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## Joseph C. Smith, Jr.

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### PROFESSIONAL PRACTICE

Bartlit Beck Herman Palenchar & Scott LLP, 1993-Present, Partner (since 1998)

Kirkland & Ellis, 1991-1993, Associate

### EDUCATION & HONORS

University of Chicago Law School, 1991, J.D.

Bradley Fellow in Law and Government

President, The Federalist Society

Yale College, 1988, B.A., *cum laude*

Distinction in the Philosophy Major

Faculty prizes for oratory and debate

Varsity Member, Yale Debate Team

### GOVERNMENT SERVICE

Deputy Attorney General, State of Colorado, 1997-1998

### AWARDS & RECOGNITION

Recognized in *SuperLawyers*

### BAR ADMISSIONS

Colorado

### PROFESSIONAL ACTIVITIES AND COMMUNITY SERVICE

Co-Chairman, Professional

### CASES TRIED OR OTHERWISE TAKEN TO JUDGMENT

***Static Control Components, Inc. v. Lexmark International, Inc.*** (Federal District Court, Eastern District of Kentucky)

Represented Static Control in consolidated cases concerning aftermarket for repair of toner cartridges for Lexmark laser printers. Lexmark alleged patent infringement and active inducement of infringement. Static Control alleged patent misuse. Six week jury trial. Jury verdict for Static Control.

***Darkprint Imaging, Inc. v. Static Control Components, Inc.*** (Federal District Court, Colorado)

Defended Static Control against patent infringement claim. Technology involved electroless nickel plating for laser printer parts. Achieved favorable *Markman* ruling, then won summary judgment of patent invalidity based on obviousness.

***Poly Trucking, Inc. v. Concentra Health Services, Inc.*** (Colorado Court of Appeals)

Retained by Poly Trucking to appeal order reforming settlement agreement based on alleged unilateral mistake. Appeal concerned alleged duty to disclose information to adverse party during settlement negotiations. Appeal won; order reversed.

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# BARTLIT BECK HERMAN PALENCHAR & SCOTT LLP

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Liability Litigation  
Committee, Section of  
Litigation, American Bar  
Association, 2003-2005

Board of Advisors, Texas  
Review of Law and Politics,  
1998-Present

Board of Trustees, The  
Independence Institute,  
2001-Present

Board of Directors, Boys  
and Girls Clubs of Metro  
Denver, 2009-Present

Board of Advisors, Alliance  
for Choice in Education,  
2010-Present

***Static Control Components, Inc. v. Darkprint Imaging, Inc.*** (Federal District Court, Middle District of North Carolina)

Represented Static Control in case arising from Darkprint's misappropriation of trade secrets, unfair and deceptive business practices and tortious interference with Static employee's non-compete agreement. Summary judgment for Static on Darkprint's counterclaim. Jury verdict and judgment for Static, awarding both compensatory and punitive damages.

***Gore v. Bush, et al.*** (Leon County Circuit Court, Florida)

Represented President George W. Bush in election contest filed by former Vice President Al Gore in Leon County, Florida, contesting the results of the 2000 Presidential election in Florida.

***Langley v. Pratt & Whitney*** (Jefferson County District Court, Colorado)

Represented Pratt & Whitney against claims of fraud, breach of contract, consumer-protection violations and design defect, arising from manufacture, sale and repair of jet engines. Directed verdict for Pratt on all claims arising from manufacture and sale of engines. Jury verdict for Pratt on all claims arising from repair of engines.

***Sonoco Products Co. v. The Newark Group, Inc. et al.*** (Colorado Court of Appeals)

Argued The Newark Group's appeal of a judgment awarding damages and injunctive relief for misappropriation of trade secrets and other confidential or proprietary information. Appeal challenged only the award of damages. Judgment affirmed.

***Chromalloy v. Pratt & Whitney*** (Texas State Court, Bexar County)

Defended Pratt & Whitney in \$2.4 billion antitrust action filed by jet-repair competitor. Led counterclaim team. Jury verdict for Pratt & Whitney.

***Koch v. Koch Industries*** (Federal District Court, Kansas; 10th Circuit Court of Appeals)

Represented primary plaintiff and appellant, William Koch, in action for fraud, breach of contract and breach of fiduciary duty, arising from sale of stock in nation's second largest privately held company. Worked primarily with experts to develop claims regarding company's accounting practices, value of real estate subsidiary, and actual damages exceeding \$1 billion. Jury verdict for Koch Industries; affirmed by Tenth Circuit; certiorari denied by United States Supreme Court.

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***Cvengros v. Cenco*** (Illinois State Court)

Defended Cenco against claims of fraud and breach of contract, arising from sale of suture manufacturing business. Bench trial. Judgment for Cenco on all claims.

***Boulder Sausage Litigation*** (State, Federal District and Bankruptcy Court, Colorado)

Defended former directors of liquidated Chapter 7 debtor against actions by former shareholders of the debtor, arising from directors' purchase of estate's assets. Claims included fraud, breach of fiduciary duty, RICO and a motion to reopen the bankruptcy proceeding. Achieved dismissal of state-court actions. Federal magistrate judge recommended dismissal of federal action.

## OTHER REPRESENTATIVE CASES

***Countrywide Home Loans, Inc. and BAC Home Loans Servicing, LP v. Mortgage Guaranty Insurance Corporation*** (Federal District Court, Northern District of California)

Representing MGIC in mortgage insurance dispute with Countrywide.

***Walker Digital, LLC v. ADT, Tyco Safety Products, and Westec Intelligent Surveillance (among others)***

(Federal District Court, Delaware)

Representing ADT, TSP and Westec in patent infringement actions. Patents are alleged to cover certain internet-based surveillance systems.

***Cole v. Asurion and T-Mobile*** (Federal District Court, Central District of California).

Representing Asurion and T-Mobile in class action brought by T-Mobile subscriber who purchased cell-phone insurance and claims, on behalf of 1.4 million consumers, that Asurion and T-Mobile did not sufficiently disclose the terms of the insurance. Plaintiff seeks the return of all premiums paid by all class members. Won stay of case pending individual class member arbitrations.

***United States of America ex rel. Oberg v. Nelnet et al.*** (Federal District Court, Eastern District of Virginia)

Represented Nelnet in *qui tam* action under Federal False Claims Act. Relator alleged that Nelnet submitted false claims for hundreds of millions of dollars in student loan subsidies. Case settled immediately before jury selection.

***GEA v. Bechtel Power*** (Federal District Court, District of Colorado)

Represented Bechtel in dispute with subcontractor over subcontractor's performance during construction of power plant in Athens, New York. Case settled.

***Merrill Lynch Bank & Trust Co., FSB v. National City Bank*** (Supreme Court of the State of New York)

Represented National City Bank in case concerning its \$4.5 billion sale of mortgage origination and servicing businesses to Merrill Lynch. Case settled.

***DK Acquisition Partners, L.P. et al. v. J.P. Morgan Chase & Co. et al.*** (Federal District Court, Southern District of Texas)

Represented holders of about \$1.6 billion in Enron bank debt in action against J.P. Morgan Chase & Co., Citigroup and affiliates, alleging fraud and other wrongdoing based on defendants' knowledge of and participation in scheme to conceal Enron's true financial condition. Case settled after discovery.

***Smith v. Arthur Andersen, et al.*** (Federal District Court, Arizona)

Defended Andersen in action by bankruptcy plan trustee for Boston Chicken, Inc., alleging malpractice, negligence, breach of contract, negligent misrepresentation, and aiding and abetting breach of fiduciary duty. Trustee sought \$1.5 billion in compensatory damages; case settled for \$40 million shortly before trial.

***Pioneer Hi-Bred International, Inc. v. Syngenta Seeds, Inc.*** (Federal District Court, Southern District of Iowa)

Represented Pioneer in action for trade secret misappropriation, patent infringement and reverse palming-off, arising from Syngenta's acquisition and use of Pioneer's proprietary hybrid corn and parent seed and germplasm.

***Elm Technology Corp. v. Tachyon Semiconductor Corp.*** (Superior Court, Santa Clara County, California)

Defended Tachyon against breach of contract claim arising from licensing of semiconductor technology and parties' agreement to terminate licenses. Case settled after Tachyon counterclaimed for breach of contract and fraud.

***Espinoza v. Wal-Mart Stores, Inc.*** (District Court, Pueblo County, Colorado)

Retained by Wal-Mart to challenge multi-million-dollar default judgment entered in personal injury action. Motion to set aside granted.

***Powell v. DuPont et al.*** (Federal District Court, Colorado)

Defended DuPont against claims of negligence and strict liability, arising from the plaintiff's alleged workplace exposure to a DuPont product. Achieved voluntary dismissal by plaintiff before trial.

***Adams et al. v. AIMCO*** (Superior Court, San Francisco County, California)

Defended Denver-based Real Estate Investment Trust AIMCO in suit by nine families living in HUD-subsidized apartments owned by AIMCO. Plaintiffs asserted personal injury claims arising from allegedly toxigenic mold in apartments, among other habitability issues. Case settled.

***Goodyear, et al. v. Beren, et al.*** (District Court, City and County of Denver)

Represented Robert M. Beren in action by personal representative of estate of deceased brother Sheldon K. Beren, alleging breaches of contract and fiduciary duty with respect to closely held Delaware corporation. Case settled.

# BARTLIT BECK HERMAN PALENCHAR & SCOTT LLP

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***Unitech v. DuPont*** (Federal District Court, Idaho)

Defended DuPont against claims of breach of contract, theft of trade secrets and tortious interference with economic relations, arising from failed joint venture. Achieved favorable settlement before trial.

***Siemens, AG v. LG Semicon; Hyundai v. Infineon Technologies, et al.*** (Federal District Courts, Delaware and N.D. California)

Represented Siemens and Infineon in patent infringement litigation relating to semiconductor devices and processes. District of Delaware (Judge McKelvie) and Northern District of California (Judge Ware). Case settled.

***Guardian Life Insurance v. El Dorado*** (Denver District Court; Colorado Court of Appeals)

Principal author of El Dorado's briefs on appeal and petition for certiorari on narrowed issues after Court of Appeals decision. Also defended El Dorado against Guardian's post-trial motion for attorneys' fees in two-day evidentiary hearing. Settled after El Dorado filed petition for certiorari.

***Sound Solution v. Pratt & Whitney et al.*** (Federal District Court, Illinois)

Defended Pratt & Whitney in antitrust action based on joint venture arrangements among Pratt, The Boeing Company and the maker of a noise-control device for the Pratt engines on Boeing's 737-200 airplane. Worked primarily on antitrust theories. Settled on eve of trial.

***United Technologies Corporation v. Heico*** (Federal District Court, Florida)

Represented United Technologies in antitrust and patent infringement action arising from Heico's production and sale of jet engine replacement parts. Worked primarily on Heico's counterclaims against United Technologies.

***Amazing Enterprises v. Dun & Bradstreet*** (Boulder County District Court, Colorado)

Defended Dun & Bradstreet against claims of negligent misrepresentation brought by Ponzi-scheme investors who alleged reliance on Dun & Bradstreet credit report. Worked primarily on developing counterclaim and motions for summary judgment. Settled favorably.

***Hughes Aircraft Company v. Underwriters at Lloyds of London*** (California State Court)

Represented Hughes in third-party property damage insurance coverage litigation. Worked primarily on successful discovery of reinsurance treaties, for which there was no California precedent.

## NEWS

Bartlit Beck Profiled as "Litigation Powerhouse"

Joe Smith Wins Major Victory for Toner Cartridge Recycling Industry

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## **BIG WINS**

Bartlit Beck Saves the Multi-Billion-Dollar Printer Cartridge Remanufacturing Industry, *Lexmark v. Static Control (2007)*