



## Dennis T. Smith

CHAIR, INSURANCE & INDEMNIFICATION

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### PRACTICE AREAS

Appellate Advocacy  
Insurance & Indemnification  
Litigation  
Business Divorce & Ownership Disputes  
Construction Law  
Trusts, Estates & Fiduciary Litigation

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### CLERKSHIPS

Hon. Arthur C. Dwyer, J.S.C. General  
Equity Division, Passaic County 1988-1989  
Hon. John J. Gibbons Chief Judge, Third  
Circuit Court of Appeals 1987

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### EDUCATION

B.A., Fairfield University, 1985  
J.D., Seton Hall University School of Law,  
1988

Dennis Smith, a founding member of the Firm, chairs the Firm's Insurance Coverage & Indemnification practice. Pashman Stein Walder Hayden has obtained coverage for its clients in construction, environmental, toxic tort, class action, and D&O liability cases, as well as in a number of other areas, including the related area of entitlement to indemnification for officers, directors, and employees pursuant to Corporate By-laws, Articles of Incorporation and Business Corporation Acts.

Dennis also has extensive experience in litigation, including construction, commercial, estate, personal injury, insurance defense, and workers' compensation defense. He has tried cases in both state and federal courts.

Dennis represents owners, general contractors, prime subcontractors, and suppliers in construction defect matters in connection with commercial projects and residential condominium projects.

### Representative Matters

Our firm is proud of the results it has achieved for clients, some of which are noted here. Of course, each legal matter is unique on many levels, and past successes are not a guarantee of results in any other pending or future matters.

- Together with co-counsel, obtained a settlement of up to \$25 million in favor of a statewide class of inmates and their families in a class

action lawsuit against Global Tel Link Corp. (GTL), a prison technology company, and its subsidiaries, regarding overcharged inmate calling services.

- Representing the plaintiff in an oppressed minority shareholder suit concerning issues of oppression in a closely held corporation. This case resulted in the New Jersey Supreme Court issuing a precedential decision clarifying the State's oppressed shareholders jurisprudence and provided needed guidance on the question of the proofs necessary to trigger the availability of remedies under the oppressed shareholder statute. The case was remanded and is on appeal again following the entry of a \$25 million judgment in our client's favor on remand. In post-judgment enforcement proceedings, assisted in collecting more than \$20 million on a judgment through various execution avenues from both individual and corporate judgment debtors. Successfully tried a fraudulent transfer claim, resulting in an opinion and order requiring the return of \$18 million in funds secreted overseas.
- Represents governmental agency in connection with the recovery of over \$2 million dollars from an excess workers' compensation carrier of benefits paid above a self-insured retention. The issue is whether the excess carrier, in the absence of an underlying defense obligation, is obligated to pay without having advised the insured of its policy defenses by way of a coverage position letter. The claim, based on estoppel and waiver, presents a novel issue of whether, in these circumstances, an excess carrier may avoid coverage without issuing its coverage position
- Represented plaintiffs in construction case against design and building professionals seeking \$5 million in damages for structural failure. Suit was filed against the architect, engineer, construction manager that hired the various subcontractors, concrete company and mason for negligent design and construction of a 90,000 square foot suspended concrete slab that failed after a few years of use. Prior to trial, we obtained a multimillion dollar settlement from a majority of the defendants. As an interested party, we successfully opposed the declaratory judgment action by the masonry contractor in the underlying case seeking to disclaim coverage. Case required an in-depth analysis of the "Your Work" exclusions and doctrine of "reasonable expectations" with regard to claims for property and loss of use damages under standard CGL policies. We obtained summary judgment as the court held that plaintiff's damages were covered under the masonry contractor's policy. The trial court and Appellate Division rejected plaintiff's application for fees under court rule because plaintiff did not succeed in obtaining verdict against defendant contractor in underlying matter. In a case of first impression, the New Jersey Supreme Court reversed and awarded our client substantial fees as a successful claimant in the coverage action.
- Represented life partner of decedent on issue of whether it was the decedent's probable intent to devise real property to his life partner free of mortgage debt although the issue was not addressed in decedent's will. The case was decided against the life partner at trial and on appeal. In a published opinion, the New Jersey Supreme Court granted certification and held that the decedent's probable intent was to transfer the property to the life partner free of debt and thus estate was required to pay off significant mortgage amount.
- Represents owners, general contractors, prime subcontractors, and suppliers in construction defect matters in connection with commercial projects and residential condominium projects.

- Represented New Jersey Turnpike in construction litigation involving the expansion of the Driscoll Bridge arising out of errors in original steel design and resultant increased costs to the Turnpike. Favorably resolved against contractor and project insurer resulting in several million dollars being paid to the Turnpike.

## Reported Decisions

- *LCG Investments v. Merchants Mutual Ins. Co.*, 2006 N.J. Super. Unpub. LEXIS 2976 (App. Div. June 2, 2006) (first New Jersey decision to address scope of debris removal provision in comprehensive Business Owner's Policy.)
- *Myron Corporation v. Atlantic Mutual/Insurance Company*, 2007 WL432624 (N.J. Super. Law Div. Jan. 22, 2007) (first New Jersey decision to address duty to defend Telephone Consumer Protection Act class action claims.)
- *Bridge Metal Industries v. Travelers Indemnity Company*, 812 F. Supp. 2d 527 (S.D.N.Y. 2011) (involving coverage for Lanham Act and Unfair Competition claims in both federal and state courts.)
- *Mortgage, Inc. v. Ward & Olivio, LLP*, 439 N.J. Super 202 (App. Div. 2014) (addressed issue of first impression as to whether limited liability partnership that fails to maintain malpractice insurance as required by court rule is converted into a general partnership in which all partners are jointly and severally liable for the malpractice of one partner.)
- *Parker v. Poole*, 440 N.J. Super. 7 (App. Div. 2015) (addressing evidentiary issue of first impression concerning admissibility of speculative testimony by party-opponent.)
- *Kiken v. Kiken*, 149 N.J. 441 (1997)(involving issue of whether decedent's estate was obligated to pay for son's ivy league education as provided in Judgment of Divorce.)
- *IMO Theodore M. Payne*, 186 N.J. 324 (2006)(involving doctrine of probable intent as applied to interpretation of decedent's will.)
- *Vergopia v. Shaker*, 383 N.J. Super. 256 (App. Div. 2006) aff'd., 191 N.J. 217 (2007) (involving issue of whether attorney was entitled to indemnification from corporation client for costs of his defense against a wrongful discharge lawsuit.)
- *Myron Corporation v. Atlantic Mutual Insurance Company*, 407 N.J. Super. 302 (App. Div.) aff'd., 203 N.J. 537 (2010 )(involving issue of whether Myron as the prevailing party in a New Jersey coverage litigation was entitled to extraterritorial counsel fees incurred in Illinois pursuant to New Jersey R. 4:42-9(a)(6).)
- *Sipko v. Koger, Inc.*, 214 N.J. 364 (2013) (holding that minority shareholder who is victim of illegal/fraudulent actions can seek statutory remedies in absence of finding of oppression.)
- *Occhifinto v. Olivo*, 221 N.J. 443 (2015) (involving issue of whether third-party beneficiary under liability policy was entitled to recover its attorney fees as a successful claimant under N.J. Ct. R. 4:42 – 9(a)(6)

## Community & Professional Associations

- Member, New Jersey Bar Association
- Member, Bergen County Bar Association
- Past Chair, District II-A Fee Arbitration Committee

## Bar Admissions

New Jersey

## Court Admissions

U.S. District Court, District of New Jersey

U.S. Court of Appeals, Third Circuit

U.S. District Court, Southern District of New York

