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PRACTICES

Global Insurance Services

INDUSTRIES

Insurance and Reinsurance

Ashlyn M. Capote

PARTNER

EXPERIENCE

Ashlyn M. Capote advises insurers on complex coverage matters and handles insurance coverage litigation throughout New York State. She manages all aspects of coverage litigation, from pleadings and discovery to mediation and settlement negotiation.

Ashlyn regularly counsels clients on their obligations to provide coverage to insureds under their policies and their ability to seek additional coverages on behalf of their insureds. She frequently provides advice regarding coverage obligations related to liability policies, including issues related to additional insured coverage, priority of coverage, construction defects, environmental coverage, and Coverage B. She also routinely provides guidance regarding first-party coverage issues including those related to COVID-19 and catastrophic coverage claims resulting from natural disasters. She frequently publishes and speaks on these issues as well.

During law school, Ashlyn served as Editor-in-Chief of the *University of Detroit Mercy Law Review*, was active in moot court, and served as a teaching and/or research assistant for several of her professors.

EXPERIENCE HIGHLIGHTS

Appellate

- Obtained reversal at the Fourth Department of a summary judgment motion denial in a Labor Law Section 240(1) case by successfully arguing in appellant and reply briefs and at oral argument that the plaintiff was the proximate cause of his accident, *Miller v. Webb of Buffalo, LLC*, 126 A.D.3d 1477 (4th Dept. 2015).
- Won summary judgment in *Nasdi, LLC v. Acceptance Indem. Ins. Co.*, 2021 N.Y. Misc. LEXIS 21583 (Sup. Ct., Richmond Co., July 6, 2021), which resulted in additional insured coverage for the client.
- Obtained summary judgment for an insurer that had been sued for a bad faith denial of coverage in a first-party property damage case in *Endemann v. Liberty Ins. Corp.*, No. 5:18-cv-00701-DNH-ML, 2022 U.S. Dist. LEXIS 82070 (N.D.N.Y. May 5, 2022) and had the judgment affirmed by the Second Circuit in *Endemann v. Liberty Ins. Corp.*, No. 22-1217, 2023 U.S. App. LEXIS 15466 (2d Cir. June 21, 2023).
- Obtained summary judgment and a decision that the client was owed additional insured coverage in *Reidy Contr. Group, LLC v. Mt. Hawley Ins. Co.*, 727 F. Supp. 3d 399 (W.D.N.Y. 2024) and *Reidy Contr. Group, LLC v. Mt. Hawley Ins. Co.*, 683 F. Supp. 3d 290 (W.D.N.Y. 2023).
- Prevailed in obtaining a declaration that no coverage was owed by the carrier client in *Merchants National Ins. Co. v. YYR Repairs, Inc. et al.*, Index No.: 804001/2023 (Erie Co. Sup. Ct., March 22, 2024).
- Succeeded in having the Second Department Appellate Division reverse a lower court's decision in *523 BWAY, LLC v. Erie and Niagara Insurance Association*, 236 A.D.3d 841 (2d Dept. March 19, 2025), which resulted in additional insured coverage for a carrier's insured.
- Obtained dismissal for the insurer in *Looby v. Safeco Nat'l Ins. Co.*, No. 1:25-cv-00533 (MAD/PJE), 2025 LX 531045 (N.D.N.Y. Dec. 3, 2025) after demonstrating that the policyholder had filed the lawsuit after the two-year suit limitation provision expired in a first-party property damage dispute and failed to adequately allege equitable estoppel.

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- Prevailed in the Second Circuit in a decision demonstrating that the client was owed additional insured coverage in *Reidy Contracting Grp., LLC v. Mt. Hawley Ins. Co.*, 167 F.4th 44 (2d Cir. 2026).
- Successfully had extra-contractual claims dismissed against an insurer in a first-party property damage dispute in *Strelkovski v. Liberty Ins. Corp.*, No. 3:25-CV-107, 2026 LX 13279 (N.D.N.Y. Feb. 13, 2026).

HONORS & AWARDS

- Martindale-Hubbell Peer-Review Rating: AV Preeminent
- *Best Lawyers in America*
  - Insurance Law, 2023, 2025-27
  - Litigation – Insurance, 2025-27
- Upstate New York *Super Lawyers,* 2023-26
- *Best Lawyers in America: Ones to Watch*
  - Insurance Law, 2021-22
- Upstate New York *Super Lawyers, Rising Stars,* 2019-22
- Business Insurance *Women to Watch* 2025

BACKGROUND

ADMISSIONS

- New York
- Second Circuit Court of Appeals
- U.S. District Courts for the Northern, Southern, Eastern, and Western Districts of New York
- Michigan
- U.S. District Court for the Eastern District of Michigan

EDUCATION

- University of Detroit Mercy School of Law, J.D., *magna cum laude*, 2012
  - *University of Detroit Mercy Law Review*: Editor-in-Chief
  - Research and Teaching Assistant
  - Book Awards for highest grade in Evidence, Civil Procedure, Criminal Law, Property, Legal Writing, Environmental Law, Immigration Law, and Toxic Torts Law Firm Program
- Aquinas College, B.A., *magna cum laude*, 2009

PROFESSIONAL AFFILIATIONS

- Defense Research Institute (DRI)
  - Insurance Coverage and Claims Institute
    - Program Chair, 2025
    - Program Vice Chair, 2024
    - Marketing Chair, 2023
    - Planning and Marketing Committee Member,

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2019–present

- Insurance Coverage and Practice Symposium
  - Planning and Marketing Committee Member, 2018–present
- Insurance Bad Faith and Extra-Contractual Liability Seminar
  - Planning and Marketing Committee Member, 2023–present
- Insurance Law Committee
  - Membership Vice Chair, 2020–present
  - Compendium Vice Chair, 2019–present

- International Association of Defense Counsel
- Bar Association of Erie County
  - Co-Chair of the Young Lawyers Committee, 2018–20
  - Judiciary Committee, 2020
  - Awards Committee, 2020–21
- Federation of Defense and Corporate Counsel – Ladder Down Leadership Program, 2023
- Women's Bar Association of Western New York

COMMUNITY INVOLVEMENT

- SSG William R. Wilson III Memorial Foundation

PUBLICATIONS & EVENTS

PUBLICATIONS

- "Risk Transfer in New York Post-'Burlington': The Impact of Liability Determinations on an Insurer's Duty to Defend and Indemnify an Additional Insured," *New York Law Journal*, August 6, 2026
- "Self-Serving Allegations and Extrinsic Facts: An Analysis of Whether Allegations in a Third-Party Complaint can Trigger Coverage for an Additional Insured in New York," *New York Law Journal*, July 8, 2026
- "Primary and Noncontributory Provisions and Priority of Coverage," ABA's *The Brief*, December 20, 2023
- "Construction Defect Claims: A 2022 Update—Part II," (Co-Author) *Mealey's Litigation Report: Construction Defects Insurance*, March 16, 2023
- "Construction Defect Claims: A 2022 Update—Part I," (Co-Author) *Mealey's Litigation Report: Construction Defects Insurance*, January 10, 2023
- "Caused, in Whole or In Part, By: Additional Insured Coverage in the Wake of *Burlington v. NYCTA*," (Co-Author), April 2022
- "Construction Defect Claims: A 2021 Update—Part II," (Co-Author), *Mealey's Litigation Report: Construction Defects Insurance*, April 2022
- "Construction Defect Claims: A 2021 Update—Part I," (Co-Author), *Mealey's Litigation Report: Construction Defects Insurance*, March 2022
- "Construction Defect Claims: A 2020 Update—Part II" (Co-Author), *Mealey's Litigation Report: Construction Defects Insurance*, May 2021
- "Construction Defect Claims: A 2020 Update—Part I" (Co-Author), *Mealey's Litigation Report: Construction Defects Insurance*, November 2020
- "COVID-19 Business Interruption Claims: The Lesser-Discussed Acts or Decisions and

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Loss of Market Exclusions" (Co-Author), DRI's *In-House Defense Quarterly*, Fall 2020

- "Can Causation Be Examined as Part of the Amount of Loss?" DRI *For the Defense*, May 2020
- "Construction Defect Claims: A 2019 Update—Part II" (Co-Author) *Mealey's Litigation Report: Construction Defects Insurance*, April 2020
- "Construction Defect Claims: A 2019 Update—Part I" (Co-Author) *Mealey's Litigation Report: Construction Defects Insurance*, March 2020
- "What the NY Child Victims Act Means For Insurance In 2020," (Co-Author), *Law360*, January 1, 2020
- "An Overview of Recent Priority of Coverage Decisions," *For The Defense*, December 2019
- "NY Courts Vary In Allowing Bad Faith Claims Against Insurers," (Co-Author), *Law360*, October 18, 2019
- Featured in "Building a Network is Key as Attorneys Begin Careers," *Buffalo Business First,* August 13, 2019
- "When Experts Are Effective In Insurance Coverage Litigation,"(Co-Author), *Law360*, June 7, 2019
- "Construction Defect Claims: A 2018 Update — Part II," (Co-Author), *Mealey's Litigation Report*, April 2019
- "The Mold Exclusion's Consumption Exception: What Constitutes a Good or Product Intended for Bodily Consumption?," (Co-Author), DRI *Raising the Bar*, Volume 15 Issue 3, April 1, 2019
- "Recent Cases Analyzing Primary and Noncontributory Endorsements," DRI *For the Defense*, March 2019
- "Loading and Unloading: Causal Connection Is the Key for Insurance Coverage," (Co-Author), DRI *The Voice*, March 13, 2019
- "Construction Defect Claims: A 2018 Update — Part I," (Co-Author), *Mealey's Litigation Report*, March 2019
- "The Insurance Coverage Aftermath of Mass Shooting Events," (Co-Author), DRI *In-House Defense Quarterly*, Fall 2016
- "'Materially Impairs': New York's Prejudice Standard in Late Notice Cases," DRI *The Whisper*, June 2016
- "Keeping Bad Evidence Out: Dismissing Direct Liability Claims Against the Employer," DRI *The Whisper*, February 2015
- "Protecting the Motor Carrier Against the Threat of Punitive Damages: An Updated Case Review," (Co-Author), IADC *Defense Counsel Journal*, January 2015
- "The 'Emergency Doctrine': Does Inclement Weather Create an 'Emergency' in Motor Vehicle Accident Cases?," (Co-Author), DRI *In Transit*, October 2014
- "Plaintiff's Failure to Buckle Up: Is the 'Seat Belt Defense' Admissible?," (Co-Author), DRI *Trials & Tribulations*, September 2014
- "Strapping the Ladder to the Wall: Avoiding Liability Under New York's Scaffold Law," DRI *The Whisper*, August 2014
- "Clearing the Regulatory Hurdles and Promoting Offshore Wind Development in Michigan," *University of Detroit Mercy Law Review*, Vol. 89 p. 223, 2012

PRESENTATIONS

- "Loading and Unloading Under GL and Auto Policies," Client Presentation, January 15, 2026
- "Navigating the Duty to Cooperate," PLRB Claims Conference and Insurance Services Expo, March 2023

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- "Delivery Services: Personal Auto Policy Coverage," PLRB Claims Conference and Insurance Services Expo, April 2022
- "The Continued Evolution of the Duty to Cooperate," Client Presentation, April 19, 2022
- "The Continued Evolution of the Duty to Cooperate," DRI Insurance Coverage and Claims Institute, March 2022
- "Construction Defect Coverage Training – Part 2," Client Presentation, December 3, 2021
- "Introduction to Insurance Coverage Construction Defect Issues," Client Presentation, October 8, 2021
- "Insurance Bad Faith Highlights—New York—2019 Cases," The Charles S. Desmond American Inn Of Court, February 26, 2020

WEBINARS

- "Loading and Unloading Under GL and Auto Policies: 2026," (Co-Presenter), GS Webinar Series, September 23, 2026
- "The Duty to Defend Additional Insureds in New York: Guidance from Recent Cases," GS Webinar Series, June 24, 2026
- "Loading and Unloading Under GL and Auto Policies: 2025," (Co-Presenter), GS Webinar Series, September 25, 2025
- "Loading and Unloading Under GL and Auto Policies: 2024," (Co-Presenter), GS Webinar Series, September 21, 2024
- "Additional Insureds: Coverage, Contracts, Endorsements and Certificates," Lorman Education Services, October 24, 2023
- "Loading and Unloading Under GL and Auto Policies: 2023," (Co-Presenter), GS Webinar Series, September 12, 2023
- "An Insured's Duty to Cooperate Under a Liability Policy," (Co-Presenter), GS Webinar Series, May 9, 2023
- "Loading and Unloading Under GL and Auto Policies: 2022," (Co-Presenter), GS Webinar Series, October 11, 2022
- "Untangling Risk Transfer: Recent Developments and Best Practices," (Co-Presenter), GS Webinar Series, August 9, 2022
- "Loading and Unloading Under GL and Auto Policies: 2021 Update," (Co-Presenter), GS Webinar Series, August 10, 2021
- "Applying the Acts or Decisions and Loss of Market Exclusions to COVID-19 Business Interruption Claims," (Co-Presenter), GS Webinar Series, September 15, 2020
- "Insurance Clause Issues," (Co-Presenter), GS Webinar Series, March 13, 2019
- "Loading and Unloading: Where Does the Risk Fall?" (Co-Presenter), GS Webinar Series, October 23, 2018