



## JAMES D. OLIVER

OF COUNSEL

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## PROFILE

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Mr. Oliver's knowledge and experience is unusually broad – it includes a number of registered securities offerings, franchise offerings, mergers and acquisitions, and debt financings. In recent years, he has devoted most of his practice to counseling corporate clients and to the trial and appeal of complex business litigation. Mr. Oliver enjoys Martindale-Hubbell Law Directory's highest "AV" rating for lawyers and is listed in *Chambers USA* as a leading general commercial litigation attorney in the United States. He was selected by his peers for inclusion in the *Missouri & Kansas Super Lawyers*® list and *The Best Lawyers in America*® for the areas of commercial litigation and other categories as well. He was selected by *Best Lawyers*® as the 2012, 2017, and 2019 Kansas City, Kansas-area Corporate "Lawyer of the Year" and as the 2013 and 2017 Kansas City, Kansas-area Appellate Practice "Lawyer of the Year." He is a Fellow of the American Academy of Appellate Lawyers. Mr. Oliver is a member of the firm's appellate practice team and business practice team.

## Education

- Washburn University (J.D., 1975)  
cum laude; Editor - *Washburn Law Journal*
- Northwest Missouri State University (B.S., 1971)

## Admissions

- U.S. Supreme Court
- U.S. Court of Appeals for the Tenth Circuit
- U.S. District Court for the District of Kansas
- U.S. District Court for the Western District of Missouri
- Kansas (1975)
- Missouri (2005)

## PRACTICE AREAS

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- Appellate Law
- Litigation & Disputes
- Securities & Corporate Finance
- Antitrust & Trade Regulation
- Franchise & Distribution
- Business & Corporate Law
- Administrative/Regulatory

## INDUSTRIES

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- Franchise & Distribution

## COMMUNITY INVOLVEMENT

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- Kansas Humanities Council, Board
- Goodwill Industries International, Inc. Board of Directors (2002-08), Chairman of Research Committee
- Goodwill Industries & Easter Seals of Kansas - Past Chairman
- Goodwill Industries of Western Missouri & Eastern Kansas, Inc., Board of Directors(2002-12)
- Rotary Club of Topeka (1998-2002); Topeka Rotary Foundation Trustee (2001-02)
- United Methodist Health Ministry Fund - Board of Trustees (1997-99)
- Kansas Children's Service League - Advisory Council (1997-98)
- United Way of the Plains, Past Chair - lawyers division and major individual gifts division
- East Heights United Methodist Church (Wichita, KS) - Past Chair of Ad. Board & Lay Leader
- United Methodist Church of the Resurrection (Leawood, KS), Church Council (2008-2015, 2016-present); Church Council Chairman (2011-2015); Board of Trustees (2015); Lay Leader and Delegate to UMC Great Plains Conference (2016- ); Disciple Bible Study Leader

## RELEVANT EXPERIENCE

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- *Martin K. Eby Constr. Co. v. OneBeacon Ins. Co.*, 777 F.3d 1132 (10th Cir. 2015) (Affirming judgment for contractor client finding no indemnity liability to engineers for defense costs arising out of construction accident and pipeline leak).
- *Cent. States Mech., Inc. v. Agra Indus., Inc.*, 556 Fed. Appx. 762 (10th Cir. 2014). Judgment of bankruptcy court denying client recovery on breach of contract claims was affirmed.

# FOULSTON

## ATTORNEYS AT LAW

- *Craig v. FedEx Ground Package Sys.*, 300 Kan. 788; 335 P.3d 66 (2014). Answering certified questions from Seventh Circuit Court of Appeals.
- *Iron Mound, LLC v. Nueterra Healthcare Mgmt., LLC*, 298 Kan. 412, 313 P.3d 808 (2013), petitioned Supreme Court for review of Court of Appeals LLC operating agreement was ambiguous. Decision reversed; judgment directed as a matter of law in favor of firm's client.
- *Sierra Club v. Moser*, 298 Kan. 22, 310 P.3d 360 (2013). Counsel for intervenor electric power generators in appeal by Sierra club from KDHE order approving air quality permit for construction of coal-fired power plant. Affirmed in part, remanded in part.
- *Cresto v. Cresto*, 310 P.3d 1079, 2013 Kan. App. Unpub. LEXIS 927. Counsel for appellant in reversing district court judgment and validating will and trust against claims of undue influence.
- *Miller v. Johnson*, 295 Kan. 636, 289 P.3d 1098 (2012). Co-counsel on amicus brief for Kansas Chamber of Commerce upholding statutory cap on non-economic personal injury damages in medical malpractice cases.
- Counsel for Appellant-Garnishee in *Associated Wholesale Grocers, Inc. v. Americold Corp.*, 293 Kan. 633, 270 P.3d 1074 (2011), (reversing judgments against Northwestern Pacific Indemnity Company totaling approximately \$75 million, for alleged bad faith denial of liability coverage for underground warehouse fire damages).
- Counsel for Appellant Dean in *Miller, Secretary of Transportation v. Dean*, 293 Kan. 665, 270 P.3d 1065 (2011), (reversing \$1.4 million personal judgment against sole member of LLC for repayment of excess condemnation award received by the LLC).
- Appellate Counsel for Taxpayer, EOG Resources in *re Equalization Appeals of EOG Res., Inc.*, 46 Kan. App. 2d 821, 265 P.3d 1207 (2011), (Successfully challenged Court of Tax Appeals' treatment of flush production in valuation of oil and gas properties and reversed county's appraised valuation).
- Appellate counsel for Defendant/Appellant in directors & officers liability insurance coverage dispute in *Columbian Financial Corp. v. Banclinsure, Inc.*, 650 F.3d 137 (10th Cir 1011).
- Appellants Counsel in *Lightner v. Lightner*, 2011 Kan. App. LEXIS 141, September 23, 2011 (2011) (reversing \$1.2 million judgment for alleged breach of fiduciary duty by corporate directors and officers).
- Counsel for Appellant, Dr. Peter Cristiano, in *Leavenworth/Lansing Physicians Bldg., LLC v. Cristiano*, 242 P.3d 1281 (2010) (reversing \$2 million adverse judgment in business dispute).
- Counsel for taxpayer *In re Tax Exemption of Kouri Place, L.L.C.*, 44 Kan. App. 2d 467, 239 P.3d 96 (2010) (successful appeal to reverse Court of Tax Appeals denial of tax exemption for assisted living facility because of federal tax credit financing, which required court to reject prior decision of another panel on same issue).
- Counsel for Amici Curia landowners and natural gas producers in *Northern Natural Gas Co. v. Martin, Oliver, Wallace & Bauer, L.L.P.*, 217 P.3d 966 (2009) (advocating the rationale ultimately adopted by the Supreme Court regarding title to escaped storage gas).
- Counsel for defendant physician on petition for review to Supreme Court in *Williams v. Lawton*, 288 Kan. 768, 207 P.3d 1027 (2009) (reversing court of appeals and affirming trial court order setting aside "quotient" verdict, and affirming propriety of challenging verdict with information obtained in post-trial juror interviews).
- Counsel for The Coleman Company, Inc., in *Fleetwood Folding Trailers, Inc. v. The Coleman Company, Inc.*, 38 Kan. App. 2d 30, 161 P.3d 786 (2007) and *Fleetwood Enterprises, Inc. v. The Coleman Company, Inc.*, 37 Kan. App. 2d 850, 161 P.3d 765 (2007) (affirming judgment for Coleman on counterclaims for breach of contract and trademark infringement, with \$14.5 million recovery of treble damages and plus attorneys' fees and reversing permanent injunction against Coleman).
- Counsel on appeal for architects firm in *Newman Memorial Hospital v. Walton Constr. Co.*, 37 Kan. App. 2d 46, 149 P.3d 525 (2007) (Obtained reversal of \$1 million verdict for alleged defects in construction project; claim barred by statute of limitations).

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## ATTORNEYS AT LAW

- Counsel for Suzuki Motor Company in *Griffin v. Suzuki Motor Company*, 280 Kan. 447, 124 P.3d 57 (successful appeal of multi-million dollar adverse judgment in SUV rollover case).
- Co-defense counsel in trial and subsequent appeal in *Koch, et al. v. Koch Industries, Inc.*, 203 F.2d 1202 (10th Cir. 2000) (defeating claims for more than \$1 billion in damages for alleged breach of contract, breach of fiduciary duty, and securities fraud).
- Plaintiff Counsel in *Aeroflex Wichita, Inc. v. Filardo*, 275 P.3d 869 (2012) (reversing dismissal of action for tortious interference and trade secret misappropriation for lack of personal jurisdiction over non-resident defendant).
- Co-Counsel for Plaintiffs/Appellees/Cross Appellants in *Hayes Sight & Sound, Inc. v. ONEOK, Inc.*, 136 P.3d 428 (2006) (affirming Judgment for actual damages and \$5.25 million punitive damages affirmed; remanded for award of attorneys' fees to plaintiff).
- 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 (judgement affirmed).
- 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).
- 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 (overruling prior Kansas law permitting minority and marketability discounts in valuation of plaintiffs' stock in minority freeze-out situation).
- Plaintiff's counsel in commercial contract arbitration before AAA arbitrators in Chicago - \$1.8 million award for plaintiff Anthros Medical Group.
- Plaintiffs' counsel for working interest owners in claim against large oil & gas company for breach of contract and fiduciary duty in *Slawson, et al. v. Vintage Petroleum, Inc.* - tried in Sedgwick County District Court to judgement for \$650,000 actual damages and \$5,000,000 punitive damages, paid without appeal.
- Other published cases include: *Mitchael v. Intracorp., Inc.*, 179 F.3d 847 (10th Cir. 1999) (successful defense of antitrust class action claims for alleged insurance company conspiracy to limit access to, and fix prices for, chiropractic treatment); *Gonzales v. Associates Financial Service Co. of Kansas, Inc.*, 266 Kan. 141, 967 P.2d 312 (1998) (successful defense of alleged consumer credit fraud class action); *Haz-Mat Response, Inc. v. Certified Waste Services Ltd.*, 259 Kan.166, 910 P.2d 839 (1996) (counsel for Coastal Corporation in successful petition for review to Kansas Supreme Court, overturning Court of Appeals decision on liability for refinery clean-up costs).
- Law Clerk - Hon. Judge Delmas C. Hill, U.S. Court of Appeals, Tenth Circuit, 1975-77

## PROFESSIONAL MEMBERSHIPS, AFFILIATIONS, AND HONORS

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- Tenth Circuit Historical Society, President
- American Academy of Appellate Lawyers, Fellow
- Kansas Supreme Court Admissions Review Committee, Member and Chairman
- Recognized by *Best Lawyers®* as the 2012, 2017, 2019, and 2022 Kansas City-KS Corporate Law "Lawyer of the Year" and the 2013 and 2017 Kansas City-KS Appellate Practice "Lawyer of the Year"
- Selected by peers for inclusion in *The Best Lawyers in America®* in the areas of Appellate Practice, Bet-the-Company Litigation, Commercial Litigation, Corporate Law, Litigation – Antitrust, Litigation – Banking & Finance, Litigation – Regulatory Enforcement (SEC, Telecom, Energy), Litigation –

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ATTORNEYS AT LAW

Securities, Mining Law, and Securities/Capital Markets Law, 1999-2022

- Selected for inclusion in Missouri & Kansas Super Lawyers® List , 2005, 2010-2021 (a Thomson Reuters business)
- Identified by Chambers USA as a leading lawyer in the United States for Litigation: General Commercial, 2008-2022
- American Bar Association Member of Antitrust and Business Law Sections
- Kansas Bar Association - Past Member, Committee on Lawyer Specialization
- Johnson County Bar Association - Fellow, Johnson County Bar Foundation
- Topeka Bar Association - 1998-2002; Long-Range Planning Committee
- Wichita Bar Association - President 1996-1997; Ethics and Grievance Committee, 1992-1995; Outstanding Service Award, 1991
- American Bar Foundation - Fellow
- Kansas Bar Foundation - Board of Trustees 2002-2012; President 2010-2011
- Association of Professional Responsibility Lawyers
- Committee on Conduct of Attorneys for US Dist. Ct. - District of Kansas, 1992-1995; Chairman, 1995-1996
- Kansas City Metropolitan Bar Association - Managing Partners Committee
- Sedgwick County Law Library - Past Chairman

## PUBLICATIONS

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### 2009

- Education of Attorneys on Appeal and Cross Appeal  
-JOURNAL OF THE KANSAS BAR ASSOCIATION