Larry Rabinovich

Partner

New York, Newark
P: 212.784.5824
lrabinovich@barclaydamon.com

Education

- New York University School of Law, JD
- Yeshiva University, BA

Practices & Industries

- Transportation
- Insurance Coverage & Regulation
- Commercial Litigation & Complex Trials
- Torts & Products Liability Defense
- Insurance & Reinsurance

Admitted to Practice

- New Jersey
- New York

Court Admissions

- US Court of Appeals for the First Circuit
- US Court of Appeals for the Second Circuit
- US Court of Appeals for the Third Circuit
- US Court of Appeals for the Fourth Circuit
- US Court of Appeals for the Sixth Circuit
- US Court of Appeals for the Seventh Circuit
- US Court of Appeals for the Eighth Circuit
- US Court of Appeals for the Ninth Circuit
- US Court of Appeals for the 11th Circuit

Biography

As Barclay Damon's Transportation Team leader, Larry is a principal conduit for the firm's communications with insurers of transportation entities. When working with underwriters, he focuses on compliance with state and federal requirements and industry norms, and he assists with drafting policy forms from manuscript endorsements to entire policies. For client claims departments, Larry routinely prepares opinion letters, reservation of rights or declination letters, and tort-litigation monitoring, all of which frequently lead to his representation of insurers in declaratory judgment actions and in appellate cases.

In addition, Larry has litigated many of the leading cases on trucking-coverage law, including decisions on the MCS-90 endorsement, the US Department of Transportation leasing regulations, and the scope of non-trucking policies. With the veteran underwriter Carl Sadler, he wrote The MCS-90 Book, a comprehensive look at the meaning of the MCS-90 as explained by courts around the country and the USDOT itself. Larry also handles complex coverage matters involving general-liability policies and property policies issued to insureds across industries.

Bar Associations

- New York State Bar Association
- New Jersey Bar Association

- US District Court for the Central District of Illinois
- US District Court for the Eastern District of New York
- US District Court for the Northern District of New York
- US District Court for the Southern District of New York
- US District Court for the Western District of Michigan

Selected Memberships & Affiliations

- Claims & Litigation Management Alliance
- Jewish Law Association, Vice Chair and Treasurer
- Transportation Lawyers Association
- Trucking Industry Defense Association
- DRI, Insurance Law Committee Co-Chair

Representative Experience

- Represented an insurer of a small fleet of delivery vans used by the insured for package deliveries in a matter pending in the US District Court for the District of New Hampshire. Unbeknownst to the insurer, the insured also maintained a fleet of tractor-trailer rigs leased from Ryder for pallet deliveries. The client's policy provided hired-auto coverage, for which a small charge was made; the underwriters had been told that, occasionally during busy season, some additional vans were leased. But a straight reading of the policy language could have led to the conclusion that the client was liable on a co-primary basis for the insured's liability arising out of a tractor-trailer loss. That is precisely what Ryder and its insurer argued. In a decision later affirmed by the US Court of Appeals for the First Circuit, the court held that the clear intent of the client, and the insured was not to provide primary coverage for the leased tractors. Accordingly, under New Hampshire law, the Ryder policy alone provided primary coverage. The concurring opinion in the appellate court reached the same conclusion on the basis of a post-policy endorsement added to the policy at our suggestion with the consent of the insured. Separately, the court certified to the New Hampshire Supreme Court a question regarding the responsibility of an excess insurer to contribute on a co-primary basis for defense costs. The NH Supreme Court clarified state law, finding that excess insurers do not contribute to the defense on an equal basis with primary insurers. Accordingly, the client was not required to pay defense costs in the underlying matter.
- A shipper claimant whose oil rig was damaged in transit made a claim against a trucker, with the insurer offering its $250,000 cargo limit. The shipper filed suit for bad faith against the cargo handler and made a further claim against the trucking company's trucker-liability policy. Working with Texas counsel, successfully argued the loss was not covered by the auto policy in light of the "care, custody, and control" exclusion, with the court rejecting the novel theory that the cargo was in the control of the driver, but not of the trucking company. Obtained summary judgment for client Southern County. Also sought summary judgment on behalf of client

Northfield (a related company) on the bad-faith action and won summary judgment on that motion as well.

- A matter arose out of a collision in South Carolina, in which a truck rolled through an intersection and struck the plaintiffs' car, causing a knee fracture to the husband and injury to his wife. The plaintiffs initially only sued the truck driver and secured a default verdict. While the plaintiffs had been in touch with the insurer's TPA prior to the filing of action, TPA, which had offices in lower Manhattan, was forced to relocate as a result of the 9-11 attack, and, for months, had difficulty accessing its files. The default occurred during those months. Attempts to have the default opened were unsuccessful, and in a decision drafted by plaintiffs' counsel and signed by the judge to send a message to "those folks up in New York," the court assessed damages of about $1 million in compensatory damages and over $2.5 million in punitive damages. Ultimately, the TPA was found not to have acted in bad faith.
- Obtained affirmative judgment from the US Court of Appeals for the Sixth Circuit in favor of client on appeal from the US District Court in Ohio. Illinois National had issued a truckers' policy to the motor carrier, while Ohio Casualty had issued a non-trucking policy to the truck driver. The driver had been dispatched over the course of the week from one pickup and delivery to another. On Friday morning, after delivering a load in West Virginia, he was told to pick up a load in Ohio, about an hour away from his home. He intended to pick up the load, take it home for the weekend, then head out on Sunday evening to begin the trip to the delivery point in Florida. Once the load was tied down, the shipper decided to keep the loaded trailer in a covered area on its premises, as it did not want the load getting wet over the weekend. The driver detached the trailer and bobtailed home, stopping once in an unsuccessful attempt to find a truck wash. He got back on the highway and struck another vehicle just a few miles from his home, causing serious injury to the vehicle occupant. Since he was not yet home, the court agreed with Ohio Casualty that the driver remained in the business of the motor carrier and that, therefore, the Ohio Casualty policy did not apply.
- Through the machinations of an attorney who was simultaneously representing another insurance company as well as a trucking company in a tort action and its driver in the tort action and in a declaratory judgment action without letting him know, a consent judgment was entered against the driver in the amount of $5.5 million. The driver was never told about the consent judgment, either. The trucking company was dismissed as part of a settlement in which the other insurer paid only a portion of its limits. Sentry received a demand to pay its policy limits as well as a claim for bad faith for declining to defend the driver in the tort action. Successfully moved to disqualify the attorney for representing parties with conflicting interests. A separate motion to quash the consent judgment was pending when the judge called a settlement

conference, and the other parties resolved the remaining claims.

- Clarendon had issued a non-trucking policy to a truck driver who was using the rig at the time of the loss in the business of the motor carrier that had leased a vehicle. That triggered Clarendon's exclusion under the plain terms of the non-trucking policy. The estate of the victim, though, argued that the driver, who had executed the lease agreement, lacked the authority to enter into the lease because the tractor was registered in his wife's name. Convinced the district court and the Seventh Circuit Court on appeal that the driver was properly authorized by the owner to execute the lease and that, accordingly, the Clarendon exclusion was applicable.
- Successfully guided a client through a threatened suspension of its operating license by working with the client and with the US Department of Transportation to ensure the client was in compliance with the department's requirements.
- 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.
- 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 looking for a place to sleep between deliveries.
- Successfully persuaded the US Court of Appeals for the Ninth Circuit that the regulatory endorsement MCS-90 did not create a duty to defend bodily injury action against the insured motor carrier where the policy itself provided no coverage.
- Represented an insurance company in persuading the US Court of Appeals for the Second Circuit that, under New York law, the insurer's statutory duty to disclaim coverage under the contingent policy was not triggered until the adversary produced a copy of the other policy in discovery.
- Successfully persuaded the US District Court for the Eastern District of New York that a loss arising out of the negligence of the named insured's employee in operating a motor vehicle fell within several specific exclusions of the client's commercial general liability policy.

Prior Experience

- Hiscock & Barclay, LLP, Partner
- Schindel, Farman, Lipsius, Gardner & Rabinovich, LLP, Partner

Selected Community Activities

- Queens Community Little League, Former Little League and Softball Coach
- Rosenberg Center, Adult Education Volunteer
- Tomchei Shabbos, Food Delivery Volunteer

Selected Honors

- Martindale-Hubbell AV Preeminent Peer Review Rated for Very High to Preeminent Ethical Standards and Legal Ability, 2001-2019

Selected Speaking Engagements

- American Millennium Insurance, “Liability and Coverage Issues in Trucking Litigations”
- Liberty Mutual, “Commercial Auto Policies: Looking Ahead”
- General Star, “Is a Truck Driver an Employee or an Independent Contractor of a Motor Carrier?”
- ACI Conference Institute National Forum on Defending and Managing Truck Litigation, “Insurance Issues Related to Commercial Motor Vehicles and Maximizing Coverage: Risk Management and Available Options for Trucking Companies”
- Thinking About Insureds Who Transport Waste Water Resulting From Fracking Operations Seminar, “Leaks, Spills & Unloading Accidents: Liability Issues, Policy Coverage, and the MCS-90”

Selected Media

- *Business Insurance*, “Motor Carrier Insurer Must Defend Truck Driver”
- *In Transit*: The Newsletter of the Trucking Law Committee, “Insurance Coverage Snares and Snafoos for Transportation Brokers: Things to Keep in Mind When Purchasing Insurance Coverage”
- *The Oxford Handbook of Judaism and Economics*, “Coins and Money in Jewish Law and Literature”
- *The MCS-90 Book*, Co-Author
- *For the Defense*, "The MCS-90 Endorsement and the Tripartite Relationship"

Selected Alerts & Blog Posts

- COVID-19 and Insurance Coverage

Selected Publications

- Transportation Year in Review
  - 2023 Transportation Annual Year in Review
  - 2022 Transportation Annual Year in Review
  - 2021 Transportation Annual Year in Review