



## Todd G. Smith

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Madison

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Madison, WI 53703

### Practice Areas

Contract & Commercial  
Litigation

Data Privacy, Cybersecurity  
& Technology

ERISA Litigation

Insurance & Reinsurance

Litigation

### Admissions

Wisconsin

### Education

Juris Doctor, University of  
Wisconsin Law School, *cum  
laude*

Bachelor of Arts, University  
of Wisconsin-Madison,  
Political Science



Throughout his career, Todd has helped clients resolve their most difficult commercial disputes, including those involving insurance coverage and employee benefits. His practice also emphasizes advising lawyers and law firms regarding their professional responsibilities, ethics, and loss prevention practices. Todd serves as the firm's General Counsel.

Over his 25+ year legal career, Todd has developed significant expertise advising lawyers and their firms on ethics issues. He counsels attorneys regarding their professional responsibilities as issues arise in real time, and also represents attorneys involved in matters of professional discipline. Todd has extensive experience advising law firms on best practices and loss prevention strategies.

Todd is a member of the State Bar of Wisconsin's Professional Ethics Committee and the University of Wisconsin Law School Board of Visitors. Todd is also a former chair of the Appellate Practice Section of the State Bar of Wisconsin and has argued cases before the Wisconsin Supreme Court, Wisconsin Court of Appeals and Seventh Circuit Court of Appeals, in a wide variety of cases.

Todd is a cum laude graduate of the University of Wisconsin Law School, and received his undergraduate degree from the University of Wisconsin-Madison. He previously worked as a legislative aide in the United States Senate and Wisconsin State Senate.

### Representative Experience

*Choinsky v. Germantown School District*, 2020 WI 13. Appellate counsel for carrier in Wisconsin Supreme Court appeal clarifying duty to defend standard in Wisconsin and standard for recovery of attorney fees incurred in litigating coverage issues.

*Blesener v. Linton*, 2018 WI App 21, 380 Wis. 2d 508, 913 N.W.2d 514. Represented carrier before trial and appellate court in coverage dispute arising out of alleged misrepresentations in sale of real estate.

*Old Republic Ins. Co. v. Liberty Mutual Fire Ins. Co.*, 2015 WL 5794134 (E.D. Wis. J. Randa) (obtained summary judgment ruling that client insurer was not obligated to pay settlement costs incurred by other carrier due to lack of notice).

*Smith v. Medical Benefit Administrators Group, Inc.*, Eastern District of Wisconsin Case No. 09-C-538 (J. Randa) (obtained dismissal of monetary claims in purported ERISA class action against TPA, alleging improper claims handling practices, dismissal affirmed on appeal)

*McCarter v. Retirement Plan for the District Managers of the American Family Ins. Group*, 2008 US App LEXIS 18808 (lead counsel for retirement benefit plans in ERISA class action lawsuit challenging lump sum provision of plans; won summary judgment dismissing suit and recovering attorney fees from plaintiffs and their counsel).

## Representative Experience

*Johnson Outdoors v. USF&G et al.*, Eastern District of Wisconsin Case No. 05-C-264 (J. Clevert) (successfully resolved bad faith claim against insurance carrier denying coverage for personal injury claim based on lack of notice)

*Olday v. Barneveld School Dist.*, Dane Co. Case No. 02-CV-2591 (secured summary judgment of no coverage for sexual misconduct claim)

*Rodriguez v. Wineski*, Western District of Wisconsin Case No. 05-C-59-S (secured summary judgment for defendants in sexual misconduct claim)

*Haupt, et al. v. McFarlane Incentive Savings and Profit Sharing Plan, et al.*, Western District of Wisconsin Case No. 03-C-100 (J. Shabaz) (successfully defended ERISA plan in benefits and breach of fiduciary duty litigation)

*Gaiman v. Todd McFarlane Productions, Inc.*, Western District of Wisconsin Case No. 02-C-48 (J. Shabaz) (Copyright and contract litigation involving rights in comic book works)

*Summerlin v. Georgia-Pacific Life, Health & Accident Plan*, 366 F. Supp. 2d 1203 (M.D. Ga. 2005) (represented both a plan and a TPA in a case establishing that ERISA pre-empted Georgia's anti-subrogation statute)

*Kontowicz v. American Standard Ins. Co.*, 2006 WI 90 (interpreting statutes relating to imposition of interest on unpaid insurance claims) (amicus curiae counsel for Wisconsin Insurance Alliance and Civil Trial Counsel of Wisconsin)

*Westhaven Associates, Ltd. v. C.C. of Madison, Inc.*, 2002 WI App 230 (establishing standards for liquidated damages clauses in commercial leases)

## Other Experience

Advised national carrier on state laws concerning insurance marketing and compensation in connection with rollout of nationwide affinity marketing program.

Serves as outside counsel to benefits committee of regional insurance carrier, advising on fiduciary and benefits-related issues.

Advises multiple state and national carriers regarding coverage issues arising from the COVID-19 pandemic and best practices in claims handling.

Advised national retailer with regard to the negotiation of a tolling agreement with the U.S. Department of Justice concerning alleged fiduciary breaches in retirement and welfare benefit plans.

## Court Admissions

United States Court of Appeals, Federal Circuit

United States Court of Appeals, Seventh Circuit

United States Court of Appeals, Tenth Circuit

United States District Court, Central District of Illinois

United States District Court, District of Colorado

United States District Court, Eastern District of Wisconsin

United States District Court, Northern District of Indiana

United States District Court, Western District of Wisconsin

## Professional Association Memberships

Dane County Bar Association  
Defense Research Institute (DRI)  
State Bar of Wisconsin  
State Bar of Wisconsin Professional Ethics Committee  
Wisconsin Defense Counsel

## Activities

Middleton Cross Plains Area School District Board of Education – Former Officer  
City of Madison, Broadband and Telecommunications Regulatory Board – Former Chair  
Defense Research Institute (DRI) – Former Wisconsin SLDO Representative  
James E. Doyle American Inns of Court - Former Officer  
WayForward Resources – Past-President, Board of Directors  
State Bar of Wisconsin – Past Chair, Appellate Practice Section  
Tort and Insurance Practice Section of the American Bar Association  
University of Wisconsin Badger Basketball Booster Club – Former Board Member  
University of Wisconsin Law School – Board of Visitors (2024 - 2028)  
Western District of Wisconsin Bar Association – Past President  
Wisconsin Defense Counsel – Past Board Member  
Wisconsin Supreme Court Office of Lawyer Regulation – Former Special Investigator  
West Middleton Lutheran Church – Council Member

## Honors

Listed in *Best Lawyers in America* (Commercial Litigation, 2013 - present)  
Wisconsin Law Foundation, Fellow (Class of 2025)