



MICHAEL J. SMITH

Direct: 484-344-5320

Cell: 267-252-8064

Email: msmith@StewartSmithLaw.com

BAR ADMISSIONS

- Pennsylvania
- New Jersey
- New York
- Connecticut
- Ohio
- Washington, D.C.

COURT ADMISSIONS

- U.S.D.C., E.D. Pennsylvania
- U.S.D.C., M.D. Pennsylvania
- U.S.D.C., D. New Jersey
- U.S.D.C., N.D. New York
- U.S.D.C., S.D. New York
- U.S.C.A., Third Circuit
- U.S.C.A., Sixth Circuit
- U.S.C.A., Tenth Circuit

EDUCATION

Villanova University School of Law (J.D.)

Villanova University, (B.A., *summa cum laude*, *Phi Beta Kappa*)

PROFILE

Michael J. Smith is a shareholder in the firm practicing in the area of complex litigation. With extensive experience in various types of commercial litigation, a significant part of his practice is devoted to complex insurance (and reinsurance) coverage issues. His experience includes matters involving mass tort (including long tail claims involving complex trigger and allocation issues), environmental, management liability (directors and officers), bad faith/extra-contractual liability, professional liability/errors and omissions, advertising injury, construction defect, and property claims.

Mike is frequently designated by clients and co-parties as lead counsel for purposes of arguing pre-trial motions and handling trial matters. His responsibilities include developing case strategies to ensure cost-effective outcomes, handling all aspects of discovery and motion practice, pretrial and trial practice, as well as conducting effective case negotiations (including, where appropriate, Alternative Dispute Resolution). He also advises clients regarding preventative measures and provides training to avoid or minimize liability exposure.

Mike has extensive litigation and trial experience in both state and federal courts throughout the country, and is admitted to practice in Pennsylvania, New Jersey, New York, Connecticut, Ohio, and Washington, D.C., as well as before the U.S. District Courts for the Eastern and Middle Districts of Pennsylvania, the District of New Jersey, and the U.S. Court of Appeals for the 3rd Circuit, 6th Circuit, and 10th Circuit. He has also been admitted, *pro hac vice*, to various courts throughout the country, and has handled matters in California, Connecticut, Delaware, Florida, Georgia, Indiana, Massachusetts, Minnesota, Nevada, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Texas, Washington state, and West Virginia.

Mike was a shareholder and partner at Cozen O'Connor from 2000-2013 where he practiced nationally in the area of complex litigation. From 1993-2000, Mike practiced in state and federal courts throughout Pennsylvania and New Jersey (including jury trials, bench trials, arbitrations and appeals) with a well-

respected boutique litigation firm headquartered in Philadelphia, handling tort, products liability, insurance coverage, commercial litigation, civil rights, labor and employment, and professional liability matters.

PRIMARY PRACTICE AREAS

- Climate, Energy & Environmental
- Complex Litigation
- Construction Defect Coverage
- Extra-Contractual / Bad Faith
- First Party Coverage
- Mass & Toxic Torts
- Management Liability, Directors & Officers, and Financial Institutions
- Professional Liability / Errors & Omissions

AREAS OF FOCUS

- Advertising Injury & Business Tort Coverage
- CGL Insurance Coverage
- Directors' & Officers' (D&O) Coverage
- Financial Services & Banking Coverage
- Long Tail Claims & Allocation
- Products Liability Coverage
- Professional Liability (E&O) Coverage
- Property Coverage
- Rescission & Fraud
- Umbrella & Excess Coverage

REPRESENTATIVE MATTERS

(May 9, 2024) *Origis, et al. v. Great American Insurance Co., et al.*, Superior Court of Delaware, C.A. No. N23C-07-102 SKR CCLD). Motion to Dismiss granted in favor of client under claims made policy, involving multi-million dollar issue; Court held that the Underlying Litigation centered on alleged wrongs that occurred too early to be eligible for coverage under the policy and allegations in Underlying Complaint that mention wrongful conduct that occurred after the coverage cut-off date do not qualify as a "Claim" for which coverage is available. And, to extent those allegations are a Claim, they arose out of earlier alleged misconduct and therefore are excluded by the prior notice exclusions.

(May 2024) On behalf of an insurer-client, obtained a six-figure reimbursement of defense costs from another insurer who improperly refused to acknowledge its duty to defend an additional insured under its policy.

(2023) *Graphic Packaging Int'l, LLC v. Everest Nat. Ins. Co.*, Delaware Superior Court Complex Commercial Litigation Division, Case No. N22C-03-192 (2023). Obtained judgment on the pleadings that \$25 million excess policy did not provide coverage for settlement of suit brought by insured's employee under exception to workers compensation scheme. Successfully argued that insuring agreement did not extend to the type of intentional tort liability settled by insured.

(2021) *SPX Corporation v. Arrowood Indemnity Co., et al.*, North Carolina Superior Court, Mecklenburg County, Case No. 16-CVS-15605 (2021). Successfully argued and obtained summary judgment dismissing action to recover more than \$9 million from insurer in contribution action, including amounts in excess of policy limits.

(2019) *New Jersey Transit Corporation v. Certain Underwriters at Lloyd's London, et al.*, Superior Court of New Jersey Appellate Division, Docket No. A-001027-17 (briefed and argued rescission Counterclaim in property claim arising from Superstorm Sandy)

(2019) *R.T. Vanderbilt Company, Inc. v. Hartford Accident Indemnity Co., et al.* S.C. 20003 (served as lead counsel for numerous insurers on appeal and oral argument regarding several issues of first impression before Connecticut Supreme Court)

(2017) Secured full dismissal of contempt charges against client alleging violation of Final Restraining Order in connection with request for records under New Jersey's Open Records Act (OPRA) (*pro bono* court appointment).

(2016)) *R.T. Vanderbilt Company, Inc. v. Hartford Accident Indemnity Co., et al.* A.C. 36749 (served as lead counsel for numerous insurers in all-day oral argument session before Connecticut Appellate Court)

Everest National Ins. Co., et al. v. Illinois Union Ins. Co., et al., County of Kings, New York (2017) (obtained summary judgment for clients with respect to claims as to a duty to defend, compelling other insurers to defend clients as additional insureds under their respective policies, and to reimburse clients for past defense costs)

First Horizon National Corp. v. Houston Cas. Co., Western District of Tennessee (2017) – (obtained summary judgment for client under a Blended Risk Insurance Program totaling \$75 million, with a finding that the insurers properly denied coverage because the underlying claim against the insured did not fall within the applicable policy period, and, even if it did, the insured failed to give proper notice of the Claim. The Court also concluded that the insured's bad faith claim failed, and dismissed all claims in the matter with prejudice)

Everest Indemnity Ins. Co. v. Valley Forge Inc., No. 15-593, E.D. Pa.; 2015 U.S. Dist. LEXIS 140277 (summary judgment granted to insurer on duty to defend, duty to indemnify and bad faith claim in case brought by Commonwealth of PA against insured alleging violation of Solid Waste Management Act, the Clean Streams Law and Pennsylvania common law)

Anna Kormilitsyna, et al. v. Everest National Ins. Co., Supreme Court of New York, County of New York, Index No. 650769/2013 (partial summary judgment entered dismissing declaratory judgment count and breach of implied covenant of good faith and fair dealing)

R.T. Vanderbilt Company, Inc. v. Hartford Accident & Indemnity Co., et al., Superior Court, Judicial District of Waterbury Connecticut, Complex Litigation Dep't, No. X02-CV-07-5016321S (Phase I Trial) (served as lead counsel for 28 insurers in a 2-week insurance coverage declaratory judgment trial involving underlying asbestos, silica and talc-related claims)

R.T. Vanderbilt Company, Inc. v. Hartford Accident & Indemnity Co., et al., Superior Court, Judicial District of Waterbury Connecticut, Complex Litigation Dep't, No. X02-CV-07-5016321S (Phase II Trial) (served as lead counsel for 28 insurers in a 5-week insurance coverage declaratory judgement trial involving underlying asbestos, silica, and talc-related claims)

Green, et al. v. Everest National Ins. Co., et al., Court of Common Pleas, Philadelphia County, Pennsylvania, Docket No. 120403113 (preliminary objections in nature of demurrer granted in favor of insurer in direct action suit)

Everest National Ins. Co. v. New Quality's Bar Que Hut, et al. U.S.D.C. E.D. PA, Docket No. 2:2011- CV-02435 (motion for judgment on the pleadings granted in favor of insurer finding no coverage for claims alleging violation of Telephone Consumer Protection Act)

Evrz Claymont Steel, Inc., et al. v. Harleysville Mutual Ins. Co., et al., Superior Court of Delaware, New Castle County, C.A. No. N10C-12-038 JRS (summary judgment entered in favor of insurer regarding additional insured endorsement)

Everest National Ins. Co. v. J. Daniel Brett & Co., et al., U.S.D.C. E.D. PA Docket No. 08-CV-642 (motion for judgment on the pleadings granted in favor of insurer based on “dual entity”/professional services exclusion)

R.T. Vanderbilt Company, Inc. v. Hartford Accident & Indemnity Co., et al., Supreme Court of Connecticut, S.C.20000 (March 28, 2019), served as lead insurer counsel arguing before Connecticut Supreme Court regarding issues of allocation, trigger and pollution exclusion

PROFESSIONAL MEMBERSHIPS & AFFILIATIONS

- American Bar Association
- Pennsylvania Bar Association
- New Jersey Bar Association
- Philadelphia Bar Association
- Defense Research Institute (DRI)
- Pennsylvania Defense Institute (PDI) - Board Member/ Director, Eastern District
- Philadelphia Association of Defense Counsel (PADC)-served as President, Treasurer and Secretary
- Arbitrator, Court of Common Pleas, Philadelphia
- Montessori Children’s House of Valley Forge (MCHVF) - served as Board Member

NEWS, HONORS, & MORE ...

HONORS

Mike has been repeatedly voted a Pennsylvania “Super Lawyer” by his bar association peers. This honor is the result of an independent balloting survey sent to lawyers across the state and, overall, only 5 percent of lawyers are named to the list.

PUBLICATIONS & SPEAKING ENGAGEMENTS

As a complement to his extensive litigation practice, Mike has published articles and given speeches on issues of significant importance to the insurance industry. His publications and presentations include:

Panelist, Perrin Conference Emerging Insurance Coverage and Allocation Issues, May 11, 2017

Moderator and Speaker, *Reservation of Rights and Denial of Coverage Letters: Key Issues and Practical Considerations*, Client Seminar given on November 20, 2015

Moderator, *Latest in Coverage and Bad Faith*, 16th Annual Pennsylvania Bar Institute (PBI) Insurance Institute, May 9, 2012

Excess/Umbrella Insurance, client seminar given on December 8, 2010

Litigation Conduct and Bad Faith, client webinar presentation given on October 26, 2010

Litigation Conduct and Bad Faith, 2010 Cozen O’Connor Bad Faith/Extra-Contractual Conference: Unique Perspectives and Successful Strategies, presentation given on June 10, 2010, Philadelphia

Chinese Drywall: Background, Scope, and Insurance Coverage Implications, presentation given on October 1, 2009, Richmond, Va.

Chinese Drywall: Background, Scope, and Insurance Coverage Implications, presentation given on September 17, 2009, New York

Federal Magistrate Practice (Co-presented with the Honorable David Strawbridge), Philadelphia Association of Defense Counsel (PADC) Annual Meeting, June 11, 2008

Multiple Claimants and Insufficient Policy Limits: Slicing Up the Pizza Pie Without Getting Burned! Mealey's Litigation Report: Insurance Bad Faith, May 6, 2008

Bad Faith and Punitive Damages Arising from Third-Party Liability Claims (Co-author), Property Loss Research Bureau and the Liability Insurance Research Bureau National Conference, 2005, San Antonio

Where There's Smoke, Best's Review, August 2005 - article regarding insurance coverage and welding rod claims

Insurance Coverage Issues, 1st and 2nd Annual ACI Advanced Forum on Welding Rod Litigation conferences, Nov. 15-16, 2004, New Orleans, and June 20-23, 2005, Chicago

Presentations for various insurance companies, entitled *Bad Faith: Issues, Answers, and Practical Considerations*, *Bad Faith: Legal Issues and Pitfalls and Practical Considerations*, and *How to Avoid Bad Faith and Litigate Bad Faith Claims*

The Truth About Hold Harmless and Indemnity Agreements, Insurance Society of Philadelphia

Reservation of Rights/Denial of Coverage Letters, Insurance Society of Philadelphia

CHARITABLE & CIVIC INVOLVEMENT AND PERSONAL INTERESTS

Mike has represented, on a pro-bono basis, individuals in connection with Accion Comunal Latino Americana de Montgomery County (ACLAMO), a community-based multiservice organization serving the needs of low-income families, especially those of Latino background in Montgomery County, PA. Mike has also provided pro bono services to the Montessori Children's House of Valley Forge, Inc., a nonprofit school located in Valley Forge National Historical Park.