



Todd G. Smith

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Madison

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Madison, WI 53703

Practice Areas

Contract/Commercial

Data Privacy & Cybersecurity

ERISA Litigation

Insurance & Reinsurance

Intellectual Property Litigation

Real Estate & Construction

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 employee benefits and insurance coverage. His practice emphasizes advising lawyers and law firms regarding their professional responsibilities, ethics, and loss prevention practices. Todd is the leader of the firm's ERISA Litigation Practice Group and serves as the firm's General Counsel.

Todd's employee benefits litigation practice focuses on representing plans and employer sponsors in disputes involving benefits provided pursuant to self-funded arrangements, including welfare and retirement benefits plans subject to regulation under the Employee Retirement Income Security Act of 1974. His experience in this area has helped him successfully defend ERISA plans against suits seeking benefits as well as claims alleging breach of fiduciary duties. Todd also represents insurance companies in ERISA litigation seeking life, health and disability benefits under insurance policies. He also helps his clients out of court, advising plan sponsors and benefits committees on recent ERISA developments.

Todd also represents Wisconsin insurers in litigation, with a focus on complex coverage matters, including claims involving sexual misconduct, construction defects and environmental contamination. He has helped clients revise their policy language and claims procedures and has testified before the Wisconsin legislature on proposed legislation affecting the insurance industry.

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 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. Most recently, Todd was appointed to the State Bar of Wisconsin's Professional Ethics Committee.

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 has worked as a legislative aide in the United States Senate and Wisconsin State Senate, and is a member of the Defense Research Institute as well as the Wisconsin Defense Counsel.

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).

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)

Wistrom v. Employers Ins. Co. of Wausau, Marathon Co. Case No. 98-CV-462 (successfully established that bad faith claims against carriers in workers compensation proceedings are barred by exclusive remedy statute)

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)

Fernandez v. Strand, 63 F.Supp.2d 949 (E.D. Wis. 1999) (J. Adelman) (establishing principle in federal court that Wisconsin insurers need not provide defense counsel to insured when complaint fails to allege covered conduct)

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.

Served as counsel to national bank in breach of fiduciary duty litigation relating to the sale of business by ESOP.

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

Activities

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)