

## LITIGATION & DISPUTES



### OVERVIEW

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With an established reputation for quality, integrity, and client satisfaction throughout Kansas and beyond, Foulston Siefkin's Litigation & Disputes Practice Group handles a broad array of commercial and complex disputes for clients ranging from Fortune 500 companies, closely held businesses, startups, and individuals to government entities, educational institutions, and nonprofits. The practice's work encompasses high-profile, bet-the-company litigation, as well as actions necessary to help and protect small businesses and individuals. The firm's litigators prosecute and defend all types of civil litigation, ranging from complex class action and antitrust cases to ordinary breach of contract and negligence matters.

Located in Wichita, Kansas City, and Topeka, Foulston Siefkin's attorneys have extensive experience in local, state, and federal trial and appellate courts, as well as in many types of administrative and specialty proceedings. They are equally adept at providing strategic litigation-avoidance counsel and negotiating favorable out-of-court resolutions through alternative dispute resolution. The practice is known for its rapid response to emergency litigation, such as obtaining or defending against restraining orders and injunctions; its robust e-discovery capabilities; and the ability to draft and argue persuasive motions.

Keeping each client's goals in mind, the firm's attorneys strive to deliver efficient, cost-effective representation by taking a practical, common sense approach to litigation. Foulston Siefkin represents companies and executives from a cross-section of industries, serving as lead counsel for many global corporations headquartered in Kansas or Missouri and companies that do business in the region. The firm is also frequently engaged by national and international law firms to serve as local Kansas or Missouri counsel to their clients.

*Chambers USA*, *Best Lawyers*, *Benchmark Litigation*, and other leading industry guides regularly cite Foulston Siefkin's Litigation Practice Group and its attorneys for excellence. In addition, several members of the litigation team have been inducted into the American College of Trial Lawyers.

## AREAS OF REPRESENTATION

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### **Accounting Malpractice**

### **Administrative Proceedings**

Enforcement actions, rule making, decertification, show cause, appeals

### **Antitrust and Trade Regulation**

### **Bankruptcy and Creditors' Rights**

### **Business Torts**

Fraud, conspiracy, conversion, defamation, business disparagement, false advertising, breach of fiduciary duty, interference with contractual and prospective business relationships, trade secrets, covenants not to compete and usurpation of corporate opportunity

### **Class Action Defense**

### **Class Actions**

Price fixing, dealer termination, monopoly, price discrimination, refusals to deal, tying arrangements, and other trade regulation issues.

### **Commercial & Complex Litigation**

### **Condemnation Proceedings**

### **Construction Law**

### **Contracts**

### **Cyber Security**

### **Directors and Officers Liability**

### **Eminent Domain**

### **Employee Benefits and Employee Benefits Litigation**

### **ERISA Litigation**

### **Environmental and Natural Resources**

### **False Claims Act Suits**

### **Fiduciary Litigation/ERISA Litigation**

### **Financial Institutions**

### **Financial Institutions - Deficiencies and Lender Liability**

### **Franchise and Distribution Litigation**

# FOULSTON

ATTORNEYS AT LAW

Government Contracting

Government Investigations & White Collar Crime

Hud-subsidized Housing

Injunctions/Receiverships/Extraordinary Remedies

Insurance Coverage

Insurance Defense

Intellectual Property

Lease Disputes

Multi-District Litigation

Oil & Gas

Partnership Disputes

Plaintiff's Commercial & Fiduciary Duty Litigation

Product Liability

Professional Liability

Professional Malpractice

Public Utilities

Qui Tam

Real Estate

Securities

State and Local Tax Controversy

Telecommunications

Trade Secret and Noncompete Litigation

Trust and Estate Litigation

Water Rights

Zoning

## RELATED LINKS

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- [United States Constitution](#)
- [United States Supreme Court](#)

# FOULSTON

## ATTORNEYS AT LAW

- United States Court of Appeals 10th Circuit Opinions
- United States Court of Appeals, Federal Circuit Opinions
- U.S. House of Representatives

## EXPERIENCE

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- Represented Wichita Firemen's Relief Association ("WFRA") in an insurance coverage/accidental death policy/failure to pay insurance benefits without just cause or excuse case: Wichita Firemen's Relief Association v. Kansas City Life Insurance Company. Plaintiff WFRA sued the insurance company for accidental death benefits it purchased for its firefighters after one of them was injured in the course of fighting a large apartment complex fire, and subsequently died. WFRA filed suit for breach of the insurance agreement and for failure to pay without just cause and excuse. Initially, summary judgment on coverage was granted by the trial court in favor of the insurance company, and the Tenth Circuit reversed. After remand, a jury found that the insurance company breached the insuring agreement, awarding policy limits of \$100,000.
- 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
- Successfully defended antitrust class action claims in *Mitchael v. Intracorp., Inc.*, 179 F.3d 847 (10th Cir. 1999).
- 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).
- Co-counsel for plaintiffs in securities fraud class action, *Flake v. Hoskins*, U.S. District Court in Kansas City, Kansas (\$5.7 million settlement in 2001).
- Counsel for Suzuki Motor Company in Appeal from multi-million dollar adverse judgment in product liability case, *Griffin v. Suzuki Motor Company*, reversed by Kansas Court of Appeals, reversal affirmed by Kansas Supreme Court, at 280 Kan. 447, 124 P.3d 57 (2005).
- 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 (2006).
- 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).
- 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).
- Defense counsel in 1999 trial of False Claims Act qui tam litigation in the Northern District of Oklahoma.
- Plaintiff's counsel in trial of wrongful termination claim for corporate president, resulting in substantial actual and punitive damage award.
- Plaintiff's counsel in *Koch Engineering Co. v. Faulconer*, 227 Kan. 813, 610 P.2d 1094 (Kan. 1980) and 239 Kan. 101, 716 P.2d 180 (Kan. 1986), involving injunctive relief for misappropriation of trade secrets and related proceedings

# FOULSTON

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- Counsel in the well-known *Wichita Wire, Inc. v. Lenox*, 11 Kan. App.2d 459 (1986)(injunction to protect purchased good will), which established the standards in Kansas for the granting of temporary injunctive relief.
- Foulston Siefkin attorneys have appeared in numerous injunction lawsuits in state and federal court where the issues arouse out of trade secrets, restrictive covenants, or unfair competition.
- Plaintiff's counsel in *South Central Kansas Health Insurance Group v. VASA Brougher et al.* - lawsuit filed on behalf of group-funded health insurance pool against several defendants, including auditor, plan administrator and stop loss carrier, to recover losses. Significant settlements entered prior to trial.
- Plaintiff's counsel representing large aircraft manufacturers against Certain Underwriters at Lloyd's London and other insurers seeking reimbursement under commercial general liability policies. Confidential settlements entered.
- Defense counsel in *Mitchael et al. v. Intracorp, Inc. et al.*, class action filed on behalf of Kansas chiropractors against medical review company and various insurers alleging, inter alia, antitrust and RICO violations. Summary judgment for defendants affirmed on appeal at 179 F.3d 847 (10th Cir. 1999).
- Successfully defended a wide range of clients by obtaining summary judgment (and upholding judgement on appeal) in claims alleging race and gender discrimination under Title VII, claims arising under the Americans With Disabilities Act, other federal statutes, state law retaliatory discharge claims, and claims involving fair competition issues.
- Successful defense of major printer and ink cartridge manufacturer in class action brought for fraud and violation of Kansas Consumer Protection Act relating to amount of ink contained in cartridges provided with new printers. *Cole v. Hewlett Packard*, Wyandotte County District Court, Case No. 01 C 2344, aff'd 84 P.3d 1047 (Kan. Ct. App. 2004) (per curiam).
- Lead defense counsel in successful defense in fiduciary duty lawsuit related to ownership and control of large automobile dealerships with claims asserted totaling \$94 million
- Lead defense and trial counsel for large hospital against claims brought by groups of disaffiliating formerly employed physicians involving complex compensation and risk pool allocations.
- Successful defense trial counsel in wrongful discharge and retaliation lawsuit brought by nurse alleging whistle-blower status against hospital affiliated employer.
- Lead defendants' trial counsel in complex and catastrophic trucking accident cases including defense of punitive damage claims. *Smith v. Printup*, 262 Kan. 587, 938 P.2d 1261 (1997).
- Lead plaintiff's counsel in Hutchinson gas explosion litigation resulting in jury verdict of \$1.9 million in compensatory award and \$5.25 million in punitive damages award for one group of clients and multiple significant settlements for other clients.
- Plaintiff's counsel in successful breach of fiduciary duty and punitive damage lawsuit against a controlling shareholder alleging misappropriation of mid-stream and producing properties belonging to a vertically integrated oil and gas company, including a freeze-out merger of a minority shareholder and stock appraisal. *Kirk v. Woolsey*, Sedgwick County District Court, Case No. 04-CV-3301.
- Plaintiff's counsel in commercial contract arbitration before AAA arbitrators in Chicago - \$1.8 million

## PUBLICATIONS

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### ARTICLES

# FOULSTON

ATTORNEYS AT LAW

## 2014

Analyzing a Trade Secret Case in Kansas  
-The Journal of the Kansas Bar Association

## 2013

2013 Kansas Annual Survey, Volume XXIII, Torts  
-Kansas Bar Association

## 2011

Prosecutorial Liability  
-The Kansas Prosecutor

## 2009

Kansas Bar Association's 2009 Annual Survey, Torts Chapter  
-Kansas Bar Association

## ISSUE ALERTS

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### 2020

- Coronavirus: Dealing with a Positive COVID-19 Test – Guidance for Commercial Landlords and Property Managers
- Coronavirus: UPDATE on Guidance Regarding Commercial and Residential Evictions and Foreclosures
- Coronavirus: COVID-19 and Business Interruption Insurance
- Coronavirus: Guidance Regarding Commercial and Residential Evictions through May 1, 2020

### 2019

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

### 2018

- Comments Sought on Updated Legal Hold Guidelines

## ATTORNEYS/OTHER PROFESSIONALS

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