

## WENDY H. SMITH

SENIOR COUNSEL



### AREAS OF PRACTICE

Architectural, Engineering & Construction  
Defect Litigation  
Product Liability  
Environmental & Toxic Tort Litigation

### CONTACT INFO

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### ADMISSIONS

New Jersey  
1981

U.S. District Court District of New  
Jersey  
1981

U.S. Court of Appeals 3rd Circuit  
1985

U.S. Supreme Court  
1985

### OVERVIEW

Wendy has practiced in the area of construction defect/architects and engineers litigation for more than 30 years, representing general contractors, subcontractors and design professionals. She is an experienced litigator who has tried matters in state and federal courts and has handled innumerable mediation and arbitration proceedings. Wendy has also handled numerous multi-party construction defect/architects and engineers and complex product liability actions, including class actions.

In 1978 Wendy graduated from Smith College with an A.B. in economics and received her *juris doctor* from Boston University School of Law in 1981. She served as law secretary to the Honorable Charles R. DiGisi, J.S.C., during the 1981-1982 court term.

Wendy was admitted to New Jersey and the United States District Court for the District of New Jersey in 1981 and was admitted to the U.S. Court of Appeals, Third Circuit, and the United States Supreme Court in 1985. She is a member of the Bergen County, Essex County, New Jersey and American Bar Associations.

### EDUCATION

Boston University School of Law,  
Boston, Massachusetts (J.D.,  
1981)

Smith College (A.B., 1978)

### SIGNIFICANT REPRESENTATIVE MATTERS

Obtained a directed verdict on behalf of my client, an engineering firm in a breach of contract action. Plaintiff, a construction company, sought damages for additional unit price work performed during the construction of an airport parking apron. The project was 95% funded by a grant from the New Jersey DOT. Plaintiff performed the additional work without submitting written requests for Change Orders and without receiving written authorization to proceed. Plaintiff contended that the engineer verbally authorized them to proceed with the additional work and that they relied upon that authorization to their detriment. The airport contended that it relied upon the engineer to determine that the work was done properly. The Judge denied Motions for Summary Judgment. At trial, I established that the terms of the Contract required the Plaintiff to submit a written request for a Change Order prior to performing unit price work that would increase the contract price; that Plaintiff's failure to submit the written request for a Change Order prior to doing the work deprived the airport and the DOT of the opportunity to decrease the scope of the project; and that as a result the Plaintiff's failure to comply with the terms of its contract, the DOT denied the request for additional funding. At the end of Plaintiff's case, the Judge granted the motion for a directed verdict dismissing all claims with prejudice.

Successfully represented an engineering firm in defense of a suit alleging improper design/construction of improvements to a town park resulting in flooding of plaintiffs' commercial property. I tendered the defense to the contractor; their carrier assumed the defense of my client and resolved the matter, reimbursing my client's costs and counsel fees.

Successfully represented a manufacturer of a truss system in defense of a suit alleging multiple construction defects. The matter resolved with no payment by my client.

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## HONORS & AWARDS

AV® Preeminent™ by Martindale-Hubbell®

*The Martindale Hubbell rated attorney list is issued by Internet Brands, Inc. A description of the selection methodology can be found [here](#). No aspect of this advertisement has been approved by the Supreme Court of New Jersey.*

New Jersey Super Lawyer  
2006-2009, 2018; Top 50 Female  
Lawyers, 2006-2007

*The Super Lawyers list is issued by Thomson Reuters. A description of the selection methodology can be found [here](#). No aspect of this advertisement has been approved by the Supreme Court of New Jersey.*

New Jersey Top Rated Lawyer  
2012-2013

New Jersey's Women Leaders in  
the Law  
2013

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## ASSOCIATIONS & MEMBERSHIPS

American Bar Association

Bergen County Bar Association

Essex County Bar Association

New Jersey Bar Association

New Jersey Defense Association

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## YEAR JOINED

2000

Successfully represented a commercial property owner in a complex construction/fire loss matter in which claimants contended that improper design of a standpipe and a failure to test the standpipe following repairs by my client's contractor, resulted in the loss of two yachts. The matter resolved with no payment by my client.

Achieved a defense verdict in a wrongful death case. Plaintiffs' decedent committed suicide by jumping off of the roof of Rahway Hospital. Plaintiffs' claims included negligent security against our client, the contracted security company, along with psychiatric and nursing malpractice. Plaintiff appealed; the Appellate Division unanimously affirmed the Trial Court verdict; plaintiff then filed a Petition for Certification. The Supreme Court granted certification. Following briefing and oral argument, the Supreme Court agreed that Certification had been improvidently granted and dismissed the appeal, which resulted in affirmance of the Trial Court victory.

Obtained Summary Judgment on behalf of an Engineering Firm dismissing a wrongful death claim based upon the plaintiffs' failure to provide an Affidavit of Merit.

Successfully resolved, through mediation, a complex products liability/construction defect claim in which plaintiffs sought \$13.5 million in damages following an explosion of a large, commercial boiler during the commissioning process. I was able to persuade the parties and the court to permit limited, sharply focused discovery, providing enough information for the parties to intelligently participate in mediation, and avoiding the potential for hundreds of days of depositions. As a result, I was able to achieve a global resolution of the case for less than a third of plaintiffs' alleged damages and to significantly limit my client's contribution.

Successfully handled a class action construction defect/architectural malpractice claim on behalf of an architectural firm, obtaining a dismissal of all claims against them with no payment.

Successfully resolved, during trial, a construction defect claim against the general contractor, architect and engineer arising out of the design of a funeral home. The architect and engineer settled before trial. Plaintiff demanded approximately \$1 million in damages from my client. I defended on the grounds that the contractor was justified in relying upon the signed and sealed plans of the licensed architect and engineer. At the close of plaintiffs' case, plaintiff accepted \$75,000 in settlement.

Obtained Summary Judgment in a case involving a construction worksite accident. The general contractor sued my client, the plaintiff's employer, seeking defense, indemnification and additional insured status pursuant to a contract between the parties. I successfully argued that the plaintiff's claims against the general contractor arose out of the general contractor's active fault and not out of any vicarious liability on the part of my client. I successfully defeated the general contractor's motion for leave to appeal.

Achieved a defense verdict following a six-month trial in a \$65 million construction case by establishing that the cause of water infiltration was differential movement, not client's work. In the same action, successfully defeated the developer/general contractor's post-trial motion for contractual defense and indemnity.

Obtained Summary Judgment in a construction/product liability case in which the demand was in excess of \$10 million by establishing that the design of the system was doomed to failure prior to construction; therefore, any deficiency in the ductwork was not a proximate cause of the HVAC system's failure to meet specifications.

Successfully resolved through mediation, on behalf of the initial developer/project sponsor of a condominium project, a construction defect claim where the demand was in excess of \$23 million by joining appropriate subcontractors, tendering client's defense to and demanding additional insured status from multiple subcontractors/carriers and retaining the appropriate engineering and architectural experts. As a result of these efforts, able to resolve plaintiff's claims for \$7.8 million, limit client's contribution to \$1.8 million, and obtain contribution in excess of 75% from the subsequent developer/project sponsor, architect and various subcontractors.

Obtained a \$30,000 verdict following trial of a personal injury matter in which a young, diabetic woman claimed to have tripped and fallen on a defectively designed staircase, sustaining a trimalleolar fracture requiring open reduction with internal fixation. Plaintiff claimed to have sustained post-traumatic arthritis. Her expert testified that she would require subsequent surgery, most likely ankle fusion. Her pre-trial demand had been \$1 million.

Obtained Summary Judgment dismissing plaintiff's complaint against client, a product supplier, in a product liability case in which the demand was in excess of \$1 million based upon the Statute of Limitations. In the same action, obtained Summary Judgment dismissing the purchaser's cross claims for defense and indemnification based upon their failure to perfect their cross claims and upon the fact that once plaintiff's claims were dismissed, any verdict against them would be as a

result of their active fault. I successfully defeated the purchaser's appeal of the Order granting Summary Judgment as to the cross claims.