

APPELLATE LAW

OVERVIEW

Foulston Siefkin's appellate practice has two goals: winning on appeal and establishing sound precedent for the benefit of our clients. Our appellate lawyers bring to their cases thorough knowledge of appellate procedure and key areas of substantive law, including business torts, contracts, securities, antitrust, commercial code, labor and employment, medical malpractice, products liability and insurance law. Several of our lawyers have served as law clerks for federal and state judges, and two former partners currently serve on the Kansas Court of Appeals. Foulston Siefkin lawyers have established a reputation for incisive legal writing and determined advocacy, having been counsel of record in far more reported federal and state cases in Kansas than any other firm.

Our appellate lawyers become involved in cases at various stages of the litigation. We may be asked to consult with other law firms and their clients and provide second opinions as to whether to appeal and what issues and strategies to pursue or how to uphold a favorable decision. We also may handle the entire appeal after another firm has tried the case, and we have been successful in reversing adverse judgments when entering the case for the first time on appeal. In other cases, industry groups, trade associations or other interested parties have retained us to present their viewpoint in an amicus curiae brief on an important point of legal precedent.

In cases we litigate in the trial court, appellate lawyers work closely with the trial team to prepare for and handle appeals efficiently and effectively. In complex cases, appellate lawyers typically will be involved in jury instructions and objections and in briefing pretrial and post-trial motions. When an appeal is taken, appellate team lawyers assume the primary responsibility for preparation of the record on appeal and the appellate briefs, as well as the oral argument.

Our appellate lawyers are experienced in multi-party and multi-counsel cases and know how to work with teams of corporate counsel and co-counsel to coordinate strategy, work allocation, and quality control.

We are proud of the service done for our clients in previous cases and are prepared for the difficult challenge of establishing important precedent for clients in future cases.

AREAS OF REPRESENTATION

Business and Commercial Litigation

We handle appeals involving many types of business and commercial litigation, including:

- Securities transactions
- Securities Broker-Dealers and Investment Advisors liability
- Directors and Officers liability
- Antitrust liability
- Liability of Banks and Financial Institutions
- Real Estate matters
- Intellectual Property matters (patent, copyright, trademark)
- Uniform Commercial Code cases
- Bankruptcy matters
- Construction cases
- Franchise cases
- Contract cases
- Environmental cases
- Tax cases

Labor and Employment Litigation

We handle appeals, involving:

- Title VII of the Civil Rights Act of 1964
- Employee Benefit Plans
- Equal Pay Act
- Americans with Disabilities Act
- Age Discrimination in Employment Act
- State Civil Rights Acts

Insurance and Personal Injury Litigation

We represent clients in appeals involving many insurance and personal injury disputes, including:

- Medical malpractice cases
- Liability of attorneys, accountants and engineers
- Insurance coverage matters
- Products liability cases
- Tortious interference cases

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- Premises liability cases
- Motor vehicle cases

Other Appellate Matters

Other examples of matters handled on appeal include:

Constitutional cases, involving the United States Constitution and State Constitutions

Statutory Construction

Educational Institution liability

Tort claims involving fraud, misrepresentation, invasion of privacy and defamation

RELATED LINKS

- Cornell's Legal Information Institute
- Eighth Circuit Court of Appeals
- Kansas Judicial Branch
- Kansas Legislature
- Law Library of Congress
- Missouri Courts
- Missouri Legislature
- National Archives and Records Administration (Search)
- Public Access to Court Electronic Records (PACER)
- Supreme Court via Cornell
- Tenth Circuit Court of Appeals
- United States Court Opinions via govinfo.gov
- United States Courts
- University of Kansas School of Law
- U.S. District Court for the District of Kansas
- U.S. District Court for the Eastern District of Missouri
- U.S. District Court for the Western District of Missouri
- U.S. Constitution via Cornell
- U.S. House of Representatives
- U.S. Supreme Court
- U.S. Tax Court
- USA.gov
- Washburn University School of Law

EXPERIENCE

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Foulston served as defense counsel for the City of Overland Park in a case brought by two police officers who alleged their failure to be promoted within the police department was discrimination and retaliation. The Court granted the City's motion for summary judgment at the district court level, and the Tenth Circuit affirmed. *Morgan v. City of Overland Park*, No. 21-2150, 2022 WL 2643492 (July 8, 2022).

Foulston served as trial and appellate counsel for Plaintiff Aeroflex Wichita, Inc. in complex case involving loss of a government contract for highly sensitive defense equipment and claims of misappropriation of trade secrets, tortious interference, and breach of nondisclosure agreements. Aeroflex obtained a judgment for compensatory and punitive damages of \$5.425 million for defendants' tortious interference and breach of contract. After addressing novel issues related to standing and statute of limitations as well as verdict form and jury instruction questions, the Kansas Court of Appeals affirmed.

Co-Counsel for Plaintiffs/Appellees/Cross Appellants in *Hayes Sight & Sound, Inc. v. ONEOK, Inc.*, 136 P.3d 428 (2006) (judgment for actual damages and \$5.25 million punitive damages affirmed; remanded for award of attorneys' fees to plaintiffs).

Counsel for State of New Mexico on appeal to U.S. Court of Appeals for the Tenth Circuit (Denver) from adverse judgment in major case involving hazardous chemical and hydrocarbon contamination of groundwater in Albuquerque area. *State of New Mexico v. General Electric Co., ACF Industries and Chevron/Texaco*, 467 F.3d 1223

Defense counsel in trial court and on appeal in successful defense of alleged consumer credit fraud class action in *Gonzales v. Associates Financial Service Co. of Kansas, Inc.*, 266 Kan. 141, 967 P.2d 312 (1998).

Plaintiffs' counsel in successful argument on certified question from U.S. District Court in *Arnaud v. Stockgrowers State Bank*, 268 Kan. 163, 992 P.2d 216 (1999) (overruling prior Kansas law permitting minority and marketability discounts in valuation of plaintiffs' stock in minority freeze-out situation).

Defense counsel in successful 1998 trial and subsequent appeal in *Koch, et al. v. Koch Industries, Inc.*, 203 F.2d 1202 (10th Cir. 2000) (claims for more than \$1 billion in damages for alleged breach of contract, breach of fiduciary duty, and securities fraud).

Appellate work on more than 20 significant, published Kansas Supreme Court, Kansas Court of Appeals and Tenth Circuit Cases involving punitive damages, civil procedure and insurance coverage, among other topics, from 1985 to the Present (listing available on request).

Other recent published cases include: *Haz-Mat Response, Inc. v. Certified Waste Services Ltd.*, 259 Kan.166, 910 P.2d 839 (1996) (counsel for defendant Coastal Corporation in successful petition for review to Kansas Supreme Court, overturning Court of Appeals decision on liability for refinery clean-up costs); *Central Kansas Credit Union v. Mutual Guar. Corp.*, 102 F.3d 1097 (10th Cir.1996) (successful defense of credit union deposit insurer against claims of withdrawing members challenging legality bylaw changes and contract terms); *Stanfield v. Osborne Industries, Inc.*, 52 F.3d 867, 34 U.S.P.Q.2d 1456 (10th Cir.1995), and *Stanfield v. Osborne Industries, Inc.*, 263 Kan. 388, 949 P.2d 602 (1997) (successful defense of trademark infringement and related claims under federal and state law).

PUBLICATIONS

FOULSTON

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Articles

2011

Prosecutorial Liability
-The Kansas Prosecutor

ISSUE ALERTS

2019

- Kansas Supreme Court Ruling Uncaps Damages for "Pain and Suffering"

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