



Gary N. Smith Associate

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Mr. Smith is an associate practicing in the Litigation Services, Real Estate Transactions and Retail Industry teams. Mr. Smith's broad civil litigation experience includes prosecuting and defending appeals, business torts, claims for breach of contract, real estate disputes, insurance matters, employment disputes, consumer finance matters, claims for disability discrimination, negligence and mass tort claims. In addition, he has extensive experience in contract and leases negotiations.

Mr. Smith is a civil litigator who handles all aspects of civil and commercial litigation for his clients in state and federal courts throughout New York, New Jersey and Pennsylvania, from claim investigations, risk analysis, and initial pleadings through discovery, motion practice, trials and, appeals. In addition, Mr. Smith represents clients in the negotiation and drafting of various contracts and licensing agreements. He has developed significant credentials in the defense of general liability and casualty, as well as asbestos claims. The depth and breadth of Mr. Smith's experience enable him to anticipate the likely outcome of a particular claim and help the client prepare accordingly, whether the resolution strategy is settlement or trial. He works closely with clients to provide innovative strategies and cost-effective resolutions to achieve the desired result.

Representative Matters

General Litigation

- Managed and defended a significant asbestos docket in New Jersey and Pennsylvania, representing a manufacturer and supplier of various products including asbestos pipe covering, cement, block, and roofing and siding materials.
- Successfully won summary judgment on behalf of a national retail client in a premises liability matter by arguing that the terms of lease relieved the client of any duty to the plaintiff. The co-defendant landlord subsequently reimbursed the client for all costs related to the matter.
- Represented a national retail client in a successful pre-answer motion to dismiss a premises liability claim by demonstrating that the facts alleged could not result in any liability for the client.

Business Litigation

- Represented a fitness center owner against a former co-owner to enforce a covenant not to compete. Successfully negotiated a settlement which compelled compliance with non-compete provision.
- Successfully settled claims for violations of the Electronic Funds Transfer Act and UCC for a banking consumer against a bank for the wrongful transfer of funds.
- Represented an insurance carrier and obtained a significant subrogation settlement after a fire destroyed the property of its insured, a national retail company.
- Represented an aviation executive against claims for violations of restrictive covenants and in prosecution of his claim for wrongful termination. Claims were ultimately settled in the client's favor.
- Defended a commercial real estate broker against a claim that he violated a settlement agreement through the unauthorized use of a trademark. Successfully defeated the motion to enforce the settlement agreement and was awarded attorney's fees; thereafter negotiated a favorable settlement for the client.

Real Estate Litigation

- Defense of a 61-unit co-op apartment house in New York State Supreme Court regarding a dispute with its master tenant over scope of the master lease in light of the building's landmark status. Successfully defended the co-op against the master tenant's attempt to obtain a temporary restraining order, defeated a motion for summary judgment and a motion for reconsideration.
- Represented a retail tenant in a suit related to allegations by the landlord that the client's use of the property violated the lease. Successfully resolved the case in early negotiations at a minimal expense to the client.
- Defended retail tenants and commercial landlords against allegations of violations of the Americans with Disability Act.

- Successfully negotiated settlements to limit the clients' liabilities and costs related to plaintiff's fee shifting attorney's fees.
- Successfully drafted and argued motions for summary judgment in contested residential foreclosures against claims that the client, a national mortgage servicer, failed to provide proper notice to the mortgagee, violated the Truth in Lending Act, Real Estate Settlement Procedures Act and various other consumer protection statutes.
- Represented a mortgage lender in a contested foreclosure in which the client's mortgage was fraudulently discharged. Negotiated a positive settlement with the title companies for the subsequent purchaser and his mortgagee.
- Represented homeowners in claims against the local municipality for claims that the municipality failed to adhere to its requirements to maintain an easement and culvert on the clients' property. Successfully negotiated a settlement in which the municipality agreed to make all necessary repairs.
- Represented homeowners in claims against adjacent property owners for trespass and for nuisance caused by the manipulation of their property to cause water run-off onto the clients' property. Following extensive discovery and mediation, successfully negotiated a settlement agreement in which the adjacent landowner constructed a drainage system to avert any water entering the clients' property.

Appellate Litigation

- Represented a lender in an appeal to the New Jersey Appellate Division of an order denying a mortgagor's motion to vacate a summary judgment resulting in an affirmance.
- Represented a lender in an appeal to the New York State Appellate Division, Second Department to overturn the trial court's decision denying a mortgagor's motion to dismiss an action for an equitable lien.
- Represented a residential mortgage servicer in the Second Circuit Court of Appeals against allegations that it violated the Fair Debt Collection Practices Act.

Education

- Brooklyn Law School, J.D., 2004
- Pennsylvania State University, B.A., 2001

Bar Admissions

- New Jersey, 2004
- New York, 2005
- Pennsylvania, 2010

Court Admissions

- U.S. Court of Appeals for the Second Circuit
- U.S. Court of Appeals for the Third Circuit
- U.S. District Court for the Southern, Eastern and Western Districts of New York
- U.S. District Court for the District of New Jersey
- U.S. District Court for the Eastern District of Pennsylvania

Practices

- Business Services
- Litigation
- Product Liability
- Real Estate Transactions

Industries

- Retail