

IN THE PURSUIT

LOVE OF LEARNING LEADS TO
SUCCESS IN THE COURTROOM

In cases involving international aviation disasters to medical negligence, Smith LaCien co-founder Todd Smith has earned more than 100 verdicts and settlements worth more than \$1M.

OF JUSTICE

PHOTO BY MICHELLE NOLAN

Flying had always fascinated Chicago trial lawyer Todd A. Smith. As a young lawyer practicing injury law, he decided to include aviation in the list of practice areas in which he wanted to excel. To do that, he learned how to fly small aircraft; earned his Private Pilot's License (PPL); took the written FAA exam; logged the requisite hours of flight time; and passed the check rides and solo flight requirements.

"I wanted to learn as much as I could about piloting aircraft so I could talk intelligently and knowledgeably to aviation engineers and experts to better understand what led to a tragic aviation disaster, then share it with clients or family members," he states.

After receiving his PPL, he flew a Cessna 172 four-seat single-engine prop plane most weekends until eventually the long hours and demand of trial work prevailed. His days of recreational flying tailed off.

That's the kind of committed pursuit of learning and preparation which has led to a highly successful legal career and Smith's reputation as a go-to trial lawyer. Without fanfare, he has quietly gained a reputation as one of the nation's top trial lawyers. Those who know him say his pursuit of justice for severely injured people and families who have lost loved ones is truly heartfelt.

Previously a founding partner at Power, Rogers & Smith, he left in early 2020 to form Smith LaCien LLP with fellow trial lawyer and partner Brian LaCien. The two had worked together for 15 years and had a history of winning exceptional results for clients, with \$2 billion in settlements and verdicts, and more than 100 cases with results of at least \$1 million.

Aviation Practice Evolves

Smith has succeeded in both Commercial and General aviation small craft cases.

In his first aviation case in the 1980s, he represented the families who lost loved ones when American Airlines Flight 191 crashed shortly after takeoff from O'Hare International Airport in Chicago. All 271 on board perished. It remains the worst domestic aviation accident ever.

Around the same time, he tried a wrongful death case of a young student pilot who lost control and crashed just short of the runway at the DuPage Airport. That case was against the United States and their Air Traffic Controllers filed in the Federal District Court for the Northern District of Illinois. Now-retired Chief Judge James F. Holderman requested the trial be held at the University of Chicago Law School auditorium, since he taught there at the time and wanted the students to learn from an authentic trial. At the end of two

weeks, a judgment of \$2 million was awarded to the family of the pilot.

Over the last 30-plus years, Smith has represented plaintiffs involved in numerous domestic and international aviation cases, including a Turkish Airline crash near Amsterdam and a domestic crash in the mountains of Afghanistan on approach to Kabul. More recently, he worked with the prominent New York law firm Kreindler & Kreindler, serving on the plaintiff's executive committee of the Ethiopian Airlines Flight 302 that crashed on March 10, 2019, shortly after takeoff from Addis Ababa, Ethiopia, killing 159. The Boeing 737 Max planes were subsequently grounded worldwide and were only recently recertified to fly again.

"There is a great deal of satisfaction that results from providing at least some sense of justice for families who have suffered devastating losses," Smith says.

Sometimes in small aircraft incidents, there is a need to reconstruct the events, since there were no witnesses nor, as in large commercial flights, data recorders to provide important information. The *Russell v Agusta* case, involving the death of the helicopter pilot Michael Russell, 50, was one such case. He was the only person on board the Agusta 109(c) helicopter when it crashed.

"We put together a great team of experts to help demonstrate, through a reconstruction of the events and the helicopter, that the cause was not pilot error as claimed but a tail rotor failure which resulted in loss of control and a deadly fiery crash near the DuPage airport," he states.

Class Actions Take Center Stage

Smith's own practice is a hybrid of subjects that have intrigued him over the years, from financial fraud and malpractice matters to litigation over faulty Takata airbags. The latter became the subject of international scrutiny after reports in the mid-2010s that some airbags were "exploding," sending shrapnel into the passenger compartment when the vehicles in which they were installed crashed.

Ultimately, 67 million of the protective devices were recalled by the National Highway Traffic Safety Administration due to the explosions, which had resulted in injuries and deaths both domestically and abroad. Vehicles affected included models from Honda, BMW, Chevrolet, Toyota, Ford and others. Smith serves as co-lead counsel on the Economic Loss portion of this national multi-district litigation in the Southern District of Florida Federal courthouse.

Other matters in Smith's caseload include a deadly explosion in a grain elevator, trucking accidents,

medical negligence and ongoing litigation in a large action, consolidated for discovery, against sterilization company Sterigenics, for alleged health problems and specifically certain cancers that were caused by deadly ethylene oxide emissions from its facility in Willowbrook, Ill. Smith serves as co-lead counsel in the litigation. About 700 cases have been filed to date.

Sterigenics closed its Willowbrook facility in 2019 after the U.S. Environmental Protection Agency, in 2018, listed the town and surrounding neighborhoods as among a few dozen nationwide facing cancer risks from air pollution that exceeded agency guidelines.

Among the class action cases in which the firm is involved is the Monsanto Roundup weed-killer litigation. The pesticide is known to cause non-Hodgkins lymphoma in people who have been exposed. A number of verdicts have already been successfully obtained and affirmed on appeal.

Bar Leadership

Providing leadership in the legal profession and specifically promoting and protecting access to justice has been a priority and passion throughout Smith's career.

While serving as president of the Illinois State Bar Association in the late 1990s, "Access to Justice" was the overriding theme and included a large pro-bono effort to aid special needs children who were affected by the cutbacks in Federal programs. Smith and a group of volunteers advocated for reinstatement of funding on a case-by-case basis.

As president of the Illinois Trial Lawyers Association in 2010, he fought back against efforts to reduce worker's rights to compensation in work-related injuries. And, as president of American Association Justice (AAJ), he launched the 7th Amendment Fund to protect civil justice rights and the right to a trial by jury. During that time, the George W. Bush Administration pushed hard for caps on jury trial awards nationally through their legislative efforts. Ultimately—those legislative efforts failed.

Impact of the Pandemic

Smith LaCien's opening coincided with the unexpected arrival of the COVID-19 pandemic at a time when economists were still predicting a year of continued economic growth leading up to the fall Presidential elections. Obviously, opening during a pandemic was not the time frame which Smith and LaCien would have chosen, but they managed to make the most of it.

"The timing wasn't perfect, that's for sure," Smith says. "But to some extent, it gave us a bit more latitude and

breathing room that allowed us to be completely settled in as the re-opening occurs."

At the start of the pandemic, Cook County jury trials came to a halt but have now resumed on a limited basis. The courts have announced they'll be fully re-opened in October 2021, but the emergence of the new COVID-19 variant could mean the date is altered.

On a broader scale, Smith wonders how many of the legal profession's concessions to Covid-19 during the past year will outlive the pandemic. Some concessions, such as conducting hearings, case management conferences, and depositions with videoconferencing apps like Zoom, seem to have proven their worth.

"I think there's a lot more efficiency in handling some things remotely," he says.

When it comes to juries, however, Smith believes justice is best decided and delivered face-to-face. "It is critical for jurors to be present and for juries to see the witnesses and make assessments of credibility," he says. "I don't see how a jury can do that effectively unless they're together in person."

The Road Ahead

Smith says the real joy in practicing law is not just the satisfaction of helping everyday people but the in-depth learning needed across a wide spectrum of topics to successfully litigate a case.

With a master's degree in business administration from Northwestern University Kellogg School of Management, he has continued to learn about complex matters that range from the causes of a birth injury to catastrophic injuries suffered from motor vehicle crashes, to the intricacies involved in accounting and financial malfeasance cases. He and LaCien worked together on an accounting malpractice case in Peoria, Illinois, involving their client and the international accounting firm KPMG. Their work resulted in a \$17.6 million record jury verdict.

"We intend to continue pursuing cases of all kinds in which we have proven success," he states. "We already enjoy our autonomy and various collaborations. But size does have an impact on your ability to control your own destiny, especially if you decide you want to consider a new or additional direction."

Smith believes the firm's growth is inevitable. Already, they have added several paralegals, including in nursing, to assist in medical issues and reviews. They've also added other staff including associate attorneys. "We look forward to the coming year," he concludes, "and anticipate additional success as we explore every opportunity."