



## 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. Todd has represented parties in complex commercial litigation throughout the state and is a past president of the Western District of Wisconsin Bar Association, an association of lawyers practicing in the fast-moving federal district court in Madison. Todd is the leader of the firm's ERISA Litigation Team and serves as the firm's general counsel.

In addition, Todd's practice has emphasized representing clients in ERISA litigation and other 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 (ERISA). Whenever possible, Todd proactively works with clients to identify and avoid risk in complex ERISA matters through training that is tailored to meet the particular needs of a company. When litigation does arise, Todd's significant experience in this area has helped him to 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. Todd 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 intellectual property, construction defects and environmental contamination. Todd also represents insurance companies in cases alleging bad faith or improper industry- or company-wide claims handling practices. Todd has helped clients revise their policy language and claims procedures and has testified before the Wisconsin legislature on proposed legislation affecting the insurance industry.

In addition to his trial court practice, Todd routinely represents clients in state and federal appellate courts. A leader in the Wisconsin appellate bar, Todd is a former chair of the Appellate Practice Section of the State Bar of Wisconsin. Todd has argued cases before the Wisconsin Supreme Court, Wisconsin Court of Appeals and Seventh Circuit Court of Appeals on a wide variety of cases, including insurance claims, ERISA appeals, employment disputes, copyright disputes, civil rights claims, family law disputes and criminal appeals. Before beginning practice, Todd served a one-year judicial clerkship with the Wisconsin Court of Appeals.

Todd is a cum laude graduate of the University of Wisconsin Law School, and received his undergraduate degree in Political Science from the University of Wisconsin-Madison. He has worked as a legislative aide in the United States Senate and Wisconsin State Senate. He is an active member of the Defense Research Institute as well as 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).

*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)

*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, District of Colorado  
United States District Court, Western District of Wisconsin  
United States District Court, Eastern District of Wisconsin  
United States District Court, Central District of Illinois

## Professional Association Memberships

Wisconsin Defense Counsel  
Dane County Bar Association  
Defense Research Institute (DRI)  
Self-Insurance Institute of America

## Honors

Listed in *Best Lawyers* (Commercial Litigation, 2013 - present)