

# Fee, Smith & Sharp LLP

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## Brett A. Smith

### FOUNDING PARTNER



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#### TELEPHONE

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Brett Smith, Martindale-Hubbell AV-rated attorney, regularly serves as lead counsel for companies and individuals in disputes facing multimillion-dollar exposure.

## Practice Areas & Education

### PRACTICE AREAS

- Commercial & Business Litigation
- Labor & Employment
- Products Liability
- Construction Liability & Defects
- Healthcare Liability
- Intellectual Property Litigation
- Premises Liability/Retail Litigation
- Professional Liability
- Appellate Law

### EDUCATION

- South Texas College of Law, J.D., 1991
- Southern Methodist University, B.B.A., 1988

## About Brett

### EXPERIENCE

As a founding partner of the firm, Brett Smith represents companies and individuals in high-exposure disputes in federal and state courts throughout the state of Texas.

Mr. Smith, a Martindale-Hubbell AV-rated attorney, regularly serves as lead counsel for companies in disputes facing multimillion-dollar exposure. He has successfully tried cases including but not limited to general liability, contract, insurance bad faith, product liability, medical malpractice and premises liability claims. In addition, Mr. Smith has litigated employment, construction defect and intellectual property-related matters. Mr. Smith has experience practicing before appellate courts in the State of Texas, including the opportunity to successfully argue before the Texas Supreme Court.

In addition to his litigation practice, Mr. Smith consults with clients regarding risk assessment for the purpose of making recommendations on steps to be taken to eliminate or minimize exposure.

Mr. Smith's approach to the practice of law in obtaining the most efficient and successful results makes him a valuable asset to the firm as a senior partner.

## BAR ADMISSIONS

- Texas

## COURT ADMISSIONS

- U.S. District Court for the Southern District of Texas
- U.S. District Court for the Western District of Texas
- U.S. District Court for the Eastern District of Texas
- U.S. District Court for the Northern District of Texas

## PROFESSIONAL AFFILIATIONS

- AV Rated Attorney by Martindale-Hubbell
- American Bar Association
- Defense Research Institute
- U.S. Law
- Dallas Association of Defense Counsel
- Texas Association of Defense Counsel
- Dallas Bar Association
- State Bar of Texas

## REPRESENTATIVE MATTERS

- Significant win for general contractors at the Texas Supreme Court. Represented a general contractor in a case decided by the Texas Supreme Court on May 7, 2021. The court issued an opinion in favor of our client in a case of great concern to general contractors having a presence in the State of Texas – JLB Builders, LLC v. Hernandez. The court reversed an 8-5 en banc opinion from the full Dallas Court of Appeals that may have significantly broadened general contractor liability for injuries to subcontractor employees. The Texas Supreme Court ruled that our client did not retain contractual control or exercise actual control over the subcontractor's work. As a result, the court ruled that our client owed no duty to the subcontractor's employee.
- General contractor win affirmed by the Dallas Court of Appeals. Defended an upstream contractor which was sued as a result of a subcontractor employee falling off of a roof of a multi-story apartment building while performing roofing work resulting in his death. The trial judge entered a judgment in our client's favor. Plaintiffs appealed the summary judgment to the Dallas Court of Appeals unsuccessfully resulting in affirmation of the trial judge's order in our favor based upon our client's lack of control over the subcontractor's work performed at the time of the incident. The Dallas Court of Appeals opinion in this case has been cited by other appeals courts over 65 times. Gonzalez v. VATR Const. LLC, 418 S.W.3d 777 (Tex. App.—Dallas 2013, no pet.)
- Wrongful death healthcare liability claim defense verdict for skilled nursing care facility. Represented a skilled nursing care facility in a healthcare liability lawsuit that was filed by the family of a resident for wrongful death. A defense verdict was returned in our client's favor resulting in a take nothing judgment.
- Another defense verdict in a wrongful death healthcare liability claim for skilled nursing care facility. Defended a skilled nursing care facility in a healthcare liability lawsuit that was filed by the family of a resident for wrongful death. The case was tried before a jury in East Texas. After evidence was presented by both sides, including expert witness testimony, the jury returned a verdict in favor of our client resulting in a take nothing judgment.
- Defense win in a \$5,000,000 lost profits claim. Defended a welding company sued by a concrete manufacturing company alleging that our client started a fire at their cement plant which they claimed resulted in a \$5,000,000 business interruption profit loss. After a jury trial, a defense verdict was returned in favor of our client.

- Successful motion for summary judgment regarding a traumatically brain injured minor which was upheld on appeal. Served as lead counsel for an owner/manager of an apartment complex in defense of a claim made by a tenant relating to an incident involving a young child falling out of an upper floor window resulting in a traumatic brain injury. We filed a motion for summary judgment on behalf of our clients on the basis of no duty because of lack of control. The trial judge in Denton County agreed with us and granted the motion. Plaintiffs appealed to the Fort Worth Court of Appeals which issued an opinion consistent with the trial judge's decision. Plaintiffs requested that the Texas Supreme Court consider the court of appeals decision, but that request was denied leaving the summary judgment in place in favor of our clients as a take nothing judgment.
- Successful commercial case involving breach of fiduciary duty claims, lost profits and disgorgement of lost profits. Served as co-counsel in a commercial case wherein our client claimed that a former employee breached his fiduciary duty while still employed with our client due to his soliciting the departure of other employees, carrying away confidential information, acting for his future interests at the expense of his employer by using the employer's funds or employees for personal gain or by a course of conduct designed to hurt the employer, usurping a business opportunity that belonged to that employer and working for interests of a competitor of that employer. With respect to damages, our client requested lost profits as a result of the breach of fiduciary duty and disgorgement of profits in the past for the profits gained by the subsequent employer as a result of the breach of fiduciary duty. After all evidence was presented at trial and before closing arguments, the case settled at mediation.