

LAWYER LIMELIGHT: TODD A. SMITH

By Alison Preece | November 18, 2020 | Lawyer Limelights



Winston Churchill is often quoted as saying: "If you're going through hell, keep going." Injured individuals in Illinois might have an edited ethos: "If you're going through hell, call Todd Smith."

A long-time advocate for access to justice, Smith regularly handles high-stakes cases for plaintiffs and their families who were harmed or even killed due to negligence but who would not otherwise have the means to pursue a claim. His cases are handled on a contingency basis; clients pay if Smith and his legal team win the case. As president of the Illinois State Bar Association, he led a fight against cutbacks in Social Security for children with disabilities.

Whether a horrific accident on a highway claiming the lives of four people, a negligent delivery resulting in harm to a newborn, or the crash of the 737 Max aircraft in Ethiopia, he and his team have found a way to tell their clients' stories, thereby winning substantial

verdicts and settlements for victims and their families. Over the years, Smith and his law partner Brian LaCien have received exceptional results for clients, with more than \$2B in settlements and verdicts and more than 100 cases with results of at least \$1M.

A trial lawyer for most of his career, the former Chicago assistant public defender turned personal injury attorney has always enjoyed the teamwork he experienced in government and at Power Rogers & Smith, where he was a founder and partner for more than 20 years. On May 1, he hung out a new shingle, as he and Brian LaCien opened Smith LaCien.

Lawdragon: What led you to start a new firm with Brian LaCien?

Todd Smith: I loved where I was. It was a great run of many years, but as a firm grows, sometimes, you miss the autonomy and individual collaborations. Brian and I had been doing so much work together for the past 15 years, virtually all of it very successfully. Teaming up made a lot of sense.

LD: This is your second time founding a firm. Can you talk about any lessons that you're bringing with you from the first experience?

TS: The way we work with our clients, right from the start, is important. I've always cared about that process but even more so today. The proliferation of new methods of communication such as social media helps us stay in touch and build trust. Our work is far more personal than in some areas of the law. I want clients to know that anytime they need to talk, they can reach me.

LD: Can you share any strategic plans for the firm? Are you looking to grow? Or do you want to keep that nimble size you have now?

TS: I think we're certainly going to grow. We have plans to add at least a few more lawyers, but I don't want to get too big.

I was a Cook County public defender when I started practicing law. Cook County has the largest local court system in the country. There were literally hundreds of prosecutors and at least a few hundred assistant public defenders, but we operated in a small way. It would be you and one or two other lawyers who were assigned to the courtroom with you.

I've always felt really comfortable about the closeness of working together with just a few people. Doing trial work for someone who's either injured or lost a family member is so personal that when a firm gets large it can get more business-like, and that's not good in my opinion.

That said, I think we're going to grow, and we should because we're excited about the response to the partnership being opened here this year, with people interested in asking us to help them.

LD: Tell me how the pandemic has impacted your practice?

TS: While I'm a fairly positive person generally, the ability to do a deposition, for example, is far better in person than a digital format. I know there are savings in terms of the expense of flights and hotel rooms, and maybe even the ability to stay home is better than being on the road. But I think you lose something as well. Maybe not in fairly uncontested or routine depositions where it's strictly information gathering, but if there is any contentiousness or adverse aspects to it, then you need to employ more strategy.

Doing a cross-examination on video can be done of course, but I just don't see how you can be as effective as when you're in person and handing a document to somebody. There's a big difference there.

LD: You lose all those little non-verbal cues. Especially if it's contentious as you say, then you're wondering if this person is lying to you, or you're trying to get a certain something out of them, then you can pick up on the way their foot is twitching or the way they keep reaching for their water. You wouldn't necessarily see all that if you only have this in the limited frame of a video call.

TS: Exactly. Not completely sure about the foot but the look on their face, the uncertainty and hesitations and when things like that happen, it's simply far better being there – when you're looking somebody in the eye. Maybe it's not a large majority of the time, but I believe people tend to be more candid when they see you looking right at them and they're looking right back at you – and they feel they need, when they're under oath, to respond honestly or at least closer to honest than they would otherwise. You might then gain more in a deposition when you look people in the eye.

LD: Any other impacts?

TS: Not having the paper file immediately is a challenge. A lot of our work in medical cases involves looking at medical records and comparing one record to another. We look for unusual features, if something doesn't look quite right. Maybe there's been alterations in the record and other kinds of things that might concern you, which has happened a fair amount. That can certainly be harder to spot on a computer.

And of course, we really have no juries now to speak of in civil cases. Hopefully, we get back to some sort of normal soon. It's far more difficult to ask people to come down to the courthouse, particularly at the Daley Center in Chicago. It's a 30-story high rise, and using the jury reception room that would have typically held maybe 250, 300 people is not possible today. There's a whole process that really can't be done now, and I think it's really challenging for our courts, particularly in the setting that we have. People have been talking about remote jury trials, and I don't think I want to participate in one of those. I know they've happened and we hear some positive reactions, but they are far from ideal.

LD: I can understand why people are doing it though because otherwise, when are these cases going to be tried? Things are getting so far down the road. Isn't it true that once the courts are open, the criminal cases still have to take precedence? With civil cases, it seems there will be a massive backlog.

TS: In a lot of jurisdictions, judges handle both civil and criminal cases. In ours, we have civil courtrooms and criminal courtrooms, so there's not an overlap of case types. For example, here, just down the block in the federal courthouse, those judges handle both: It's a general call.

Your point is correct that they have to deal first with criminal cases because people's freedom is at stake and they face being locked up in the Metropolitan Correctional Center. Furthermore, they have a Constitutional right to a speedy trial. There's also the issue, whether you're in custody or not, of wanting the trial to be over and getting the criminal case behind you.

LD: Can you bring us up to date about the Ethiopia Air crash case? What's happening there now?

TS: We have a specialty in aviation law. One of our current cases involves the crash of Ethiopian Airlines Flight 302, which occurred on March 10, 2019. Beyond the horrendous tragic deaths of 158 people, the thing that troubles a lot of people is that there had been another crash involving a Boeing 737 Max aircraft just 5 months earlier – Lion Air crash in Malaysia. Boeing really fought off the idea of grounding the 737 Max aircraft after Lion Air. Shortly after the March 10th tragedy, Boeing continued for a short time to fight off a grounding of the aircraft. The aircraft's been grounded for some time now.

On Oct. 28, Boeing's CEO said the company is "getting very close to the finish line" of the worldwide grounding of its 737 Max plane, which hasn't flown passengers since March 2019. One of its biggest U.S. customers, American Airlines, has the jet in its schedule for several flights at the end of the year. Regulators are at the tail end of their review of the planes but have not formally signed off. A number of knowledgeable observers remain concerned about the safety of the aircraft and the close working relationship of the FAA regulators and Boeing. Any release to service must come with the highest confidence for the safety of the flying public.

The Ethiopian case deals with a control system that took over from a faulty sensing device. The pilots were, in a very short time after takeoff, facing an inability to control the airplane. When you get out of control and you're that close to the ground, it's going to be even more problematic to do anything about it. It was extremely difficult for those pilots to figure out what was going on. Even if they had figured it out, it takes time to perform any remedy that might be available to you.

I'm on the plaintiffs executive committee of that litigation. It's in federal court here in Chicago in the Northern District of Illinois. We have weekly calls. We're involved in representation of people from Ethiopia and Kenya and a number of countries in Europe. I think there were 35 to 36 countries represented by those on the flight. It was very much an international situation and circumstance, but the focus of this case has to be here, because it's a product liability case against Boeing.

LD: What else are you working on now?

TS: I'm co-lead counsel in the Takata airbag litigation. There are basically four defendants remaining in the case: Volkswagen, Mercedes, General Motors, and Chrysler. There were four lawyers named lead counsel, chief lead counsel, and then three co-leads including myself. This started back in 2015 and it's ongoing. *(continued...)*

The defective airbag inflator was at a very real risk of busting through the housing of the inflator device because of the explosive ammonium nitrate that was used by Takata. Takata was a big supplier for a lot of the OEMs – the original equipment manufacturers. The faulty equipment resulted in a number of deaths, with the first death being a teenage girl in May 2009, and injuries, as well, because shrapnel pieces from the inflator would penetrate the bag and strike occupants of the cars. The deaths often happened when people were struck in the neck and would exsanguinate from bleeding out.

LD: Can you tell me about a recent win that felt really significant?

TS: We do a lot of trucking cases and I tried one not that long ago that had some unique challenges.

We represented the family of a 29-year-old tow truck driver, Jesse Inman, who was killed in a terrible accident on Interstate 80 East of Des Moines. He was responding to a disabled vehicle operated by Howe Freightways that had been going Westbound on Interstate 80, a major trucking route which basically runs from Illinois through Iowa, Nebraska, and on to Denver.

Two hours after Howe's truck pulled to the shoulder of the westbound lanes, two tow trucks were on site, one in front, the other about 150 feet east behind the disabled vehicle. At the same time, a Hiner Transport truck coming westbound sideswipes the tow truck that's east behind the disabled truck and trailer, on the shoulder, causing a chain of impacts involving all four vehicles. All four truck drivers died at the scene, including our client Jesse Inman.

At the trial we created a reconstruction that showed how the crash occurred. Jesse was standing in between the cab of the disabled vehicle and the back of his tow truck. At the end of the chain of impacts, Jesse was crushed in between the cab and the rear of his tow vehicle as he was preparing the towing mechanism.

The jury ultimately found Howe Freightways – the owner of the disabled vehicle on the shoulder – 57 percent responsible, and the Hiner Transport company that sideswiped that vehicle 43 percent at fault. Under Illinois law, fault is divided up in percentages. We had to show that Howe on the shoulder was more than 25 percent at fault under Illinois law to be compensated the full amount that the jury awarded. They awarded over \$19M to Jesse Inman's family.

One tragic feature came to light during the trial. The first EMT on the scene assumed Inman had died and had thrown a blanket over him. However, Jesse remained conscious for several minutes until dying at the scene. The jury awarded compensation for what we call a survival action, as well, for his conscious pain and suffering prior to death.

LD: That's heartbreaking but it was so important you were able to get some justice for Jesse's family. Tell me about the recent birth injury case you handled.

TS: I tried a birth injury case that was challenging because we were taking on an obstetrics department in a major hospital here in Chicago. There's a condition called shoulder dystocia that typically occurs when a baby's right shoulder gets stuck on the pubic bone of the mom.

What we proved happened was that there had been a pulling down on the baby's head, lengthening the nerves that run from the neck into the shoulder and arm, which tears and can pull the nerve roots out of the spinal cord causing Erb's palsy. It can leave paralysis in the affected arm and can even cause a drooping eye on that side.

Sometimes with surgery and other methods you can get a good recovery from an Erb's palsy, but there's almost always residual effects, such as loss of the use of some of the fingers and the ability to raise your arm fully over your shoulder. The jury asked for a portion of testimony from the head of obstetrics. It was on a liability point during our adverse exam. *(continued...)*

Fortunately, they returned with a decision shortly after that.

What they essentially asked was, did Mr. Smith correctly read the doctor's testimony? I had recited it correctly which demonstrated that the doctor had deviated from the standard of care. Those aren't the easiest cases in the world when you're up against one of our best hospitals and their head of obstetrics.

LD: Tell me about your experience on the board of Public Justice. I know you've served on it for quite some time.

TS: It's an honor to be involved. There are so many really good lawyers from around the country who are part of Public Justice, who actively help out with cases as well as serving on the board. An email came around the other day about the coronavirus and some of the cases that the food product group was involved in pursuing against meatpacking plants.

It was huge national news there for a while that the Covid-positive findings at meatpacking plants were astronomical relative to some other places where lots of people are working in close proximity with each other. As it turned out, the employers weren't providing or enforcing proper safety protocols. There are some cases that are ongoing right now.

I wrote an article recently stating that at the federal level right now, a bill that would provide extra protection for people who contract Covid at work is being held up in large part because the Republicans insist on having an immunity in the bill for employers. Immunities, I've always thought, were terrible to begin with, but it's ridiculous to try and include that into a bill when you're trying to support the economy.

It's not as if any lawsuit that might occur wouldn't have to prove a great deal. These would be difficult cases to begin with, but to give immunity to an employer who doesn't do the proper things to protect employees is just plain wrong.

LD: Do you think we have a problem with access to justice for low-income individuals in the country, and in Chicago specifically?

TS: I think there's always an issue about access, and the legal community has a responsibility to pay attention to that. I'm proud that I work on the side of a contingency fee situation where you can help people gain access to justice at no out-of-pocket cost to them.

In fact, when I was State Bar president here in Illinois, I focused my year on access to justice. At the time, there were cutbacks in Social Security and disability income for children, particularly those with ADHD and other learning disabilities. We handled several hundred cases pro bono during the time I was president. It was very rewarding and satisfying for all involved.
