



## JAY F. FOWLER

PARTNER

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## PROFILE

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Mr. Fowler's active trial practice emphasizes trial of lawsuits involving commercial relationships, including plaintiffs and defendants' representation in fiduciary duty litigation and business torts. He frequently handles complex commercial lawsuits, intellectual property and employment disputes. He has also tried high exposure professional negligence cases. Mr. Fowler has built an extensive and highly respected civil litigation practice in state and federal court. He has taken in excess of 200 jury cases to verdict and participated in numerous negotiations, mediations and arbitrations. Mr. Fowler has acted as lead trial lawyer in many matters and is experienced and highly regarded in the preparation and trial of jury cases. Mr. Fowler is a Fellow of the American College of Trial Lawyers, the International Academy of Trial Lawyers, and the Kansas Bar Foundation. He enjoys Martindale-Hubbell Law Directory's highest "AV" rating for lawyers and for many years has been listed in *Chambers USA* as a leading commercial litigation lawyer in the United States. He has been selected by his peers for inclusion in the *Missouri & Kansas Super Lawyers®* List and has also been listed in the *Missouri & Kansas Super Lawyers®* Top 100. He is listed in *The Best Lawyers in America®* for Bet-the-Company Litigation, as well as Commercial, Municipal, and Trusts & Estates Litigation. He was recognized by *Best Lawyers®* as the 2011, 2016, and 2021 Wichita Bet-the-Company Litigation "Lawyer of the Year" and the 2013 and 2017 Wichita Litigation – Trust and Estates "Lawyer of the Year." He has also been an elected member of the Kansas Supreme Court Nominating Commission.

## Education

- University of Kansas (J.D., 1980)  
Associate Editor - *Kansas Law Review*
- Emporia State University (B.S., 1977)  
with honors

## Admissions

- U.S. Court of Appeals for the Tenth Circuit
- U.S. District Court for the District of Kansas (1980)

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## ATTORNEYS AT LAW

- U.S. District Court for the Western District of Missouri
- U.S. Court of Federal Claims
- Kansas (1980)

## PRACTICE AREAS

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- Litigation & Disputes
- Professional Malpractice
- Product Liability
- Trade Secret & Noncompete Litigation
- Employment & Labor
- Estate Planning & Probate
- Intellectual Property
- Trust & Estate Litigation
- Renewable Energy, Storage & Transmission
- Energy

## COMMUNITY INVOLVEMENT

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- City of Wichita Citizen Review Board (Police), Chair
- The Wichita-Sedgwick County Historical Museum, Trustee and Vice-President
- Deaf & Hard of Hearing Services, Past-President
- Special Education Advisory Council USD #259 – Wichita, Past President
- Respite Outreach Care for Kids Organization, Inc., Past Board Member and Vice President
- Boy Scouts of America – Eagle Scout

## RELEVANT EXPERIENCE

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- Lead plaintiff's trial counsel in prosecution of trade secret and tortious interference of business relationship claims involving electronic correspondent banking software resulting in a jury verdict of \$12.8 million in actual damages and a finding of willful and malicious misappropriation. The case also involved an award of discovery sanctions totaling \$459,222.25 against the adverse defendant for destruction of evidence. Case settled posttrial after client filed motions with the court for an additional award of punitive damages of \$25,686,160 and attorney's fees of \$6,659,344.56 based on the willful and malicious finding by the jury. *LendingTools.com, Inc., v. The Bankers Bank, NA*, Case No. 2011 CV 1879, Sedgwick County District Court, Kansas.
- Plaintiff's trial counsel in prosecution of trade secret, tortious interference with business relationship and contract claims related to misuse of confidential business information by a competitor resulting in a jury verdict of \$3.325 million in actual damages and \$2.1 million punitive damage award. *Aeroflex, Wichita, v. Tel-Instruments Electronics Corp, et al*, Case No. 2009 CV 1141, Sedgwick County District Court,

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Kansas.

- Lead plaintiff's counsel in jury trial for deceptive and unconscionable acts under the Kansas Consumer Protection Act for claims related to lawsuit lending and advancement of medical expenses resulting in jury finding of 44 violations of the KCPA and the entry of judgment for civil penalties of \$140,000 and an attorney's fee award of \$169,063.60. *Reena Crisler v. Matthews Richards Healthcare Management, LLC and Kevin M. Atwell*, Case No. 14-CV-03373, United States District Court, Western District of Missouri, Southern Division.
- Lead counsel for bank D&O insurance carrier in federal declaratory judgment action involving coverage issues arising from the FDIC's closure of a bank and its subsequent \$52 million dollar suit against the bank's officers and directors. *BancInsure v. McCaffree et. al.* 3 F.Supp. 3d 904 (D. Kan. 2014).
- Lead plaintiff's counsel in Hutchinson gas explosion litigation resulting in jury verdict of \$1.9 million in compensatory award and \$8.25 million in punitive damages, fees and expenses for one group of clients and multiple significant settlements for other clients. *Hayes Light & Sound, et al., v. Oneok, et al.*, 281 Kan. 1287, 136 P.3d 428 (2006).
- 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.
- Lead trial counsel for estate and trust in multiple-action litigation and arbitrations related to family limited partnerships, testamentary dispositions and control of substantial oil and gas properties. *In re Estate of David Jackman, Jr.*, Butler County District Court, Case Nos. 2009 PR 34 and 2009 CV 227.
- Counsel for large cable television provider in administrative and civil proceedings under the Kansas Consumer Protection Act related to advertising practices.
- Plaintiff's trial counsel in reverse stock split minority freeze-out case establishing Kansas law prohibiting marketability and minority discounts in freeze-outs. *Arnaud v. Stockgrowers State Bank*, 268 Kan. 163, 992 P.2d 216 (1999).
- Lead litigation counsel for plaintiffs in a successful injunction, *cy pres*, mandamus and *quo warranto* action to prevent closure of a non-profit hospital pending transfer of a Critical Access Hospital designation to another non-profit to allow continued access to healthcare in a local community. *State of Kansas, ex rel. Stephen Six, Attorney General and Pawnee County Community Health Organization, Inc., v. St. Joseph Memorial Hospital, Inc., et al.*, Pawnee County District Court, Case No. 09-CV-61.
- Plaintiff's trial counsel in successful mandamus action involving ownership of stock in corporation. *Abromeit v. Paragon Geophysical Services, Inc.*, Sedgwick County District Court, Case No. 08-CV-0310
- Plaintiffs' co-counsel in gas explosion case filed in Douglas County, Wisconsin, involving one death and catastrophic injuries to two minors. Confidential settlements entered. *Cline, et al. v. Polar Gas Company, Inc., et al.*, Douglas County District Court, State of Wisconsin, Case No. 08 CV 450.
- Plaintiff's counsel in successful wrongful death claim against oil production company arising out of explosion and fire at a tank battery.
- Plaintiff's counsel in successful action filed on behalf of municipality against electric utility alleging that utility improperly priced supplemental energy sold under electric service agreement. *City of Chanute v. Kansas Gas and Electric Company, et al.*, U.S. District Court Case No. 04-4096-JAR.
- Defendants' liaison counsel in class action antitrust claim against Kansas automobile insurers related to PIP coverage. *Mitchael v. Intracorp*, 179 F.3d 847 (10th Cir. 1999).
- 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 counsel in Kansas Consumer Protection Act lawsuit related to claims of unconscionable and deceptive acts or practices related to hospital pricing and lien filings. *Via Christi Reg'l Med. Ctr., Inc. v. Reed*, 298 Kan. 503; 314 P.2d 852 (2013).

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## ATTORNEYS AT LAW

- 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.
- Successfully defended major manufacturer of printer cartridges in class action fraud under Kansas Consumer Protection Act claims related to the amount of ink supplied in cartridges provided with new printers. *Cole v. Hewlett Packard*, Wyandotte County District Court, Case No. 01-C-2344.
- Lead trial and appellate counsel in successful defense of physician in medical negligence claim involving brain damaged child with damage allegations in excess of \$25 million. *Irvin v. Smith*, 272 Kan. 112, 31 P.3d 934 (2001).
- Successful defense trial counsel in wrongful discharge and retaliation lawsuit brought by nurse alleging whistle-blower status against hospital affiliated employer.
- Designated trial counsel for defense of employment claims against large aircraft manufacturer.
- Counsel in intellectual property litigation involving printer technology and licensing and counsel in various trademark and licensing disputes.
- 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).
- Extensive jury trial experience as lead defense or plaintiffs' counsel in tort defense, commercial litigation and employment cases with over 200 cases tried to jury verdict.

## PROFESSIONAL MEMBERSHIPS, AFFILIATIONS, AND HONORS

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- Awarded the Key to the City of Larned – In deep appreciation for the leadership and professional legal advice which rescued our community hospital and ensured the future of health care in the City of Larned, Kansas.
- International Academy of Trial Lawyers Fellow
- American College of Trial Lawyers Fellow and Past Chair, State Committee
- Recognized by *Best Lawyers®* as the 2011 and 2013 Wichita Bet-the-Company Litigation “Lawyer of the Year” and the 2013 and 2017 Wichita Litigation – Trust and Estates “Lawyer of the Year”
- Selected by peers for inclusion in *The Best Lawyers in America®* in the areas of Bet-the-Company Litigation, Commercial Litigation, Litigation – Intellectual Property, Litigation – Municipal, Litigation – Trusts & Estates, and Litigation – Banking and Finance, 1999-2022
- Top 100 Missouri/Kansas Super Lawyer®, 2006, 2007, 2009, 2010
- Selected for inclusion in Missouri & Kansas Super Lawyers® List, 2005-2021 (a Thomson Reuters business)
- Identified by Chambers USA as a leading lawyer in the United States for Litigation: General Commercial, 2003-2022
- Identified in Chambers USA as a leading lawyer in the United States for Intellectual Property, 2022
- Named a Local Litigation Star by *Benchmark Litigation* in General Commercial and Product Liability, 2011-2015 & 2018-2020, and in General Commercial, Product Liability and Recall, and Securities, 2016 & 2021-2022
- American Bar Association
- Kansas Bar Association
- Kansas Supreme Court Nominating Commission Member (2009-2017)
- Wichita Bar Association President (2011-2012), President-elect (2010-2011), Vice-President (2009-2010), Member of Board of Governors (2006-2008) and Past Chair (2005-2006), Civil Practice

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Committee, Lifetime Achievement Award (2022)

- Kansas Bar Foundation Fellow
- Wesley E. Brown American Inn of Court
- United States Supreme Court Historical Society Kansas Membership Chair (2009-2010)
- Kansas Association for Justice
- Wichita Municipal Court Nominating Commission Chair (2008-2009)

## PRESENTATIONS

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### 2013

- Frequent Estate Planning Mistakes (Foulston Siefkin, Summer Estate Planning Forum)

### 2009

- Handling the Explosion Case: Much Assembly Required (Kansas Association for Justice, Crown Center Seminar)

### 2008

- Dispute Resolution in Business Organizations – Judicial Intervention (Wichita Bar Association)