility client because an adverse decision would have potentially caused other developers to also seek retroactive reimbursements, opening the client up to additional claims and damages.
- 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.
- Successfully defended a multinational corporation against a lawsuit claiming the operation of a 13,000+ acre underground mining operation had not been subjected to an adequate environmental impact review.
- Represented the City of Watertown in a lawsuit from Ives Hill Country Club seeking to invalidate a public-property lease the client had entered into with a for-profit enterprise on the basis of statutory and constitutional grounds. The firm cross-moved for judgment, successfully obtaining a denial of Ives Hill's motion with the court granting the City of Watertown's cross-motion and dismissing the case.
- Defended Native American police officers in an excessive-force lawsuit filed in federal court. Obtained complete dismissal of the case on summary judgment after discovery.

- Successfully obtained dismissal on summary judgment of a claim for a $2 million "finder's fee" arising from the sale of a pharmacy business.
- Represents a small lawn care company in a breach of contract suit brought against a commercial property management company seeking to collect payment for extensive work on several properties throughout Western New York. The Supreme Court of Erie County denied the defendant's motion to dismiss, holding that the contract was so offensive to the public policy of New York that the court retained jurisdiction despite Arizona being designated in the contract as the controlling law and forum.
- Handle appeals for minority and women-owned business enterprise (MWBE) certifications.
- Represented a commercial tenant in an action they commenced seeking declaration they were not in default of commercial leases and were thus entitled to injunctive relief pending the outcome of the litigation.
- Represented a health care provider in an audit of patient records by an insurance company that alleged approximately $400,000 in overpayments. The insurance company rescinded its determination regarding the overpayment, and the client was not required to repay any of the alleged overpayments.
- Obtained dismissal with prejudice of federal Defend Trade Secrets Act (DTSA) claims against our client, in a $200 million action pending in US District Court for the Southern District of New York. Plaintiff claimed defendants, including our clients, misappropriated trade secrets and violated alleged fiduciary duties in connection with the establishment of a stock index identifying opportunities to invest in publicly traded shares based upon the brand value of the issuing companies. The court held that the pleading did not state a federal claim under the DTSA, denied the plaintiff leave to re-plead, and dismissed all related state law claims.
- 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.
- Represented a top-tier law firm in an investigation brought forth by the Department of Labor.
- Represented an international gaming company in a dispute over licensing.
- Represented a former partner with a law firm in a dispute over contingency fees.
- Mediated a claim against a multinational consumer goods company brought by a pharmaceutical company in the American Arbitration Association.
- Represented a technology company in a dispute arising out of claims asserted against the company and a selection of its officers.
- Representing nationwide hospital and health care provider and its entities in suit brought by former nurses and doctors regarding retirement and agreed-upon pension.
- Represented an international electric company against agreement breach claims.
- Assisted in an internal, confidential investigation into a high-level executive and drafted a memorandum of findings.
- Defended a medical practitioner in an investigation brought by the Board of Registration in Medicine (BORM).
- Obtained summary judgment, which was affirmed on appeal, in favor of a multinational consumer goods company defending breach of contract and lost profit claims by the distributor for alleged failure to completely fill certain purchase orders.
- Represented defendants during a contract dispute with a private equity firm involving breach of good faith and fair dealing, promissory estoppel, tortious interference, and tortious interference with actual and/or prospective economic advantage.
- Defended a doctor and his practice against a breach of fiduciary duty case arising from their self-dealing and misconduct with respect to the management of two of their businesses.
- Represented a defendant who was accused of making defamatory statements against the plaintiff.

- Represented a defendant accused of a contract dispute and accused of making libel/defamatory statements against the plaintiff.
- Represented defendants in a dispute over millions of dollars recovered allegedly owed to plaintiffs.
- Litigated securities class action and ERISA claims against investment advisor to pension and benefit funds arising out of the Madoff Ponzi scheme.