

Counsel in numerous cases seeking recovery of COI overcharges against insurers, including cases involving Phoenix Life Insurance Company, AXA Equitable Life Insurance Company, Security Life of Denver Insurance Company, Voya Retirement Insurance and Annuity Company, Lincoln Life & Annuity Company of New York, ReliaStar Life Insurance Company, John Hancock Life Insurance Company (U.S.A.), and North American Company for Life and Health Insurance.¹ A copy of the firm’s profile in such cases, and the profiles of myself and my fellow Class Counsel, are filed herewith as **Exhibit 1**.

4. My firm’s results in such cases have been lauded by federal judges as “superb,” *Fleisher v. Phoenix Life Ins. Co.*, No. 11 Civ. 8405 (S.D.N.Y. Sep. 24, 2015), Dkt. 319 at 3:9–11, “the best settlement pound for pound for the class I’ve ever seen,” *id.*, and “quite extraordinary,” *37 Besen Parkway, LLC v. John Hancock Life Insurance Co.*, 15-cv-9924 (PGG), Dkt. 164 at 20:08–10 (S.D.N.Y. Mar. 18, 2019).

5. I also closely follow other class actions involving life insurance, particularly COI class actions. I am thus intimately familiar with the terms of settlement in these types of cases, how to evaluate the relative strengths and weaknesses in such cases, and what a successful result looks like.

SG’s Work in This Case

6. During its five-and-a-half years of litigating this case, SG took and defended 19

¹ The following is a non-exhaustive list of COI cases in which Susman Godfrey has been found to be “adequate” class counsel: *Fleisher v. Phoenix Life Ins. Co.*, 2013 WL 12224042, at *12 (S.D.N.Y. July 12, 2013); *In re AXA Equitable Life Ins. Co. COI Litig.*, 2020 WL 4694172, at *16 (S.D.N.Y. Aug. 13, 2020); *Vida Longevity Fund, LP v. Lincoln Life & Annuity Co. of N.Y.*, 2022 WL 986071, at *5 (S.D.N.Y. Mar. 31, 2022); *Advance Tr. & Life Escrow Servs., LTA v. Sec. Life of Denver Ins. Co.*, 2021 WL 62339, at *9 (D. Colo. Jan. 6, 2021); *Hanks v. Lincoln Life & Annuity Co. of N.Y.*, 330 F.R.D. 374, 387 (S.D.N.Y. 2019); *Advance Tr. & Life Escrow Servs., LTA v. ReliaStar Life Ins. Co.*, 2022 WL 911739, at *11 (D. Minn. Mar. 29, 2022); *Advance Tr. & Life Escrow Servs., LTA v. N. Am. Co. for Life & Health Ins.*, 592 F. Supp. 3d 790, 809–10 (S.D. Iowa 2022); *37 Besen Parkway, LLC v. John Hancock Life Ins. Co.*, 15 Civ. 9924 (S.D.N.Y. Nov. 1, 2018), Dkt. 139 ¶¶ 7–8.

highly technical fact and Rule 30(b)(6) depositions² and issued 84 RFPs, 21 interrogatories, 154 RFAs, and 10 third-party document subpoenas.

7. On the other side, PHL issued 83 RFPs, 30 interrogatories, and 14 RFAs.

8. PHL did not turn over many key documents in the case without a fight. In fact, securing such documents required multiple rounds of meet-and-confers with counsel for PHL, Milliman, KPMG, and other subpoena recipients. In those meet-and-confers, SG negotiated issues such as search terms, custodians, date ranges, and software licensing (to view models and data that required special software to access), routinely having to confront and overcome objections to production.

9. When negotiations failed, SG repeatedly had to move to compel on Plaintiffs' behalf. For example, in July 2019, Class Counsel moved to compel Milliman "to produce the actuarial models used to justify the cost-of-insurance ('COI') increase at issue in this litigation in a usable format." Dkt. 98. After full briefing on the issue—including declarations from multiple experts explaining the significance of the requested models (Dkts. 106–10, 118–20, 126–28)—the Court required Milliman to provide Plaintiffs access to its MG-ALFA software. Dkt. 138.

10. Class Counsel had to move to compel again, this time to require Milliman to produce documents improperly withheld as privileged. Dkt. 159. Approximately six months later, after full briefing and oral argument, the Court ordered that "*all* Milliman documents withheld as privileged shall be produced." Dkt. 178 (emphasis added). Because the Court found that *none* of PHL's communications with Milliman were privileged, PHL also had to produce all its previously withheld communications with Milliman. As a result, PHL and Milliman produced some of the

² In a previous declaration (Dkt. 263 ¶ 11), I stated that "Plaintiff took and defended 17 highly technical fact depositions." That tally of 17 excluded a 30(b)(6) deposition for two deponents who were deposed twice, once in their individual capacity and once as a corporate representative.

most impactful documents in the litigation, which featured prominently in Plaintiffs' expert reports and several depositions.

11. These successful motions to compel led to important expert analysis. To carry out that analysis, Plaintiffs' experts, with SG's oversight, devoted dozens of hours to learning the intricacies of the MG-ALFA software and scrutinizing the MG-ALFA models.

12. Plaintiffs also hired a separate actuarial expert [REDACTED]

13. By performing this arduous analysis, Plaintiffs' experts uncovered critical errors in PHL's actuarial assumptions and models underlying the 2017 COI Increase.

14. Given the highly technical expert analysis required, expert discovery was an enormous undertaking. Plaintiffs designated two opening experts: actuarial expert Howard Zail and damages expert Robert Mills. In response, PHL designated actuarial expert Darryl Wagner, regulatory expert Maria Vullo, and "insurance economist" Craig Merrill. In rebuttal, Plaintiffs produced reports from Zail, Mills, and regulatory rebuttal expert Jeffrey Angelo.

15. Class Counsel took and/or defended depositions for all six experts.

16. Collectively, the Parties produced eight expert reports, totaling 530 pages. Plaintiffs' expert reports were supported by exhibits and appendices exceeding 5,200 pages and including complex MG-ALFA models and detailed spreadsheets.

17. Class Counsel also retained several consulting experts who provided valuable assistance. Overall, Plaintiffs' experts spent 1,463 hours conducting their vital work in this case.

18. One of Plaintiffs' theories of breach and liability in this case is that PHL

██████████. Proof of that theory required meticulous legal and actuarial analysis.

Plaintiff James Kenney’s Work in This Case

19. Mr. Kenney devoted significant time working with Class Counsel, gathered hundreds of documents, spent many hours responding to paper discovery with counsel, prepared over multiple days for his deposition, and has stayed actively involved throughout this case.

20. At his deposition, Mr. Kenney offered credible and compelling testimony, including the following response to a question from opposing counsel trying to get Mr. Kenney to admit that the 2017 COI Increase was acceptable or desirable:

Q: Would you rather see your – your cost of insurance rates increase modestly or would you rather see your death benefit limited by a guaranty fund?

A: Well, I don’t know whether I’d rather have the flu or pneumonia. I just can’t answer that.

21. Opposing counsel paused for an extended time after that response and ended the deposition shortly thereafter.

The Settlement Benefits Secured for the Class

22. On November 15, 2022, the Parties reached an agreement to settle this litigation. That agreement came after years of negotiation and two separate mediations.

23. The first mediation was conducted at the offices of Professor Eric D. Green on January 20, 2022. The second was conducted on November 8, 2022, also at Professor Green’s offices. On both occasions, the Parties provided Professor Green with a substantial amount of information regarding the key issues in the case, including relevant briefing.

24. After a vigorous, arms-length debate at the second mediation about all aspects of the merits of the case and damages, Professor Green made a “mediator’s proposal” and gave the

Parties until November 15, 2022 to accept or reject it.

25. After clarifying certain aspects of the proposal, the Parties ultimately accepted it.

For the following three months, the Parties negotiated and then agreed to a long-form settlement.

26. For the Class, the Settlement awards three main benefits:

CASH: A cash Settlement Fund of up to \$18,500,000, which is 62.8% of all COI overcharges collected from the Class Policies. The cash fund decreases by an agreed *pro rata* formula if any Class Member opts out. As of October 6, 2023, no Class Members had opted out (or objected).

COI INCREASE FREEZE: A two-year moratorium on any new COI rate scale increases on the Class Policies, starting on each policy's first policy anniversary date falling on or after January 1, 2021.³ Thus, even if PHL suffers from a future change in cost factors that would otherwise permit a COI rate increase—including any alleged surge in mortality due to the COVID-19 pandemic—PHL will not increase COI rate schedules.

POLICY VALIDITY GUARANTEE: PHL has agreed not to challenge the validity and enforceability of any Class Policies on STOLI grounds or misrepresentations in the application for such policies.

27. Plaintiffs' expert James Rouse—who has extensive experience in the life-insurance industry and with longevity-based products—has opined that the non-monetary relief is worth \$26,180,216 to the Class. Rouse Decl. ¶¶ 7, 80. Specifically, the COI Increase Freeze is worth \$18,088,329, and the Policy Validity Guarantee is worth \$8,091,888. Rouse Decl. ¶¶ 71–81.

28. The total Settlement value, including nonmonetary and monetary benefits, is thus \$44,680,216.

29. The average cash payment per policy will be approximately \$2,266 if the Court approves the fee, expense, and service-award amounts that Class Counsel is requesting.

The Lodestar Calculation

30. During its five-and-a-half years litigating this case, SG invested \$6,041,207.50 in

³ The COI rate freeze does not apply if government regulators request that PHL increase COI rates. I am unaware of any government regulator anywhere, at any time ever, having previously requested that a carrier raise COI rates on its owners of universal life insurance.

time on a fully contingent basis, representing 7,531.3 hours of work.

31. Table 1 below shows the amount of time spent by the SG attorneys and professional support staff who were involved in this litigation. The lodestar calculation uses 2023 billing rates. Table 1 was prepared from daily time records regularly prepared and maintained by Susman Godfrey. Time expended in preparing Class Counsel’s application for fees and reimbursement of expenses are not included in Table 1. Hours worked by summer associates and a small number of attorneys and staff who provided occasional “spot project” support at various points in the case also have been excluded and are not reflected below.

TABLE 1

Attorneys	Current Rate	Hours	Value
Michael Adamson (Associate)	\$775.00	4,154.50	\$3,219,737.50
Brenda Adimora (Staff Attorney)	\$400.00	443.40	\$177,360.00
Seth Ard (Partner)	\$1,200.00	381.60	\$457,920.00
Davida Brook (Partner)	\$800.00	106.50	\$85,200.00
Samantha Fenwick (Staff Attorney)	\$400.00	206.00	\$82,400.00
Alex Kaminsky (Staff Attorney)	\$400.00	383.80	\$153,520.00
Ryan C. Kirkpatrick (Partner)	\$1,000.00	410.70	\$410,700.00
Krysta K. Pachman (Partner/Associate) ⁴	\$800.00	352.90	\$282,320.00
Komal Patel (Associate)	\$600.00	315.70	\$189,420.00
Edgar G. Sargent (Partner)	\$800.00	158.00	\$126,400.00
Steven G. Sklaver (Partner)	\$1,300.00	419.40	\$545,220.00
Nicholas Spear (Partner/Associate) ⁵	\$800.00	198.80	\$159,040.00
Paralegal	Current Rate	Hours	Value
Vanessa Santos	\$350.00	434.20	\$151,970.00
		7,531.30	\$6,041,207.50

32. The total number of hours expended on this litigation by attorneys and paralegals is 7,531.3 hours through September 20, 2023. The total lodestar value, derived by multiplying each professional’s hours by his or her current hourly rate, is \$6,041,207.50 through September 20,

⁴ Ms. Pachman spent time on this case as a partner and as an associate; she worked on this case starting in October 2019 and was promoted to partner in January 2020.

⁵ Mr. Spear spent time on this case as a partner and as an associate; he worked on this case starting in June 2019 and was promoted to partner in January 2023.

2023. All time spent litigating this matter was reasonably necessary and appropriate to prosecute the action, and the results achieved further confirm that the time spent on the case was proportionate to the amounts at stake.

33. The hourly rates identified in Table 1 for SG's attorneys and professional staff are the firm's standard hourly rates. As shown in Table 1, the hourly rates of SG's attorneys range from \$400 to \$1,300. The hourly rate for SG's paralegal who worked on this matter is \$350.

34. In a nationwide survey of AmLaw 50 law firms performed by PwC Product Sales, LLC and issued in June 2023, the median standard billing rate for equity partners was \$1,463, the first quartile standard billing rate was \$1,655, and the third quartile standard billing rate was \$1,371.

35. The same survey indicates that the median standard billing rate for associates was \$933, the first quartile standard billing rate was \$1,018, and the third quartile standard billing rate was \$838.

36. Here, four of the seven *partners* working on this matter have billing rates of \$800, which is *below* the third-quartile standard rate for *associates*. And every partner on this matter bills below the third quartile standard rate for equity partners. Likewise, every associate's rate is below the third quartile rate for associates.

37. Given the lodestar of \$6,041,207.50, the requested award of \$6,166,667 yields a multiplier of 1.02. That multiplier will only decrease as SG invests additional attorney time into preparing to move for final approval, managing Class Member inquiries about the settlement, and administering the Settlement if it obtains final approval from the Court.

38. As of October 6, 2023, no Class Member has objected to Class Counsel's fee.

Litigation and Settlement Administration Expenses

39. As detailed and categorized in Table 2 below, SG has advanced a total of \$1,062,481.04, in un-reimbursed expenses in connection with the prosecution of this litigation. These expenses were reasonably necessary to the prosecution of this action and are the type that SG normally incurs in litigation.

TABLE 2

Expense Category	Amount
Deposition Expenses / Witness Fees / Client Charges	\$88,480.15
Document Review Hardware / Hosting	\$130,941.86
Expert / Consultants	\$763,532.60
Filing / Service / Court Reporter Fees / Transcripts	\$5,582.55
Mediation Fees and Expenses	\$17,947.35
Photocopies / Reproduction / Messenger Services / Postage	\$7,604.67
Research Expenses	\$30,178.48
Secretarial Overtime	\$683.80
Telephone	\$102.70
Travel / Meals / Hotels / Transportation	\$17,426.88
	\$1,062,481.04

40. SG did not use any outside litigation funding to finance these expenses.

41. The amount of expenses incurred by Settlement Administrator JND Class Action Administration LLC is \$9,427.91 through September 25, 2023. This includes the amounts incurred in connection with settlement administration, including the class notice. Class Counsel seeks continued permission to reimburse these and other Settlement Administration Expenses that may be incurred, as provided in the Settlement Agreement and the Court's Preliminary Approval Order, Dkt. 271 ¶ 9.

The Timing and Structure of the 2017 COI Increase

42. Approximately three years after PHL implemented the 2017 COI Increase, it announced a new COI increase (the "2021 COI Increase") in November 2020. According to PHL, the 2021 COI Increase went into effect on each policyholder's policy anniversary on or after

January 1, 2021 (the “2021 COI Increase Effective Dates”), and replaced, and cut off all overcharges arising from, the 2017 COI Increase.

43. Plaintiffs sought leave from this Court to add allegations challenging the 2021 COI Increase in this action, but the Court denied that request. Dkts. 177–78. A new case was then filed in the United States District Court for the District of Connecticut challenging the 2021 COI Increase and seeking recovery of overcharges imposed on or after the 2021 COI Increase Effective Dates. *See Kenney v. PHL Variable Ins. Co.*, No. 3:22-cv-00552-OAW (D. Conn.).

SG’s Contingent-Fee Work in Non-Class Action Cases

44. SG frequently takes high-stakes non-class commercial cases on a contingent-fee basis (*e.g.*, patent, legal malpractice, antitrust, etc.). In cases like this one where the firm is advancing expenses, SG typically negotiates a contingent-fee arrangement starting at 40% of the gross sum recovered with expenses reimbursed. As cases draw near to and proceed through trial, SG’s typical contingency-fee percentages increase to 45% and 50%. Sophisticated parties and institutions have agreed to these standard market terms.

45. The requested fee here is 13.8% of the settlement benefits, or one-third of the cash component viewed in isolation. That is substantially less than what SG would receive under a standard contingency agreement entered in a competitive market.

The Risk of COI Class Action Litigation as Illustrated by the *Meek* Case

46. It is my unequivocal opinion that the Settlement is fair, adequate, and reasonable, and reflects a tremendous result for the Class, particularly given the risks faced at trial.

47. The risk of a lower-than-expected recovery in COI class action litigation is well illustrated by a recent COI class action trial in *Meek v. Kansas City Life Ins. Co.*, No. 19-CV-472 (W.D. Mo.). In that case, the class sought \$18 million in damages. Despite prevailing on liability,

and having a certified class, the class ultimately recovered less than 6% of the alleged overcharges after the jury awarded just \$5 million. That \$5 million verdict was further reduced to just \$900,000 after the court granted partial decertification after the trial. *See Meek* 4/28/2023 Tr. at 69:9–16 (a true and correct excerpted copy filed herewith as **Exhibit 2**); *Meek*, Dkt. 311 (verdict form) (a true and correct copy filed herewith as **Exhibit 3**); *Meek* Dkt. 329 (Order (1) Granting Defendant’s Motion to Partially Decertify Class, (2) Dismissing Count V Without Prejudice, and (3) Directing that Judgment be Entered) (a true and correct copy filed herewith as **Exhibit 4**).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: October 9, 2023

SUSMAN GODFREY LLP

/s/ Seth Ard

Seth Ard

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EXHIBIT 1

Class Action Work

From antitrust to copyright, to securities to product liability, Susman Godfrey's trial lawyers have litigated and achieved impressive results for significant nationwide class action lawsuits. While some of these actions are ongoing, others have settled prosperously for our clients. In three cases alone, the firm obtained more than \$1 billion in settlements for plaintiffs. The firm has also represented defendants such as Chevron, Walmart, Texas Brine, The Rawlings Co., and Dean Foods in high stakes class actions.

PLAINTIFF SIDE LITIGATION

- ***In re Automotive Parts Antitrust Litigation.*** Secured, to date, over \$1.2 billion in settlements to date as co-lead counsel for a class of end payor plaintiffs in this complex series of antitrust cases brought against dozens of automobile suppliers who engaged in price-fixing and bid-rigging in the multi-billion-dollar automotive parts industry. This massive multi-district litigation is related to a criminal investigation which the US Department of Justice described as the largest price-fixing investigation in history. The litigation continues against the non-settling defendants. [Read more.](#)
- ***In re Libor-based Financial Instruments Antitrust Litigation.*** Secured, to date, \$590 million in settlements for plaintiffs who allege several banks were involved in setting LIBOR and manipulating it to their advantage. Barclays PLC agreed to pay \$120 million, Citigroup agreed to pay \$130 million, Deutsche Bank agreed to pay \$240 million, and HSBC agreed to pay \$100 million. Since that time, a multitude of lawsuits have been consolidated as part of a multidistrict litigation proceeding. These settlements are each combined with breakthrough agreements with the defendant banks to cooperate with plaintiffs in the ongoing litigation.
- ***Flo & Eddie v. Sirius XM*** and ***Flo & Eddie v. Pandora.*** Serving as co-lead counsel representing Flo & Eddie, founding members of 60's music group, The Turtles, along with a class of owners of pre-1972 sound recordings for copyright violations by music provider Sirius XM. Sirius XM agreed to pay at least \$25.5 million (over \$16 million after fees and expenses) and royalties under a 10-year license that is valued up to \$62 million (over \$41 million after fees and expenses) as compensation for publicly performing without a license Pre-1972 sound recordings. Flo & Eddie have a similar putative class action pending against Pandora.
- ***Leonard et al. v. John Hancock Life Insurance Co. of New York et al.*** Secured a settlement valued at \$143 million, before fees and expenses, including a cash fund of over \$93 million and an agreement by John Hancock Life Insurance Company not to impose a higher cost of insurance rate scale for 5 years (even in the face of a worldwide pandemic), on behalf of a class of approximately 1,200 policyholders who alleged that Hancock breached the terms of their respective life insurance policies and overcharged them for life insurance. When granting final approval, the Court held that the settlement provided an "absolutely extraordinary" recovery rate for the class, and lauded Susman Godfrey's "extraordinary work."

- ***Helen Hanks v. Voya Retirement Insurance and Annuity Company.*** Negotiated settlement worth \$118 million, before fees and expenses, including a cash fund of over \$92 million and an agreement by Voya not to impose a higher rate scale for 5 years, on behalf of a certified class of 46,000+ policyholders over allegations that Voya improperly raised cost-of-insurance charges. Over the course of litigation, the team from Susman Godfrey secured certification of the nationwide class and defeated summary judgment. The Court recognized the quality of the work, stating: “I want to commend you all for the work done on the pretrial order and motions in limine . . . I’m very happy to have you as lawyers appearing before me.”
- ***In re Qualcomm Antitrust Litigation.*** Appointed by the Court as co-lead counsel in this multi-district litigation on behalf of purchasers impacted by Qualcomm’s anti-competitive conduct. Denying Qualcomm’s motion to dismiss, the Court granted class certification in a 66-page order finding “substantial,” “strong,” and “compelling” evidence to support the certification. The certification order is currently subject to an interlocutory appeal in the Ninth Circuit. With damages topping \$5 billion, Qualcomm has called it “the largest class action in history.”
- ***ODonnell v. Harris County.*** Tried, pro bono, on behalf of the plaintiffs, an extraordinary lawsuit challenging the constitutionality of Harris County’s (Houston) system of secured money bail for the release of misdemeanor arrestees. Harris County jailed tens of thousands of people arrested for minor, non-violent misdemeanors, many of which were financially unable to post cash bail. After an 8-day evidentiary hearing, the Southern District of Texas found that Harris County’s bail system violated both the due process clause and equal protection clause of the US Constitution and enjoined the County and its judges from further violations. The Supreme Court denied the County’s motion for a stay and the injunction was implemented. The 5th Circuit affirmed the constitutional rulings. After just one year in which the injunction relief was in effect, more than 12,000 people were released from jail.
- **Animal Science Products**
 - ***In re Vitamin C Antitrust Litigation.*** Secured a \$54.1 million jury verdict in an antitrust price-fixing class action brought on behalf of direct purchasers of vitamin C against two Chinese vitamin C manufacturers in the first-ever case in which mainland Chinese companies were successfully sued under US antitrust law. The verdict was tripled as required by law and, after adjusting for \$32.5 million in settlements with other defendants (\$19.5 million net of fees and expenses), a final judgment of \$147 million was entered against the defendants. This antitrust price-fixing class action was later reviewed by the United States Supreme Court, which issued a unanimous 9-0 decision in favor of the plaintiffs. In its ruling, the Supreme Court provided clarification as to how much deference US federal courts must show statements made by foreign governments regarding the application of their domestic laws.
 - ***Animal Science Products v. Chinook Group.*** Obtained a \$1.05 billion settlement in a price-fixing case against leading European vitamin manufacturers, including Hoffman-La Roche, BASEF A.G. and Rhone-Poulenc S.A.

- ***In re Animators Antitrust Litigation.*** Secured more than \$168 million in settlements (\$147.3 million after fees and expenses) for a class of animation industry employees in this antitrust action against the largest animation companies, including Disney, Pixar, Lucas Films, DreamWorks, and Sony, based on restrictions on their ability to compete against one another for talent.
- ***Ferrick v. Spotify USA.*** Secured a settlement worth over \$100 million to resolve a class-action lawsuit against music streaming service, Spotify, brought on behalf of music copyright owners.
- ***In re Allergan Proxy Violation Derivatives Litigation.*** Recovered \$40 million (before fees and expenses)—what is believed to be the largest recovery ever obtained on behalf of derivative securities investors—in an insider trading case. Our team served as co-lead counsel for the plaintiff class, who alleged that Valeant Pharmaceuticals International, Inc. provided non-public information to Pershing Square Capital Management about its impending hostile takeover of Allergan, Inc. so that Pershing Square could secretly buy Allergan stock and commit that stake in support of Valeant’s bid. Plaintiffs claimed that Pershing Square then secretly acquired a 10% stake in Allergan and gleaned millions of dollars in profits by selling on the news of the takeover bid. A California federal judge granted final approval of two settlements totaling \$290 million to resolve these insider-trading claims shortly before trial was set to commence in the first of the two actions.
- ***Fleisher v. Phoenix Life Insurance.*** Secured a landmark settlement on behalf of plaintiffs in a case challenging Phoenix Life Insurance Company’s and PHL Variable Insurance Company’s decision to raise the cost of insurance (“COI”) nationwide on life insurance policy owners. The case settled the day of the final Pretrial Conference. Settlement terms included a \$48.5 million cash fund (\$34 million after fees and expenses), COI freeze through 2020, and a covenant by Phoenix not to challenge the policies, worth \$9 billion in face value, when the policies mature on the grounds of lack of insurable interest or misrepresentations in the application. At the final approval hearing, the Court said: “This may be the best settlement pound for pound for the class that I’ve ever seen.”
- ***Behrehnd et al. v. Comcast.*** Represented a class of 800,000 Comcast cable subscribers who alleged that between 2003 and 2008, Comcast and other cable companies entered into subscriber swaps and acquisitions that deterred over-builder competition and enabled Comcast to raise prices to supra-competitive levels, in violation of sections 1 and 2 of the Sherman Act. The parties settled for \$50 million after remand of the case from the Supreme Court. The class received \$35 million after fees and expenses.
- ***In re NYC Bus Tour Antitrust Litigation.*** Secured a \$19 million cash settlement for customers of two New York City tour bus companies (approximately \$12 million after fees and expenses), Coach USA Inc. and City Sights LLC, and their joint venture, Twin America LLC. The settlement ended an antitrust class action against the joint venture, which plaintiffs said eliminated competition between the two bus companies and artificially raised prices for passengers.

- ***In re Korean Air Lines Antitrust Litigation.*** Secured \$86 million in settlements (approximately \$62 million after fees and expenses) in this antitrust litigation involving more than 70 class action cases brought on behalf of airline passengers who alleged that between 2000 and 2007, Korean Air Lines and Asiana Airlines conspired to fix the price of air travel between the United States and the Republic of Korea.
- ***In re Toyota Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation.*** Appointed by the Court as co-lead counsel to the plaintiffs, the Susman Godfrey team negotiated a deal with Toyota Motor Corporation in which Toyota agreed to pay benefits worth up to \$1.6 billion (approximately \$1.4 billion after fees and expenses) to settle multi-district class action litigation pending in federal court in Santa Ana, California. Plaintiffs brought the case over allegations of economic losses as a result of recalls for defects causing unintended acceleration in Toyota, Lexus, and Scion vehicles.
- ***Coady v. IndyMac Bancorp et al.*** Appointed as co-lead counsel for investors who were allegedly defrauded into purchasing securities issued by the parent of mortgage lender IndyMac Bank. Plaintiffs alleged that IndyMac had misrepresented its financial health and the quality of its lending practices. After more than five years of intense, hard-fought litigation, the Court granted final approval of a \$6.5 million recovery for the class (approximately \$4 million after fees and expenses).
- **Google AdWords Class Action** Obtained a \$20 million settlement (\$14.8 million net of fees and expenses) for a class against Google for breach of contract, unfair competition, and false advertising relating to Google's AdWords billing practices and related disclosures.
- ***White v. NCAA.*** Served as co-lead counsel in an antitrust class action alleging that the NCAA violated the federal antitrust laws by restricting amounts of athletic based financial aid. The NCAA settled and paid, in addition to fees and expenses, \$218 million (\$209.4 million net of fees and expenses) for use by current student-athletes to cover the costs of attending college and paid \$10 million to cover educational and professional development expenses for former student-athletes.
- ***Powell v. Yates Petroleum.*** Obtained a \$27.5 million settlement (\$18.9 million after fees and expenses) with ConocoPhillips for alleged underpayment of royalty on natural gas liquids produced from the San Juan Basin of northwestern New Mexico and processed at the New Blanco Plant near Bloomfield, New Mexico on behalf of 4,300 royalty and overriding royalty owners across the United States.
- ***Drayton v. Western Auto.*** Obtained class certification from the Middle District of Florida for a class of Black employees of Western Auto Supply Co. (now owned by Advance Stores Company, Inc.) who were suing the former auto parts retailer for racial discrimination. The defendants immediately appealed the certification decision to the 11th Circuit. The Court affirmed the class certification decision—the first such class action decision the 11th Circuit had upheld in decades. The case settled with the defendants making a substantial payment to the class.

DEFENSE-SIDE LITIGATION

- ***Fitzgerald et. al. v. Apache.*** Secured a complete defensive win for Apache Corporation when Chief Judge H. Lee Rosenthal from the Southern District of Texas granted in full a motion to dismiss a royalty class action brought by a putative class of plaintiffs who alleged – contrary to existing law – that Apache breached thousands of mineral leases by allegedly underpaying royalties. [Read more.](#)
- ***In re Caustic Soda Antitrust Litigation.*** Serving as lead counsel for Westlake Chemical Corporation in its defense of a group of nationwide antitrust cases relating to the production and sale of caustic soda.
- **Walmart Employment Class Actions.** As National Trial Counsel, represented Walmart in numerous wage and hour class actions in courts across the country, three of which were tried.
- **Walmart Consumer Class Action.** Represented Walmart in defense of a Pennsylvania consumer class action regarding how grocery coupons are treated for sales tax purposes
- ***In re Bayou Corne Sinkhole Litigation.*** Represented Texas Brine Corporation in a case pending in Napoleonville, Louisiana, resulting from the Bayou Corne sinkhole that formed in 2012. This case involves complex technical and environmental issues surrounding the collapse of a salt dome. Texas Brine settled with the plaintiff landowners on favorable terms, and then pursued and recovered huge amounts of the costs from other companies responsible for the collapse.
- ***Johnston v. Rawlings.*** Won a defense-side jury verdict on behalf of The Rawlings Company in a certified class action challenging the company's classification of its employees. After a three-week jury trial in Kentucky state court, the jury decided in favor of the defense.
- ***Watts v. Sysco Corp.*** Represented Sysco Corp. (SYSCO) and several California subsidiaries in a labor dispute in which the plaintiffs sought to assert class wide claims to recover business expenses and late wage penalties under California law. The firm negotiated a favorable settlement for SYSCO, which was approved months later by the Court.
- ***Siebenmorgen v. Hertz.*** Represented the Hertz Corporation in a class action case challenging the company's rental car fuel service charges. Susman Godfrey successfully argued and won the appeal in the case. The class consisted of tens of thousands of class members and alleged millions of dollars in damages. The Texas Court of Appeals reversed the trial court's class certification order and decertified the class on all claims.
- ***Bates v. Schneider National Carrier.*** Defended Georgia-Pacific against claims alleging injuries from exposure to formaldehyde fumes released by various wood products. Of the approximately 200 cases handled by Susman Godfrey, two proceeded to a jury verdict. In one case, the jury returned a verdict for our client and awarded no damages to the plaintiff. In the other, in which the plaintiff was seeking \$5 million in damages, the jury returned a verdict of \$12,500.

- ***ASARCO v. Nueces County TX.*** Represented ASARCO Incorporated in defending cases filed by approximately 3,000 plaintiffs alleging arsenic contamination in Commerce, Texas.
- ***Coleman v. ABB Lummus Crest.*** Represented a German chemical company and its subsidiaries in the defense of claims made by soldiers allegedly exposed to chemical and biological warfare agents in the Persian Gulf war. The case is one of the largest toxic tort cases ever filed. The firm was successful in obtaining dismissals of its clients at an early stage of the litigation.
- ***In re Rio Piedras Explosion Litigation.*** Represented Enron Corporation and San Juan Gas Company in more than 500 cases pending in San Juan, Puerto Rico. The cases, brought by more than 2,000 plaintiffs, arose from a 1996 building explosion. As lead counsel, our team coordinated the activities of the numerous law firms involved in the defense.
- ***NYLCare Personal Injury Litigation.*** Represented NYLCare, a health maintenance organization, in a number of personal injury claims against NYLCare alleging direct and vicarious liability for medical malpractice by doctors. The plaintiffs in those claims have sued NYLCare alleging theories of negligent credentialing, negligent hiring, and negligent supervision. Susman Godfrey has also represented NYLCare in the defense of various related class action lawsuits



Steven G. Sklaver

Partner

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Overview

Named one of *Lawdragon's* 500 Leading Lawyers since 2020, a recipient of the California Lawyer Attorneys of the Year award in 2017 and selected as "Top Plaintiff Lawyers in all of California" in 2016 and 2017 by *The Daily Journal*; Steven Sklaver has secured substantial litigation victories for both plaintiffs and defendants. For plaintiffs, Sklaver was lead counsel for a certified class of insurance policy owners, helping them achieve what the Court in the Southern District of New York described as "the best settlement pound for pound for the class that I've ever seen." You can read the Court's statement in full [here](#). You can also read more about the case in The Deal's profile on the litigation [here](#). Sklaver was also lead trial and appellate counsel for investors against an insurance company that resulted in a complete victory and full payout of a \$20 million life insurance policy. A copy of the appellate court decision is available [here](#). To listen to Sklaver's appellate oral argument, click [here](#). That matter was the feature cover story of the [April 2012 California Lawyer](#).

Sklaver also represents the former members of the legendary rock group The Turtles in *Flo & Eddie, Inc. v. Sirius XM Radio, Inc.* (C.D. Cal.) in a certified class action lawsuit against Sirius XM that settled less than 48 hours before the jury trial was scheduled to begin. Sirius XM agreed to pay at least \$25.5 million (over \$16 million after fees and expenses) and royalties under a 10-year license that is valued up to \$62 million (over \$41 million after fees and expenses) as compensation for publicly performing without a license Pre-1972 sound recordings. The settlement was [approved by the Court](#), and has received widespread media coverage from publications such as [The New York Times](#), [Billboard](#), [The Hollywood Reporter](#), [Law360](#), [Rolling Stone](#), [Variety](#), [Reuters](#) and [Managing IP](#).

Within six months after the Sirius XM class action settled, so did Sklaver's [copyright class action](#) brought on behalf of artists owed mechanical royalties for compositions made available by Spotify, the leader in digital music

streaming. [Spotify agreed to a class action settlement valued at over \\$112 million](#) (over \$95 million after fees and expenses), a settlement for which the district court granted final approval and remains subject to a pending appeal. You can read more about this matter in [Billboard](#).

Sklaver's many significant and widely covered class action results in 2016 helped secure Susman Godfrey's recognition as *Law360*'s "Class Action Group of the Year" in early 2017. You can read that article announcing the award [here](#).

For defendants, Sklaver has handled numerous employment class actions across the country. He served, along with the Managing Partner of Susman Godfrey, as trial counsel for Wal-Mart, the world's largest retailer, trying a large employment class action in California. He also successfully defended and defeated class certification in numerous, substantial wage and hour matters for Alta-Dena Certified Dairy, LLC, dairy producers for Dean Foods, one of the leading food and beverage companies in the United States. Copies of the pro-employer decisions are available [here](#), [here](#), and [here](#).

Sklaver has tried complex commercial and class action disputes — including jury trials and bench trials in federal and state court, as well as arbitrations. Sklaver graduated cum laude from Dartmouth College, magna cum laude and Order of the Coif from Northwestern University School of Law, and clerked for Judge David Ebel on the United States Court of Appeals for the Tenth Circuit. Sklaver also won the National Debate Tournament for Dartmouth College, and is just one of four individuals in debate history to win three national championships at the high school and collegiate level. From 2010-2022, Sklaver has been recognized every year as a "Super Lawyer" in Southern California, awarded to no more than the top 5% of the lawyers in the state of California (*Law & Politics Magazine*, Thomson Reuters).

Sklaver currently serves on the Board of Directors for the Western Center on Law & Poverty. Sklaver was also previously selected as a Ninth Circuit Judicial Conference Lawyer Representative.

Experience

- Judge Approves \$25 Million Settlement to End Lawsuit Over Genworth's Cost of Insurance Increase
- Susman Godfrey and Gradstein & Marzano Secure \$43.45 Million Settlement with Spotify in Copyright Class Action
- Gradstein & Marzano and Susman Godfrey Secure Settlement Valued at Up to \$99 Million Settlement for The Turtles And Other Owners of Pre-1972 Sound Recordings in Class Action Against Sirius XM Radio
- U.S. Consumers and Businesses Obtain a \$193.8 Million Settlement with Denso in Auto Parts Price-fixing Multidistrict Class Action

- Susman Godfrey Wins Summary Judgment in \$5 Million Life Settlement Rescission Lawsuit
- Susman Godfrey L.L.P. Wins Reversal in \$20 Million Life Settlement Rescission Lawsuit
- Susman Godfrey Wins Summary Judgment in \$5 Million Life Settlement Rescission Lawsuit

Notable Representations

Class Actions

- **Copyright Infringement:** Sklaver serves as co-lead counsel with the Gradstein & Marzano firm representing Flo & Eddie (the founding members of 70's music group, The Turtles) along with a class of owners of pre-1972 sound recordings for copyright violations by music provider Sirius XM. The day before trial was to commence before a California jury in federal court in late 2016, Flo & Eddie reached a landmark settlement with Sirius XM on behalf of the class in a deal potentially worth \$99 million. The Court granted final approval of the settlement in May 2017. Click [here](#) for more. Sklaver with his co-leads were recently named "California Lawyer Attorneys of the Year" by *The Daily Journal* for their outstanding legal work on this case.
- In May 2017, Sklaver, as co-lead counsel with Gradstein Marzano, secured a deal valued at \$112 million to settle a class-action lawsuit with Spotify brought on behalf of music copyright owners. The suit alleged that Spotify made music available online without securing mechanical rights from the tracks' composers. Under the terms of the deal, Spotify will pay songwriters \$43.45 million for past royalties, as well as commit to pay ongoing royalties that are valued at \$63 million. Read more about the case [here](#) and see *Billboards* coverage of it [here](#).
- **Insurance:** In a seminal insurance class action filed in the Southern District of New York, resolved in September 2015, Mr. Sklaver served as lead counsel in a case that challenged Phoenix Life Insurance Company's and PHL Variable Insurance Company's decision to raise the cost of insurance ("COI") nationwide on life insurance policy owners. After winning class certification and defeating two motions for class decertification and a motion for summary judgment, the case settled the day of the final Pretrial Conference — less than two months before trial. Settlement terms included: \$48.5 million cash fund (\$34 million after fees and expenses), COI freeze through 2020, and a covenant by Phoenix not to challenge the policies, worth \$9 billion in face value, when the policies mature on the grounds of lack of insurable interest or misrepresentations in the application. At the final approval hearing, the Court concluded, "***I want to say publicly that I think this is an excellent settlement. I think this is a superb – this may be the best settlement pound for pound for the class that I've ever seen.***" You can read the statement in full on

page 3 [here](#). You can also read more about the case in *The Deal's* feature on the matter [here](#).

- **Antitrust:** *In In re Automotive Parts Antitrust Litigation*. In the largest price-fixing cartel ever brought to light, Mr. Sklaver and a team of Susman Godfrey lawyers run a massive MDL litigation in which the firm serves as co-lead counsel for a class of consumer plaintiffs in multidistrict price-fixing cases pending in a Detroit, Michigan federal court. The actions, alleging anti-competitive conduct, were brought by indirect purchasers of component parts included in over 20 million automobiles, and involve parts such as wire harnesses, instrument panel clusters, fuel senders, heater control panels and alternators. The Department of Justice has imposed fines exceeding \$2.6 billion pursuant to guilty plea agreements with some of the defendants, and its investigation is still ongoing. The Susman Godfrey team together with its co-lead counsel has defeated multiple motions to dismiss. Settlements have been reached with a certain defendants for a combined \$620 million thus far. Final settlement (after fees and expenses) has not yet been determined. The case remains ongoing against the remaining defendants.

Life Settlements

- Represented Jonathan Berck, as Trustee of the Rosamond Janis Insurance Trust in a \$5 million rescission claim brought by the Lincoln Life and Annuity Company of New York for alleged violations of New York's insurable interest laws and other "STOLI" (stranger originated life insurance) related claims. RESULT: Summary judgment granted in favor of my client. A copy of the summary judgment order is available [here](#).
- Won reversal in a \$20 million life settlement rescission lawsuit against Lincoln Life & Annuity Company of New York. Lincoln's lawsuit was based on allegations that the insurance policies lacked an insurable interest because they were procured by third-parties for investment purposes and because there were net worth and other misrepresentations in the applications. The appellate court ordered that the trial court enter judgment in favor of the trust. The appellate court also affirmed our trial court victory that Lincoln's fraud claim was time barred because the policies were incontestable. The case is *Lincoln Life & Annuity Co. of New York v. Jonathan Berck, as Trustee of the Jack Teren Insurance Trust*, Court of Appeal Case No. D056373 (Cal. Ct. App. May 17, 2011). A copy of the appellate court decision is available [here](#). The *Teren* case was the feature, cover story of the [April 2012 California Lawyer](#).
- Represents investors, trusts, trustees, brokers, and insureds in life settlement and STOLI litigation across the country against insurance companies seeking to rescind policies with face values worth more than \$125 million. Mr. Sklaver is also a frequent speaker and commentator on life settlement and STOLI litigation, in both [trade publications](#) and [conferences](#).

Financial Fraud

- Represented Royal Standard Minerals, which was the plaintiff in a federal securities lawsuit against a “group” of more than ten dissident shareholders for failing to file Schedule 13-D disclosures. RESULT: Preliminary injunction granted and final judgment entered that, among other things, required for three years the votes of all shares owned by any of the defendants to be voted as directed by the Board of Directors of my client.
- Represented plaintiff who held millions of WorldCom shares as an opt-out to the class in In re WorldCom Securities Litig. RESULT: Settled on confidential terms.
- Represented plaintiff Accredited Home Lenders in a TRO and breach of contract action over a wrongful default declared by Wachovia in a credit re-purchase agreement. RESULT: The case was resolved favorably, following the entry of a TRO.
- Represented Walter Hewlett in his challenge to the Hewlett-Packard/Compaq merger. In preparation for that trial, Mr. Sklaver deposed Compaq’s former CEO Michael Capellas about his famous handwritten journal note which, describing the merger, stated “at our course and speed we will fail.” Mr. Capellas was right.

Employment

- Represented one of the world’s largest retailers in the defense of a four month long jury trial, wage and hour class action pending in California. One of the world’s largest retailers appointed Susman Godfrey L.L.P. to be its national trial counsel for wage and hour litigation.

Antitrust

- Lead day-to-day lawyer for the class in White, et al. v. NCAA, a certified, antitrust class action alleging that the NCAA violated the federal antitrust laws by restricting amounts of athletic based financial aid. ESPN Magazine coverage of the lawsuit may be found [here](#). RESULT: The NCAA settled and paid an additional \$218 million for use by current student-athletes to cover the costs of attending college, paid \$10 million to cover educational and professional development expenses for former student-athletes, and enacted new legislation to permit Division I institutions to provide year-round comprehensive health insurance to student-athletes.

Entertainment

- Represented NAACP image award winner Morris Taylor “Buddy” Sheffield in his breach of contract lawsuit against ABC Cable Networks Group

regarding the creation of Hannah Montana. RESULT: Defendant settled less than four weeks before trial.

Pro Bono

- Appointed to represent Carl Petersen, who was charged by the United States Attorney's Office with being a felon in possession of a firearm — a charge that carries a five-year prison sentence and an 89% conviction rate. RESULT: Acquittal. Jury deliberation lasted less than four hours. Appointed by the United States Court of Appeals for the Tenth Circuit as appellate counsel in five cases, including: United States v. Petersen; United States v. Blaze (specifically noting Mr. Sklaver's "good workmanship"); and Sorrentino v. IRS (appointed as amicus curiae by and for the Court)

Honors & Distinctions

- Lawdragon 500 Leading Litigator (2022, 2023)
- Litigation Star, Benchmark Litigation (2022, Euromoney)
- Recommended Lawyer – Litigation – Labor and Employment, Best Lawyers in American (2020 – 2024, Woodward White, Inc.)
- Southern California California Super Lawyer (2010 – 2023, Thomson Reuters)
- Lawdragon 500 Leading Lawyers in America (2020, 2021, 2022, 2023)
- Lawdragon 500 Leading Plaintiff Financial Lawyers (2019, 2020, 2021, 2022, 2023)
- Outstanding Antitrust Litigation Achievement in Private Law Practice by the American Antitrust Institute (2019) for work on *In re: Automotive Parts Antitrust Litigation*.
- California's Lawyer Attorneys of the Year in 2017 by *The Daily Journal*. Click [here](#) for a photo of Sklaver, along with co-counsel, receiving the award.
- Top 30 Plaintiff Lawyers in all of California in 2016 by *The Daily Journal*
- Southern California "Super Lawyers" awarded to no more than the top 5% of the lawyers in the state of California (2010 – 2021, *Law & Politics Magazine*, Thomson Reuters)
- Northwestern Law Review member and editor
- National Debate Tournament (NDT) collegiate championship winner

Clerkships

Honorable David M. Ebel, United States Court of Appeals for the Tenth Circuit

Education

Northwestern University School of Law (J.D., magna cum laude)

- Order of the Coif

Dartmouth College (B.A., cum laude)

Admissions

Bar Admissions

- Colorado
 - California
 - Illinois
-

Court Admissions

- United States Supreme Court
- U.S. Court of Appeals for the Ninth Circuit
- U.S. Court of Appeals for the Tenth Circuit
- U.S. District Court for the Central District of Colorado
- U.S. District Court for the Eastern District of Colorado
- U.S. District Court for the Northern District of Colorado
- U.S. District Court for the Southern District of Colorado
- U.S. District Court for the Western District of Colorado

Leadership & Professional Memberships

- Board of Directors, Western Center on Law & Poverty



Seth Ard

Partner

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Overview

Seth Ard, a partner in Susman Godfrey's New York office and a member of the firm's Executive Committee, has secured substantial litigation victories for both plaintiffs and defendants. For plaintiffs, Ard was co-lead counsel for a certified class of insurance policy owners, helping them achieve what the Court in the Southern District of New York described as "the best settlement pound for pound for the class that I've ever seen." For defendants, Ard has obtained take-nothing judgments for NASDAQ and Dorfman Pacific in contract and intellectual property actions seeking tens of millions of dollars. Since 2019, Mr. Ard has been named one of the country's Leading Plaintiff Financial Lawyers by Lawdragon.

Before joining the firm, Mr. Ard clerked for the Honorable Shira A. Scheindlin of the United States District Court for the Southern District of New York, and for the Honorable Rosemary S. Pooler of the United States Court of Appeals for the Second Circuit. Mr. Ard graduated magna cum laude from Harvard Law School and completed his undergraduate work first in his class with a perfect GPA from Michigan State University, with dual degrees in philosophy and French literature. For the past three years, Ard has been recognized as a "Rising Star" in New York by Super Lawyers magazine.

Experience

- Judge Approves \$25 Million Settlement to End Lawsuit Over Genworth's Cost of Insurance Increase
- Susman Godfrey L.L.P. and Hausfeld LLP Secure \$240 Million Deutsche Bank LIBOR Settlement
- Susman Godfrey LLP and Hausfeld LLP Secure \$130 Million Citibank LIBOR Settlement
- Susman Godfrey Secures \$120 Million Barclays LIBOR Settlement, Game-Changing Agreement from Bank to Cooperate in Ongoing Litigation

Honors & Distinctions

- *Lawdragon* 500 Leading Litigator ([2022](#), [2023](#))
- *Lawdragon* 500 Leading Plaintiff Financial Lawyers ([2019](#), [2020](#), [2021](#), [2022](#), [2023](#))
- New York Super Lawyer ([2022](#), [2023](#), Thomson Reuters)
- New York Rising Star (2013-2018, Thomson Reuters)
- Teaching and Research Assistant for Professor Arthur Miller (Harvard Law School)
- Teaching Assistant for Professor Jon Hanson (Harvard Law School)
- Editorial Board, Harvard Civil Rights/Civil Liberties Law Review

Clerkships

Honorable Shira A. Scheindlin, United States District Court for the Southern District of New York, 2008-2009

Honorable Rosemary S. Pooler, United States Court of Appeals for the Second Circuit, 2007-2008

Education

Harvard Law School (J.D., magna cum laude, 2007)

Northwestern University (M.A., A.B.D., Philosophy, , 2003)

Michigan State University (B.A., Philosophy & French Literature, first in class, Highest Honors, 1997)

Admissions

Bar Admissions

- New York

Languages

French



Ryan Kirkpatrick

Partner

New York

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Overview

Ryan Kirkpatrick rejoins Susman Godfrey after spending four years as General Counsel and Senior Managing Director of McCourt Global, an alternative asset management firm. In that role, Ryan served as head of the New York office where he oversaw all legal affairs of the firm and its business verticals, including a \$1 billion commercial real estate development joint venture, MG Sports & Media (which owns the LA Marathon and co-owns Global Champions Tour and Global Champions League), and MG Capital (owner of a private direct lender and registered investment adviser).

Ryan's experience at McCourt equipped him with a deep understanding of how to successfully manage and direct a wide variety of multi-national legal matters. Ryan obtained or negotiated billions of dollars in judgments, settlements, and transactions while at McCourt. Working on both the plaintiff and defense sides, Ryan also developed a deep understanding of and how to successfully leverage litigation (and the threat of it) to accomplish financial and business objectives while at the same time managing and mitigating the financial and operational costs of litigation to a business. For example, while serving as director of Global Champions League, Ryan initiated an EU competition law action against Fédération Equestre Internationale, the international governing body for equestrian sports. After obtaining a landmark preliminary injunction that was upheld by the Brussels Court of Appeals—and has implications for all international sports federations—Ryan helped negotiate a highly favorable settlement with the FEI. As of 2017, Global Champions League has now sold/licensed 18 team franchises and holds 15 events around the world. This use of EU competition law to effect worldwide relief for a client was reminiscent of one of Ryan's first cases at Susman Godfrey, where he and Steve Susman guided start-up mainframe manufacturer Platform Solutions, Inc. to a \$200 million buy-out by IBM following years of contentious

of antitrust, patent infringement, and copyright infringement proceedings in both the Southern District of New York and the European Commission.

Ryan was first elected to the Susman Godfrey partnership in 2011. At the time, he was representing Frank McCourt and the Los Angeles Dodgers in connection with Mr. McCourt's highly-publicized divorce and the team's bankruptcy. This three-year representation culminated in a favorable settlement of the divorce, the sale of the Dodgers to Guggenheim Partners for \$2.15 billion—the highest amount ever paid for a professional sports franchise—and the formation of a \$550 million joint venture with affiliates of Guggenheim Partners. Ryan has been interviewed and quoted by numerous media outlets regarding the case, including the Wall Street Journal, Bloomberg News, the Los Angeles Time, ESPN, the National Law Journal, the Associated Press, KABC, and KTLA. Shortly following the sale, Mr. McCourt asked Ryan to help lead McCourt Global.

Ryan was named among *Lawdragon's* 500 Leading Litigators in America in 2022 and 2023. Prior to his time at Susman Godfrey, Kirkpatrick clerked for the Hon. Ruggero J. Aldisert of the US Court of Appeals for the Third Circuit.

Experience

- Judge Approves \$25 Million Settlement to End Lawsuit Over Genworth's Cost of Insurance Increase
- Court Approves \$16,500,000 Settlement in Securities Class Action Brought by Susman Godfrey Against Dendreon

Notable Representations

Representative Cases

- During his previous tenure at Susman Godfrey, Kirkpatrick led numerous successful litigation matters in a variety of legal areas including intellectual property, insurance, securities, antitrust and class actions. For example,
- Successfully represented various hedge funds investing in "stranger-owned life insurance," including obtaining complete defense victory for a hedge fund in a case in which an insurer sued to rescind a \$20 million life insurance policy for alleged fraud and lack of an insurable interest, and initiating a class action against an insurer relating to cost of insurance increases that resulted in a settlement valued at \$134 million.
- Obtained a \$45 million damages judgment on behalf of Masimo Corporation in an antitrust case against Tyco Healthcare involving pulse oximetry products, which judgment was upheld by the Ninth Circuit on appeal, with the client receiving a net recovery of approximately \$27 million.
- Defeated class certification of a putative wage and hour class action brought against a subsidiary of Dean Foods.

- Obtained a \$16.5 million settlement for a group of investors in Seattle-based Dendreon Corporation in a case alleging securities fraud and insider trading, with the class receiving approximately \$12 million.
- Guided start-up mainframe manufacturer Platform Solutions, Inc. to a \$200 million buy-out by IBM following years of contentious of antitrust, patent infringement, and copyright infringement proceedings in both the Southern District of New York and the European Commission.
- Represented Frank McCourt and the Los Angeles Dodgers in connection with Mr. McCourt's highly-publicized divorce and the team's bankruptcy. This three-year representation culminated in a favorable settlement of the divorce, the sale of the Dodgers to Guggenheim Partners for \$2.15 billion—the highest amount ever paid for a professional sports franchise—and the formation of a \$550 million joint venture with affiliates of Guggenheim Partners.

Clerkships

Honorable Ruggero J. Aldisert, United States Court of Appeals for the Third Circuit, 2005-2006

Education

UCLA School of Law (J.D., Order of the Coif, 2005)

Yale University (B.A., Political Science, , 2001)

Admissions

Bar Admissions

- New York
- California
- District of Columbia

Court Admissions

- U.S. District Court for Central District of California
- U.S. District Court for the Northern District of California
- U.S. Court of Appeals for the Seventh Circuit
- U.S. District Court for the Eastern District of Texas



Michael Adamson

Associate

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Overview

Trial lawyer Michael Adamson has been recognized by *Daily Journal* as a Top 40 Lawyer Under 40 (2022), by *National Law Journal* as a Plaintiff's Attorney Trailblazer (2023), and by *Los Angeles Business Journal's Leaders in Law* series (2021). Michael is a versatile litigator representing plaintiffs and defendants in arbitrations and federal and state courts across the country.

LEGAL VICTORIES

In 2023, Michael secured more than \$330 million in a confidential arbitration for a client in the renewable energy industry. The litigation proceeded from demand to hearing in just 60 days. After speeding through fact and expert discovery, Michael led damages examinations at the hearing and helped secure an award of 100 cents on the dollar of the client's proposed damages model. Michael also secured for the client a full reimbursement of attorneys' fees and expenses from the opposing party, meaning the client effectively paid almost nothing to receive a multi-hundred-million-dollar recovery.

On the defense side, Michael represented Wyle Labs, a subsidiary of KBR, in a trade-secrets case. By the end of a four-week trial, the court had struck most of the damages, and the jury had rejected the most significant remaining claims. Through post-trial briefing, Michael helped defeat some of the jury's few unfavorable findings. The case ultimately settled for a tiny fraction of the tens of millions in damages asserted – a knockout win for Wyle.

Michael has also achieved victories for both plaintiffs and defendants in class actions. He recently helped secure an eight-figure settlement, pending court approval, for a nationwide class of hundreds of policyholders suing PHL Variable Insurance Company for breach of contract. In state court, Michael defended cybersecurity company Bitdefender in a consumer class action

asserting claims under California's Unfair Competition Law. Through mediation, Michael helped negotiate a favorable pre-discovery settlement.

PRO BONO

Michael represents a putative class of disabled students and their families alleging systemic constitutional violations, as well as violations of the Individuals with Disabilities Education Act. The class seeks injunctive relief in the form of widespread reform to the educational system afforded to disabled students in Virginia. Michael recently argued against defendants' motion to dismiss in this case, which has garnered national media attention from the *Wall Street Journal*, *Washington Post*, *Politico*, *Associated Press*, and others. [Read more.](#)

BACKGROUND

Michael joined Susman Godfrey after clerking for Judge Gerald Tjoflat on the U.S. Court of Appeals for the Eleventh Circuit. He received his law degree from Duke University School of Law and his undergraduate degree from the Marriott School of Business at Brigham Young University where he studied accounting and later became a Certified Public Accountant.

Before law school, Michael worked in Washington, D.C. as a legislative aide for the Ranking Member of the Senate Finance Committee, specializing in tax, banking, and financial policy.

Notable Representations

Representative Matters

CONTRACT DISPUTES

- **Confidential Arbitration.** Obtained an award of hundreds of millions of dollars in connection with fraud and breach-of-contract claims. The arbitration proceeded from demand to hearing in just 60 days, during which Michael took and defended several depositions, coordinated expert reports and discovery, and examined several witnesses at the hearing, with emphasis on damages issues. In the tribunal's award, the arbitrator fully adopted the client's damages model, awarding 100 cents on the dollar.
- ***Chevron v. California Resources Corp.*** Served as counsel for American multinational energy corporation, Chevron, in a complex contractual dispute regarding oil production and gas balancing. Prior to arbitration, Michael helped achieve a business solution to the dispute on favorable terms for Chevron.

INSURANCE

- ***Advance Trust & Life Escrow Servs, LTA et al. v. PHL Variable Ins. Co., (S.D.N.Y.)*** Represents plaintiffs who are asserting breach-of-contract claims stemming from PHL Variable Insurance Company's unlawful cost of insurance rate increases imposed on plaintiffs' universal life insurance policies. After fully briefing the motion for class certification and starting summary judgment briefing, the parties reached agreement on an eight-figure settlement for the class, pending court approval.
- ***Vida Longevity Fund, LP v. Lincoln Life & Annuity Co. of N.Y. (S.D.N.Y.)*** Represents a certified class of hundreds of policyholders in an action against Lincoln National's New York affiliate, Lincoln Life & Annuity Co. of New York. The court has granted class certification.
- ***TVPX ARS Inc. v. Lincoln Nat'l Ins. Co. (E.D. Pa.)*** Represents a putative class of thousands of insurance policyholders who are asserting breach-of-contract claims against Lincoln National Insurance Company, which failed to reduce cost of insurance rates to reflect improvements in mortality rates, as the contracts require. Michael led efforts to write and file class-certification and Daubert motions, both of which are currently pending decision.
- ***Iwanski v. First Penn-Pacific Life Ins. Co. (E.D. Pa.)*** Serving as counsel to plaintiffs in this matter against Lincoln National's affiliate First Penn-Pacific Life Insurance Co. Michael has led all aspects of discovery and all major briefings. The parties are awaiting the court's decision on pending class-certification and Daubert motions.
- ***Angus v. Lincoln Nat'l Life Ins. Co. (E.D.P.A.)*** Briefed the opposition to Lincoln National's motion to dismiss, which is pending decision, in this putative class action. The plaintiff is alleging breach of contract due to Lincoln's failure to lower cost of insurance rates on universal life insurance policies despite substantial improvements in Lincoln's mortality expectations.

INTELLECTUAL PROPERTY

- ***Positron v. KBRWyle (Cal. Super. Ct.)*** Defended construction company, KBR and its subsidiary Wyle Laboratories against trade secret claims. After developing legal defenses not asserted by prior counsel and trying the case to a jury verdict, the court struck nearly all plaintiff's damages and the case settled for fractions of a penny on the dollar.
- ***Finjan v. Bitdefender (N.D. Cal.)*** Defended cybersecurity company, Bitdefender, in a patent infringement case. Michael argued claim construction, led all aspects of discovery, and took and defended key depositions in multiple countries. The case settled on favorable terms for Bitdefender.

PRO BONO

- ***D.C. et al. v. Fairfax County School Board et al. (E.D. Va.)*** Represents a proposed class of disabled students and their parents against the Virginia Department of Education and Fairfax County School Board for systemic constitutional violations, as well as violations of the Individuals with Disabilities Education Act. [Read more.](#)

Honors & Distinctions

- [Plaintiff's Attorney Trailblazer](#), *National Law Journal* (2023)
- [Top 40 Under 40](#), *Daily Journal* (2022)
- Finalist, [Leaders in Law Rising Star](#), *Los Angeles Business Journal* (2021)
- Duke Law Journal, Executive Editor
- Top 5 Percent of Graduating Class
- Governing Faculty Award for Excellence in Business and Finance Law
- Order of the Coif
- Dean's Award
- Former Member of the Board of Directors, Vaccine Ambassadors

Clerkships

Honorable Gerald B. Tjoflat, United States Court of Appeals for the Eleventh Circuit

Education

Duke University School of Law (J.D., magna cum laude, Order of the Coif, 2016)

Brigham Young University (B.S., Accounting, , 2011)

Admissions

Bar Admissions

- California
 - New York
-

Court Admissions

- U.S. District Court for the Southern District of New York
- U.S. District Court for the Eastern District of New York
- U.S. District Court for Central District of California
- U.S. District Court for the Northern District of California
- U.S. Court of Appeals for the Fourth Circuit

*Leadership &
Professional
Memberships*

- Certified Public Accountant



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Overview

Komal Patel joined Susman Godfrey after clerking for Judge Rosemary Pooler of the United States Court of Appeals for the Second Circuit and Judge Victor Marrero of the United States District Court for the Southern District of New York. Before clerking, she practiced litigation at another leading firm. Ms. Patel graduated summa cum laude and Phi Beta Kappa from New York University. She earned her J.D. from Columbia Law School, where she was a Managing Editor on the board of the *Columbia Law Review* and recipient of the Whitney North Seymour Medal, an honor awarded to a student who shows the greatest promise of becoming a distinguished trial advocate.

Experience

- Susman Godfrey Secures Key Appellate Win for Speedwell Holdings After Decade-Long Litigation

Clerkships

Honorable Victor Marrero, United States District Court for the Southern District of New York

Honorable Rosemary S. Pooler, United States Court of Appeals for the Second Circuit

Admissions

Bar Admissions

- New York



Krysta Kauble Pachman

Partner

Los Angeles

(310) 789-3100

kpachman@susmangodfrey.com

Overview

Krysta Pachman represents plaintiffs and defendants in high-stakes commercial litigation, including class actions, patent cases, trademark & copyright matters, and other disputes. Ms. Pachman has a track record of obtaining trial wins, favorable settlements and arbitration victories for her clients, who range from small businesses and individuals to Fortune 500 companies.

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“Krysta absorbed a lot of technical information, digested it, and helped the team understand the challenges with our case. [She] developed and recommended strategies and stood [her] ground when the other side and their expert tried to bully [her]. Krysta’s professionalism and skill was essential to the outcome we received from the panel.”

Denise M. Buffington, Director, Federal Regulatory Affairs & Corporate Counsel, Kansas City Power & Light Company

In 2021 Ms. Pachman was appointed to serve as co-lead counsel in the Blackbaud Data Breach Class Action. She will lead a class action brought over a data breach involving cloud management software firm Blackbaud. Ms. Pachman represents a class of plaintiffs who are suing Blackbaud for negligence, as well as violations of California’s Consumer Privacy Act and other state law statutes. The leadership team is being hailed as ‘most diverse leadership team ever’ in data breach class action.

In the landmark copyright action, *Ferrick, et al. v. Spotify USA*, Ms. Pachman was an integral part of a trial team that secured a settlement valued at more than \$100 million dollars, including a \$43.45 million cash settlement fund and an agreement to pay future royalties to settle a class-action lawsuit with

Spotify brought on behalf of music copyright owners. This case made national news, receiving press from *Billboard*, *Forbes*, and *Reuters*.

Ms. Pachman was also part of a team that secured a \$40 million settlement for a class of derivatives traders in *Timber Hill v. Pershing Square Capital Management, L.P., et al.* Timber Hill alleged Defendants violated federal securities laws through their illicit insider trading and front-running scheme that damaged Timber Hill and other investors by artificially deflating the value of options and equity forwards traded by Timber Hill and Class Members. This is the largest ever stand-alone options settlement and the largest ever Section 20A options settlement.

Ms. Pachman played a key role in *Schulein, et al. v. Petroleum Development Corp.*, representing a class of more than 7,000 limited partners who invested in 12 oil and gas limited partnerships, who alleged the defendants made false and misleading statements and omitted material information regarding the value of the assets held by the partnerships in proxy statements used to solicit votes in favor of mergers that caused the investors to be cashed out of their investments. Ms. Pachman took key depositions, wrote the opposition to defendants' motion for summary judgment, and wrote the successful opposition to defendants' motion to decertify the class. The case was settled for \$37.5 million in March 2015, with the class receiving approximately \$24 million.

Ms. Pachman also represented Kansas City Power & Light Company (KCPL) in a high-stakes renewable energy arbitration. During arbitration she delivered the opening statement, cross-examined the other side's expert, presented fact and expert witnesses, handled depositions, managed expert reports, and wrote the pre-and post-hearing briefs. The panel unanimously ruled in KCPL's favor.

Ms. Pachman currently serves as counsel for one of the largest-ever certified consumer classes, which encompasses nearly all U.S. cellular phone purchasers, all of whom have been impacted by Qualcomm's anti-competitive conduct. This complex case straddles the intersection of antitrust and technology and involves Qualcomm's monopoly in the cellular modem chip market to extract supra-competitive licensing fees on its intellectual property. Ms. Pachman briefed and successfully obtained class certification for the group – synthesizing hundreds of pages of expert analyses, voluminous fact evidence, and case law spanning complex antitrust and intellectual property issues. In 2018, the Court granted class certification in a 66-page order finding “substantial,” “strong” and “compelling” evidence to support the certification. Click [here](#) for the certification order.

For these wins and more, in 2022 Pachman was recognized as a [Top Woman Lawyer in California](#) by *The Daily Journal*. In 2021, she was named a [Rising Star of the Plaintiffs Bar](#) by *National Law Journal's* Elite Trial Lawyers (ALM) and one of the [Top 40 Lawyers Under 40](#) by the Daily Journal (Daily Journal

Corp.). *The Recorder* named her a California Trailblazer in 2020 (ALM), and *Best Lawyers* called her “One to Watch, Commercial Litigation” (2021, Woodward White, Inc.).

Prior to joining Susman Godfrey, Ms. Pachman served as a Law Clerk to the Honorable Philip S. Gutierrez in the U.S. District Court for the Central District of California. She also serves on the Board of Governors for the Women Lawyers’ Association of Los Angeles and serves on the Board of the Association of Business Trial Lawyers.

Experience

- Susman Godfrey and Gradstein & Marzano Secure \$43.45 Million Settlement with Spotify in Copyright Class Action
- Susman Godfrey Obtains \$37.5 Million for Investors in Oil & Gas in Limited Partnerships

Honors & Distinctions

- 40 and Under Hot List, Benchmark Litigation (2020, 2021, 2022, 2023 Euromoney)
- Lawdragon 500X – The Next Generation of Leading Lawyers (2023)
- Class Action Litigation Rising Star, Law360 (2023)
- Rising Star of the Plaintiff’s Bar, *National Law Journal* (2023, ALM)
- *Lawdragon* 500 Leading Litigator (2022, 2023)
- Top Woman Lawyer, *Daily Journal* (2022, Daily Journal Corp.)
- Future Star, Benchmark Litigation (2022, 2023 Euromoney)
- *Lawdragon* 500 Leading Plaintiff Financial Lawyers (2021, 2022, 2023)
- One to Watch, Commercial Litigation *Best Lawyers* (2021, 2022, 2023, 2024 Woodward White, Inc.)
- Top 40 Under 40, *Daily Journal* (2021, Daily Journal Corp.)
- Rising Star of the Plaintiffs Bar, *National Law Journal’s* Elite Trial Lawyers (2021, 2023 ALM)
- California Trailblazer, *The Recorder* (2020, ALM)
- Recommended Lawyer, Dispute Resolution: General Commercial Disputes, The Legal 500, (2019, Legal 500)
- Next Generation Woman Leader in Tech Law, *The Recorder* (2018, ALM)
- Southern California Rising Star, *Super Lawyers* (2017, 2018, 2019, 2020, 2021, 2022, 2023; Thomson Reuters)
- UCLA Law Review, Chief Comments Editor, Vol. 58

Clerkships

Honorable Philip S. Gutierrez, United States District Court for the Central District of California

Education

UCLA School of Law (J.D.,)

Northwestern University (B.A., Political Science and Communication Studies, magna cum laude)

Admissions

Bar Admissions

- California

Leadership & Professional Memberships

- Board of Governors, Women Lawyers Association of Los Angeles



Edgar G. Sargent

Partner

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Overview

Sargent represents clients in complex, high-stakes lawsuits in courts throughout the United States. He has years of experience litigating disputes involving cryptocurrency and digital assets. In addition to his cryptocurrency work, Sargent has represented plaintiffs and defendants in a wide range of commercial disputes, from patent infringement to breach of contract and business torts. He has served as litigation counsel to the estate or to major claimants in some of the largest bankruptcies in the country over the past fifteen years. Sargent has been with Susman Godfrey since 2000 and has been a partner since 2005. He has been named a “SuperLawyer” by Washington Law and Politics each year since 2014.

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“I cannot say enough about Edgar’s skill at trial, from his presentation to his insight and anticipation of the opposition’s thoughts he is the complete trial lawyer. Indeed one rarely experiences the intelligence that Susman Godfrey’s trial lawyers possess. If I find myself at trial in a bankruptcy case or any other high stakes litigation, Edgar and Susman Godfrey will be at the top of the list.”

Michael Willingham, Chair of Washington Mutual Equity Committee

Sargent was a member of Susman Godfrey’s trial team representing Dominion Voting Systems in its defamation litigation against Fox News. Dominion sought compensation from Fox for its broadcast of a series of false claims about Dominion’s technology being used to perpetrate election fraud during the 2020 presidential election. The case settled immediately after a jury was empaneled with Fox agreeing to pay Dominion \$787.5 million, believed to be the largest settlement ever obtained in a defamation case. Among other responsibilities, Sargent oversaw discovery related to Dominion’s voting technology, including taking and defending the depositions of all technical experts in the case.

In July 2022, Sargent represented Dr. Joe Dispenza and his business Encephalon in a ten-day bench trial of claims brought by the Ramtha School of Enlightenment. Judge Dixon of the Superior Court for Thurston County, Washington presided over the trial. In the case, the Ramtha School alleged that Dr. Dispenza had breached a contract by teaching meditation techniques and metaphysical concepts that he had first learned at the School. The case sought over \$12 million in past damages as well as a portion of Dr. Dispenza's future revenues. The Court ruled in favor of Dr. Dispenza on all issues, finding no breach and awarding no damages. Before reading his ruling into the record, Judge Dixon told the parties that the trial work done by the lawyers in the case was the best he had seen in ten years on the bench.

Sargent brought one of the first significant lawsuits in the United States involving the digital currency bitcoin when he was hired by the Seattle company CoinLab to sue the Japanese exchange MtGox. In the suit, filed in May 2013, CoinLab seeks to enforce a \$50 million liquidated damages clause in a contract with MtGox. Under the contract, CoinLab was to serve as the exclusive bitcoin exchange agent for MtGox in the United States and Canada. When MtGox filed for bankruptcy in Japan in 2014, the CoinLab dispute was transferred to the jurisdiction of the Japanese bankruptcy court. The dispute is ongoing in that forum and Sargent has provided several submissions through CoinLab's Japanese counsel to the bankruptcy court explaining relevant United States legal principles and advocating for CoinLab's claim.

In 2017, Sargent was the lead trial lawyer for the real estate website Zillow in a three-week jury trial in Federal District Court in Seattle. The case was brought by Chicago-based real estate photography company VHT, which sought \$50 million in damages based on allegations that Zillow had infringed VHT's copyrights in tens of thousands of photographs. Sargent and his Susman Godfrey colleagues Ian Crosby, Genevieve Wallace, and Jenna Farleigh obtained orders dismissing the majority of VHT's claims in pre- and post-trial motions. The remaining claims in the case are still being litigated.

In 2014, the City of Seattle retained Sargent to defend the City's new minimum wage law from a Constitutional challenge. The case was filed by former United States Solicitor General Paul Clement on behalf of a franchise trade organization and several franchise businesses. In the Complaint, these businesses allege that Seattle's minimum wage law violates the Equal Protection Clause, the Dormant Commerce Clause, and several other provisions of the United States and Washington State Constitutions. In a fifty-page order, the District Court rejected the plaintiffs' motion seeking to enjoin the minimum wage law from taking effect. After the Ninth Circuit upheld that ruling and the United State Supreme Court denied the plaintiff's petition for certiorari, the plaintiffs voluntarily dismissed the case.

Bankruptcies in which Sargent has represented significant parties include Washington Mutual (representing the Equity Committee), Hostess (the baker's

union), Tom Petters' Ponzi scheme (major creditors), Chrysler (the estate), Lehman Brothers (Lehman's European brokerage), Metropolitan Mortgage/Summit Securities (the estate), and Boston Chicken (D&O insurer).

Sargent's successful representation of Washington Mutual's Equity Committee was widely reported in the press, including Reuters, Bloomberg, and the Wall Street Journal. In two multi-week plan-confirmation hearings, Sargent served as co-lead trial counsel, opposing plans that would have wiped out shareholders. Although both plans were supported by the debtor and by all major creditors, the Court rejected both plans after the trials. Sargent then negotiated terms of a new plan that distributed over \$100 million in value to shareholders, including 90% ownership of the reorganized debtor.

Sargent has represented bankruptcy estates in litigating audit malpractice, fraudulent conveyance, officer and director liability, and breach of contract claims. He has led investigations by estates into potential claims in each of these areas as well as securities violations and other causes of action. He has litigated matters in bankruptcy courts across the United States, including Arizona, Washington State, Delaware, and the Southern District of New York.

Sargent is based in Seattle but he represents clients in courts across the United States.

Experience

- Susman Godfrey Secures Key Appellate Win for Speedwell Holdings After Decade-Long Litigation
- Fox News to Pay \$787.5 Million to Settle Defamation Claims Brought by Susman Godfrey Client, Dominion Voting Systems
- Seattle Workers Win Fight Over \$15 Minimum Wage

Notable Representations

Representative Cases

- Sargent represents Dominion Voting Systems in defamation claims against Newsmax, One America News, Mike Lindell, Rudolph Giuliani, and others. Those claims are ongoing. Sargent was also part of the Susman Godfrey team that successfully brought defamation claims against Fox News which were settled for \$787.5 million in April 2023.
- Sargent represents photographer Connie Aramaki in copyright infringement claims against Pacific Market International based on its ongoing use of Aramaki's photos to market Stanley brand thermoses and related products after expiration of the original license. The case is ongoing before Judge Jones in federal district court for the Western District of Washington.

- Sargent successfully defended Dr. Joe Dispenza in litigation brought by the Ramtha School of Enlightenment seeking over \$10 million in damages, future revenues, and an injunction. After a ten-day bench trial, the court ruled in favor of Dr. Dispenza on all issues.
- Sargent represented Seattle consulting firm New Alchemy in a dispute with a former client involving the distribution of digital tokens. The dispute was resolved on terms favorable to Sargent's client New Alchemy after a confidential mediation.
- Sargent represented the plaintiff widow in claims against General Motors alleging that her husband had been killed in an accident caused by a defective ignition switch. The case was one of hundreds filed across the country and consolidated in the Southern District of New York based on allegations that GM's ignition switches had rotated unexpectedly, causing accidents. Sargent was retained to assist with this case after the Court identified it as a bellwether to provide guidance for resolution of the remaining cases. After extensive expert and fact discovery, the case was settled on confidential terms favorable to Sargent's client.
- Lead trial counsel for real estate website Zillow in fifty million dollar copyright infringement claim asserted by real estate photography company. The case is ongoing.
- Represented large Seattle technology company in dispute with former executive over severance compensation. Resolved favorably in a confidential proceeding.
- Represented the City of Seattle in defense of minimum wage ordinance challenged on constitutional grounds by franchise businesses and the national franchise trade association. The City won on all claims in the District Court and in the Ninth Circuit Court of Appeals and the case has now been dismissed.
- Represents Coinlab Inc. in case against Japanese Bitcoin exchange, Mt. Gox. The suit alleges that Mt. Gox breached a contract granting Coinlab exclusive rights to perform Bitcoin exchanges for Mt. Gox customers in the United States and Canada.
- Represented Washington Mutual Liquidating Trust in investigation into potential claims against third-parties, including claims against major brokerage firms for short-selling Washington Mutual Stock and claims against auditors and others for professional malpractice.
- Represents Internet marketing firm Selling Source in arbitration concerning valuation of acquired businesses and implementation of contractual earn-out provision.
- Represented Equity Committee in the Washington Mutual bankruptcy in two successful challenges to reorganization plans and negotiation of confirmed plan awarding equity ownership of reorganized company and other assets.

- Represents Liquidating Trustee for several investment funds that lost money in the Petters Ponzi scheme in claims against U.S. Bank for aiding and abetting breaches of fiduciary duty by the funds' former managers.
- Represented mortgage broker in confidential arbitration against bank that had agreed to underwrite and acquire mortgages from broker.
- Represented Baker's Union in Hostess Bankruptcy in opposition to sale terms in proposed plan of reorganization.
- Represents Mexican manufacturing company in dispute with competitor over assertion of intellectual property rights in Mexico.
- Represented Chrysler bankruptcy estate in multi-billion dollar fraudulent conveyance claims against Chrysler's former parent, Daimler, and several former directors.
- Represented SuperSpeed Software in patent infringement claims against IBM. The case settled on confidential terms favorable to Mr. Sargent's client three months before trial was scheduled.
- Represented the bankruptcy estate of Metropolitan Mortgage, a formerly \$2 billion financial company from Washington State, in claims against auditors and other professionals. Claims against PricewaterhouseCoopers settled for \$30million on the eve of trial. Claims against a second audit firm were resolved in a confidential arbitration.
- Counsel for ACE Insurance Ltd. in coverage claims brought by the Boston Chicken, Inc. bankruptcy trustee under a Directors & Officers policy.
- Counsel for Forgent Networks in patent infringement claims against over thirty defendants, including Microsoft, Apple, Kodak, and Hewlett Packard, related to the JPEG image compression algorithm.
- Represented SuperSpeed Software, Inc. in a patent infringement claim against Oracle Corporation. The case was settled on confidential terms in December 2005, shortly after the Court issued a claim construction ruling highly favorable to SuperSpeed.
- Counsel for Gateway Computers in developing antitrust and related claims against Microsoft. After extensive negotiations in which Gateway was represented by Susman Godfrey attorneys Parker Folse, Mr. Sargent, and Brooke Taylor, Gateway's released its antitrust claims against Microsoft as part of an agreement under which Microsoft will pay Gateway \$150 million.
- Counsel for Seattle-based software company in confidential contract and intellectual property dispute with a prominent East-Coast technology company. The case settled on terms favorable to Mr. Sargent's client after a mediation.
- With a team of Susman Godfrey attorneys led by Steve Susman, Mr. Sargent represented a consortium of eighty financial institutions in claims against a big-four accounting firm. Mr. Sargent's clients had loaned \$2.1

billion to fund a merger and later learned that the borrower's financial statements had been inaccurate. The case settled the day before jury selection was to begin on terms favorable to Susman Godfrey's clients.

- Successfully defended major manufacturer of building materials in trademark, trade dress, and related claims by competitor claiming that product patterns had been copied.

Honors & Distinctions

- Named a "Super Lawyer" by Washington Law And Politics (2014 – 2022, Thomson Reuters)
- Fraternities: Order of the Coif
- Editor in Chief, Washington Law Review, 1997-1998
- Honorable John C. Coughenour, Chief Judge of the U.S. District Court for the Western District of Washington, 1998-2000
- Part-time lecturer, University of Washington School of Law, summer term 2000
- Named "Rising Star" by Washington Law & Politics (Thomson Reuters), 2006

Clerkships

Chief Judge John C. Coughenour, United States District Court for the Western District of Washington

Admissions

Bar Admissions

- Washington



Nick Spear

Partner

Los Angeles

(310) 789-3100

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Overview

Nick Spear litigates high-stakes and high-profile matters across the United States, representing both plaintiffs and defendants and regularly facing-off against industry titans. Spear has tried cases in federal courts, state courts, and arbitrations across a variety of legal areas including false claims, insurance, securities, real property, breach of contract, personal injury, intellectual property, and employment. Spear's cases have been covered by the *Los Angeles Times*, the *Associated Press*, and numerous industry publications.

Named a California Lawyer Attorney of the Year by *The Daily Journal* in 2023, a Rising Star of the Plaintiffs Bar by *National Law Journal's* Elite Trial Lawyers, a Litigation Trailblazer by *National Law Journal* (ALM), and a Southern California Super Lawyers Rising Star (Thomson Reuters) in 2021 and 2022, Spear plays a central role in his cases, regularly leading deposition efforts that elicit critical information, writing persuasive motions and briefs, and winning crucial arguments in court. Spear frequently argues and succeeds against lawyers with decades more experience, including successfully opposing a demurrer argued by a former United States Attorney.

LANDMARK LITIGATION

In *State of California v. Cellco Partnership*, Spear served as co-lead counsel to some of the largest government entities in California—including the University of California system, the California State University System, and the County of Los Angeles—in a ground-breaking California False Claims Act lawsuit against several major wireless carriers. The carriers were alleged to have fraudulently overbilled their government customers for wireless services by failing to provide contractually required “lowest cost available” service. Spear played a key role in the matter, leading efforts to pursue the offensive case against AT&T. In total, the four telecommunications giants—AT&T,

Verizon, Sprint, and T-Mobile—agreed pay \$175 million to the government plaintiffs in California and Nevada, including over \$50 million from AT&T alone (net settlement after fees and expenses not yet determined). These record-setting settlements are among the largest of their kind in California. Read more in the [Los Angeles Times](#)' coverage.

Spear is at the forefront of protecting policyholders from improper insurance charges by many of the nation's largest insurers, including Voya, Lincoln Life, North American, Genworth, Phoenix, and John Hancock. In *Helen Hanks v. Lincoln Life & Annuity Company of New York*, Spear secured a settlement valued at over \$118 million (before fees and expenses), which included a \$92.5 million non-reversionary cash settlement fund, for thousands of insurance policy owners against Voya Retirement Insurance and Annuity Company over allegations that Voya improperly raised policyholders' cost-of-insurance charges. In *37 Besen Parkway LLC v. John Hancock Life Insurance Co*, Spear helped secure a \$91.25 million all-cash, non-reversionary settlement for insurance policy owners against John Hancock Life Insurance Co over allegations that Hancock breached the life insurance contracts of the class (before fees and expenses). Read more [here](#) (subscription required). Spear now represents a certified class of insurance policyowners in *Advance Trust & Life Escrow Services, LTA v. North American Company for Life and Health Insurance* over allegations that North American has overcharged universal life insurance policyowners

Spear also tries cases at the cutting edge of law and technology, including representing the Lead Plaintiff in a putative securities class action alleging that the cryptocurrency XRP is an unregistered security.

Spear maintains an active pro bono practice. He currently represents a tenant advocacy group helping defend the constitutionality of eviction protections for renters enacted by the City of Oakland and Alameda County in the wake of the COVID-19 pandemic. The [Daily Journal](#) profiled Spear and his colleagues for their work in this area. You can also read more about it in [San Francisco Chronicle's](#) coverage and in [Law360](#) (subscription required).

COMMUNITY LEADERSHIP

Spear is actively involved in the community. He is an [officer](#) on the Executive Committee of the Barristers/Young Attorneys section of the Los Angeles County Bar Association (LACBA), which represents the interests of thousands of early-career attorneys across Los Angeles county. Spear is the President-Elect and will serve as President during the 2023–24 term. In addition, Spear is on the LACBA [Executive Committee](#) and [Board of Trustees](#), as well as the Bench and Bar Committee.

Spear is also on the [Advisory Board](#) of the Western Center on Law and Poverty where he has helped raise thousands of dollars to support Western Center's mission to protect California's most vulnerable citizens. Spear has also spent more than a decade as a staff member for the American Legion's

California Boys' State program, one of the nation's premier governmental education programs for high school students, and currently serves as one of the program's Legal and Elections counselors. Spear also sits on the Board of Directors of the California Boys & Girls State Foundation.

BACKGROUND

Before joining the firm, Spear served as law clerk to the Honorable Andrew D. Hurwitz of the United States Court of Appeals for the Ninth Circuit and to the Honorable Philip S. Gutierrez of United States District Court for the Central District of California.

Spear earned his JD from University of Chicago Law School where he graduated order of the coif and with high honors, and his Bachelor of Arts degree from UCLA, where he graduated *cum laude* and Phi Beta Kappa.

Experience

- Verizon, AT&T Agree to Pay \$116 Million in California and \$11 Million in Nevada to Settle Whistleblower Cases

Honors & Distinctions

- Lawdragon 500X – The Next Generation of Leading Lawyers (2023)
- California Lawyer Attorney of the Year, *Daily Journal* (2023)
- Recommended Lawyer, Energy Litigation: Oil & Gas, The Legal 500 (2022, Legalease)
- Litigation Trailblazer, *National Law Journal's* Elite Trial Lawyers (2021, ALM)
- Rising Star of the Plaintiffs Bar, *National Law Journal's* Elite Trial Lawyers (2021, ALM)
- Southern California Rising Star, Super Lawyers (2021, 2022, 2023 Thomson Reuters)
- Comments Editor, *The University of Chicago Law Review*
- Order of the Coif, University of Chicago Law School
- Kirkland & Ellis Scholar, University of Chicago Law School
- The Ann Watson Barber Outstanding Service Award, University of Chicago Law School
- The Thomas R. Mulroy Prize for Excellence in Appellate Advocacy and Oral Argument, University of Chicago Law School
- Phi Beta Kappa, UCLA

Clerkships

Honorable Andrew D. Hurwitz, United States Court of Appeals for the Ninth Circuit

Honorable Philip S. Gutierrez, United States District Court for the Central District of California

Admissions

Bar Admissions

- California
-

Court Admissions

- U.S. Court of Appeals for the Ninth Circuit
- U.S. Court of Appeals for the Eleventh Circuit
- U.S. District Court for Central District of California
- U.S. District Court for the Eastern District of California
- U.S. District Court for the Northern District of California
- U.S. District Court for the Southern District of California

Leadership & Professional Memberships

- American Bar Association
- American Bar Foundation, Fellow
- Association of Business Trial Lawyers
- California Lawyers Association
- Federal Bar Association
- Judge Paul R. Michel Intellectual Property American Inn of Court
- Los Angeles County Bar Association, Executive Committee



Davida Brook

Partner

Los Angeles

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dbrook@susmangodfrey.com

Overview

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“Davida Brook is one of the best lawyers there is. A steadfast advisor, a brilliant legal mind, and she fights like hell to win.”

John Poulos, CEO of Dominion Voting Systems

Ms. Brook addresses a crowd of reporters at the Dominion v. Fox settlement announcement

Davida Brook’s practice focuses on commercial litigation at every level, ranging from two-party business and employment disputes, to complex, multi-party and class action cases. Ms. Brook is also well known for her work related to defamation and intellectual property. Ms. Brook has been named by the *Daily Journal* as one of the Top 100 Lawyers in California in [2023](#) and [2022](#) and one of the Top Women Lawyers in California in 2023, 2021, and 2017. Lawdragon named her among the country’s 500 Leading Litigators in 2023 and 2022 and Law360 recognized her as an MVP in 2023.

In 2023, acting as co-lead counsel, Ms. Brook and her team secured a historic [\\$787.5 million settlement](#) to resolve Dominion Voting System’s massive defamation lawsuit against Fox News Network on the very day a jury trial was to commence in Delaware Superior Court. Ms. Brook and her team filed the [\\$1.6 billion defamation suit against Fox News Network](#) on behalf of Dominion two years earlier over allegations that Fox made false statements that Dominion rigged the 2020 presidential election.

The milestone deal made media waves, receiving coverage from [The New York Times](#) (“the latest extraordinary twist in a case that has been full of remarkable disclosures”), [The Washington Post](#) (“one of the most highly-anticipated media trials in decades”), and [Wall Street Journal](#) (“the case was set to test the contours of modern media law”). Ms. Brook spoke to the [LA Times](#) about the win and was interviewed on [MSNBC: Deadline](#), [Anderson](#)

Cooper 360, and CBS Mornings. She was also recognized as a Litigator of the Week by Law.com for the momentous result.

[Click here to see Ms. Brook interviewed on MSNBC: Deadline.](#)

Ms. Brook is prosecuting similar defamation claims on behalf of Dominion against Rudy Giuliani, Sidney Powell, Mike Lindell/MyPillow, Patrick Byrne, One America News Network (OAN) and Newsmax TV. In these cases, she and her team have already defeated every motion to dismiss filed by the defendants.

Ms. Brook has handed several other high-profile defamation cases on behalf of well-known clients, including billionaire hedge fund founder Louis Bacon, for whom her team helped secure a \$203 million award. Ms. Brook has also been involved in multiple defamation and related lawsuits involving the #metoo movement, all of which settled out of court. Prior to her work on the Dominion cases, working pro bono work, Ms. Brook successfully represented then Arizona Secretary of State Katie Hobbs and Wisconsin Governor Tony Evers in litigation brought to try and prevent the counting of every legally cast vote in the 2020 presidential election. Two of those cases were dismissed after Ms. Brook and her team filed motions to dismiss. A third case, brought by Donald Trump in Wisconsin against Governor Evers, was dismissed following a bench trial in which Ms. Brook and her team represented the Governor.

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“Intelligent, articulate, and always well prepared. There isn’t anyone I rather have representing me in trial.”

Steven Lamar, Beats by Dre Concept creation & Founder, ROAM Audio

Back in California, Ms. Brook previously obtained a \$25 million verdict (not including fees) for her client, Steve Lamar, after a three-week trial in LA Superior Court on his claims he was owed royalties from music moguls Dr. Dre and Jimmy Iovine on the sale of Beats Electronics headphones. Ms. Brook’s contributions to the case included leading a multi-day direct examination of leadoff witness Steve Lamar and convincing the California Court of Appeal to reverse an earlier summary judgment order that had dismissed the case (which ultimately paved the way to trial). Click here for a profile on Ms. Brook’s contribution to the case written by legal news publication, *The Recorder*.

Ms. Brook and her partner Krysta Pachman are leading a class action against Pornhub parent company, MindGeek, over allegations that MindGeek violated federal sex trafficking and child pornography laws by knowingly posting, enabling the posting of, and profiting from thousands of pornographic videos featuring persons under the age of 18. The lawsuit states that MindGeek chose to prioritize profits over the safety and welfare of children around the world, refusing to institute an age verification policy. A U.S. District Judge denied in

substantial part a motion to dismiss filed by MindGeek—and found that Section 230 does not protect Mindgeek’s actions—a huge win for the class.

BACKGROUND & DEDICATION TO THE COMMUNITY

In addition to her robust docket of cases, Ms. Brook actively participates in a range of legal and philanthropic organizations in Los Angeles and nationwide such as the Federal Bar Association, of which she is Board Member. During her time at Stanford Law School, Ms. Brook co-founded [Building a Better Legal Profession](#), a national organization that promotes diversity within the legal profession by compiling and publishing data on law firms’ commitment to the retention and promotion of women and minority attorneys.

Prior to joining Susman Godfrey, Ms. Brook served as a judicial law clerk for the Honorable Raymond C. Fisher in the Ninth Circuit Court of Appeals.

Ms. Brook is admitted to practice in California, all of the U.S. District Courts for California, the U.S. District Court for the Eastern District of Texas, Wisconsin District Court, and the United States Circuit Courts for the Second, Seventh, and Ninth Circuits

Experience

- Jury Awards Susman Godfrey Client Steven Lamar \$25.25 Million in Beats Headphone Royalty Dispute
- Fox News to Pay \$787.5 Million to Settle Defamation Claims Brought by Susman Godfrey Client, Dominion Voting Systems
- Susman Godfrey Obtains \$37.5 Million for Investors in Oil & Gas in Limited Partnerships

Notable Representations

Defamation

- **US Dominion Inc. et al. v. Fox News Network LLC**. Serving as co-lead counsel, secured a historic \$787.5 million settlement to resolve client, Dominion Voting System’s, defamation lawsuit against Fox news Network. Ms. Brook is prosecuting similar defamation claims on behalf of Dominion against Rudy Giuliani, Sidney Powell, Mike Lindell/MYPillow, Patrick Byrne, One America News Network (OAN) and Newsmax TV.
- **Bacon v. Nygard et al., Nygard Int’l Partnership v. Feralio et al., McKinney v. Bacon et al., Moore v. Bacon**. Representing billionaire hedge fund founder, Louis Bacon, in a series of disputes involving billionaire fashion tycoon, Peter Nygard. Ms. Brook helped secured a \$203 million settlement to resolve one of the high profile cases against Nygard. These cases, which span the country, involve legal issues at the heart of many entertainment-related disputes, including defamation claims and anti-SLAPP motions. Read more [here](#).

- **Rosette Pambakian v. Gregory Blatt et al.** Serving as counsel to former Tinder CEO, Greg Blatt, regarding allegations that a former Tinder marketing executive was unlawfully fired after she was sexually harassed. Mr. Blatt counter-sued for defamation, which was challenged via an anti-SLAPP motion. Ms. Brook secured a ruling that Mr. Blatt could move forward with his defamation claims.
 - **Various #metoo Related Suits.** Served as counsel in several #metoo related lawsuits, all of which settled out of court or before trial.
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Intellectual Property

- **Jibe Audio LLC et al. v. Pentagram Design Inc. et al.** Obtained a \$25 million verdict for Steve Lamar after a three-week trial in LA Superior Court on his claims he was owed royalties from music moguls Dr. Dre and Jimmy Iovine on the sale of Beats Electronics headphones. Ms. Brook played an instrumental role at trial; one of her most significant contributions was a multi-day direct examination of leadoff witness, Steve Lamar. She also paved the way for the jury trial to happen after a key appellate argument in which she convinced the California Court of Appeal to reverse a summary judgment order against her client. Ms. Brook and her team were also awarded another \$9 million in attorney's fees, plus an ongoing royalty on the Studio 3 headphone that is still in production.
 - **Vaporstream Inc. v. Snap Inc.** Represented Vaporstream Inc. in a lawsuit against Snapchat parent company Snap Inc. for patent infringement on a number of patents related to methods to reduce the traceability of electronic messages. Ms. Brook was instrumental in fending off Snapchat's attempts to dismiss the case and shepherding it towards trial. The case was resolved just before trial.
 - **Cortex MCP, Inc. v. Visa, Inc.** Patent infringement matter against Visa, Inc., by which Cortex, alleges that Visa is infringing upon Cortex's patents related to tokenization technology.
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Class Actions

- **Jane Doe v. MindGeek USA Incorporated et al.** Filed a class action against Pornhub parent company, MindGeek, alleging MindGeek has violated federal sex trafficking and child pornography laws by knowingly posting, enabling the posting of and profiting from thousands of pornographic videos featuring persons under the age of 18. A U.S. District Judge denied in substantial part the motion to dismiss filed by MindGeek—a huge win for Ms. Brook's clients
- **Johnson, et al., v. Zillow; Rachel Kremer v. Zillow; Jennifer Young v. Zillow; Ashley Boehler and James Friedrich v. Zillow.** Represented Zillow in various employment matters, including a class action claiming unpaid overtime. Ms. Brook coordinated the defense of the company in response to various disputes brought by nearly a dozen former employees

in federal court. Ms. Brook managed all stages of the litigation and secured several key victories for Zillow. Read more [here](#).

- ***Schulein, et al. v. Petroleum Development Corp., et al.*** Represented a class of more than 7,000 limited partners who invested in 12 oil and gas limited partnerships. Plaintiffs alleged the defendants made false and misleading statements and omitted material information regarding the value of the assets held by the partnerships in proxy statements used to solicit votes in favor of mergers that caused the investors to be cashed out of their investments. On the eve of trial, the case was settled for \$37.5 million, with the class receiving approximately \$24 million.

Election Litigation

- ***Tyler Bowyer et. al. v. Doug Ducey, et al.*** and ***Trump v. The Wisconsin Elections Commission, et al.*** Working pro bono, Ms. Brook successfully represented Arizona Secretary of State Katie Hobbs and Wisconsin Governor Tony Evers in litigation brought to try and prevent the counting of every vote cast in the 2020 presidential election. The two cases brought by a team of lawyers led by Sydney Powell (one in AZ and one in WI) were dismissed after Ms. Brook and her team filed a motion to dismiss.
- ***William Feehan And Derrick Van Orden v. Wisconsin Elections Commission.*** Defended the Wisconsin Elections Commission in case brought by former president Donald Trump in Wisconsin against Governor Evers. Ms Brook took the matter to a one-day bench trial during which she defended the Governor against Mr. Trump's claims of voter fraud. After hearing the evidence and argument, the judge rejected the case on the merits and dismissed it. The dismissal followed earlier attempts by Mr. Trump to have cases heard as original actions in the WI Supreme Court, all of which were rejected.

Honors & Distinctions

- Finalist – Attorney of the Year, *The Recorder* (2023, ALM)
- Media & Entertainment Litigation MVP, *Law360* (2023)
- Top 100 Lawyer, *Daily Journal* (2023, 2022, Daily Journal Corp.)
- Top Woman Lawyer, *Daily Journal* (2023, 2021, 2017, Daily Journal Corp)
- Litigator of the Week, *Law.com* (2023, ALM)
- *Lawdragon* 500 Leading Litigator (2022, 2023)
- Future Star, Benchmark Litigation (2022, 2023 Euromoney)
- *Lawdragon* Leading Plaintiff Financial Lawyer (2020, 2021, 2022, 2023)
- Featured in California Super Lawyers Spring 2019 Issue – Discovery Q&A with Davida Brook (Thomson Reuters)
- Rising Star, General Commercial Disputes, *The Legal 500* (2019)
- Next Generation Woman Leader in Tech Law, *The Recorder* (2018, ALM)
- Top 40 Lawyers Under 40 in California, *Daily Journal* (2018, Daily Journal Corp.)
- Rising Star, *Super Lawyers* Southern California (Thomson Reuters, 2016-2023)
- Stanford Law and Policy Review, Member and Editor
- Stanford Public Interest Fellow
- Phi Beta Kappa Society

Clerkships

Honorable Raymond C. Fisher, United States Court of Appeals for the Ninth Circuit

Education

Columbia Law School (B.A., magna cum laude)

Stanford Law School (J.D.,)

Admissions

Bar Admissions

- California
-

Court Admissions

- U.S. District Court for Central District of California
- U.S. District Court for the Northern District of California
- U.S. District Court for the Eastern District of California
- U.S. District Court for the Southern District of California
- U.S. District Court for the Eastern District of Texas
- Wisconsin District Court
- U.S. Court of Appeals for the Second Circuit
- U.S. Court of Appeals for the Seventh Circuit
- U.S. Court of Appeals for the Ninth Circuit

Leadership & Professional Memberships

- Board of Directors, Building a Better Legal Profession

EXHIBIT 2

Excerpted

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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

CHRISTOPHER Y. MEEK,)
Individually and On Behalf)
of All Others Similarly) No. 19-00472-CV-W-BP
Situated,) April 28, 2023
) Kansas City, Missouri
Plaintiff,) CIVIL
)
V.)
)
KANSAS CITY LIFE INSURANCE)
COMPANY,)
)
Defendant.

TRANSCRIPT OF INTERIM PRETRIAL CONFERENCE
BEFORE THE HONORABLE BETH PHILLIPS
UNITED STATES DISTRICT JUDGE

Proceedings recorded by electronic stenography
Transcript produced by computer

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APPEARANCES

For Plaintiff:

**MR. PATRICK J. STUEVE
MR. BRADLEY WILDERS
MR. ETHAN M. LANGE
MS. LINDSAY TODD PERKINS
Stueve Siegel Hanson, LLP
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Kansas City, MO 64112**

**MR. MATTHEW W. LYTLE
Miller Schirger, LLC
4520 Main Street, Suite 1570
Kansas City, MO 64111**

For Defendant:

**MR. DANIEL L. DELNERO
MR. JAMES RANDOLPH EVANS
Squire Patton Boggs LLP
1201 W. Peachtree Street, NW
Suite 3150
Atlanta, GA 30309**

**MR. JOHN W. SHAW
MS. LAUREN TALLENT ROGERS
Berkowitz Oliver LLP
2600 Grand Boulevard, Suite 1200
Kansas City, MO 64108**

1 up, but this is just an area of law and just a topic generally
2 that I know so little about that it's taking me longer to get
3 up to speed on what the terms mean, what the concepts mean.
4 And so this has been helpful, but I just need to go back to the
5 drawing board and look through all of this again before making
6 rulings on a lot of these issues.

7 With that, does counsel for plaintiff have anything
8 else that you'd like to discuss at this time?

9 MR. STUEVE: Your Honor, just very briefly. I want
10 to make sure the Court understood. We didn't have this number,
11 but we do argue the prejudice that's required for equitable
12 estoppel, if the Court were to limit the damages to those
13 five -- the past five years, over 56 percent of the class will
14 not have any damages because their policies would have lapsed
15 before that time frame, and the damages number goes from about
16 18 million to approximately one million.

17 THE COURT: Okay. There were two other topics that
18 I wanted -- I would like a copy of the Jackson County jury
19 instructions. We looked online and weren't able to access
20 them, so I would like to get a copy of those.

21 MR. STUEVE: Okay.

22 THE COURT: And I don't need an answer to this
23 question right now, but to the extent you have any witnesses
24 that will be testifying via deposition, the rule is -- the rule
25 I follow is a little bit different than the Missouri state

1 ineffective, and it most certainly extends the argument in the
2 trial, which is something that I'm always working to avoid.

3 So again, I apologize I haven't been more definitive
4 in my rulings. This has been helpful. I'm going to go back to
5 the drawing board and review these issues with this argument in
6 mind.

7 We, as you know, have the next pretrial conference
8 set. It looks as though maybe this case won't have as many
9 traditional pretrial issues in terms of motions in limine and
10 things of that sort. Maybe I'm wrong, but it seems as though a
11 lot of these issues are still -- will be related to the issues
12 that are outstanding. So file whatever is necessary for the
13 pretrial conference, and I will be better prepared to rule on
14 some of these outstanding issues then. And godspeed with the
15 mediation.

16 So have a good weekend.

17 (Hearing adjourned.)

18 - - -

19 CERTIFICATE

20 I certify that the foregoing is a correct transcript
21 from the record of proceedings in the above-entitled matter.

22

23 May 3, 2023

24

25

/s/ _____
Kathleen M. Wirt, RDR, CRR
U.S. Court Reporter

EXHIBIT 3

VERDICT FORM A

Note: Complete this form by writing in the names required by your verdict.

On Plaintiffs' claim that Defendant breached the COI charge provision, as submitted in Instruction No. 18, we find in favor of:

Plaintiff

(Plaintiffs) or (Defendant)

Note: Complete the following paragraphs only if the above finding is in favor of Plaintiffs.

For the period of June 18, 2014, to February 28, 2021:

We find Plaintiffs' damages for Defendant's consideration of factors other than age, sex, and risk class and its expectations as to future mortality experience when setting the COI rate to be:

\$ 908,075.⁰⁰ (state the amount or, if none, write the word "none").

Note: Fill in the next blank only if you determined Defendant failed to apply its then-current mortality rates when setting the monthly COI charge.

We find Plaintiffs' damages for Defendant's failure to apply its then-current mortality rates when setting the monthly COI charge to be:

\$ _____ (state the amount or, if none, write the word "none").

For the period of May 1, 1982, to February 28, 2021:

We find Plaintiffs' damages for Defendant's consideration of factors other than age, sex, and risk class and its expectations as to future mortality experience when setting the COI rate to be:


\$ 5,059,275.⁰⁰ (state the amount or, if none, write the word "none").

Note: Fill in the next blank only if you determined Defendant failed to apply its then-current mortality rates when setting the monthly COI charge.

We find Plaintiffs' damages for Defendant's failure to apply its then-current mortality rates when setting the monthly COI charge to be:

\$ _____ (state the amount or, if none, write the word "none").

Dated: 05/25/23



Foreperson

VERDICT FORM B

Note: Complete this form by writing in the names required by your verdict.

On Plaintiffs' claim that Defendant breached the expense charge provision, as submitted in Instruction No. 19, we find in favor of:

_____ or Defendant
(Plaintiffs) (Defendant)

Note: Complete the following paragraphs only if the above finding is in favor of Plaintiffs.

For the period of June 18, 2014, to February 28, 2021:

We find Plaintiffs' damages to be:

\$ 0 (state the amount or, if none, write the word "none").

For the period of May 1, 1982, to February 28, 2021:

We find Plaintiffs' damages to be:

\$ 0 (state the amount or, if none, write the word "none").

Dated: 05/25/23

Cheryl Smith
Foreperson

EXHIBIT 4

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

CHRISTOPHER Y. MEEK,)
 Individually and On Behalf of All Others)
 Similarly Situated,)
)
 Plaintiff,)
)
 v.)
)
 KANSAS CITY LIFE INSURANCE)
 COMPANY,)
)
 Defendant.)

Case No. 19-00472-CV-W-BP

ORDER (1) GRANTING DEFENDANT’S MOTION TO PARTIALLY DECERTIFY CLASS, (2) DISMISSING COUNT V WITHOUT PREJUDICE, AND (3) DIRECTING THAT JUDGMENT BE ENTERED

This lawsuit presents claims that Defendant—an insurance company—improperly calculated the rate for the cost of insurance (the “COI Rate”), resulting in improper and excessive charges for cost of insurance (the “COI charge”) under a universal life insurance policy (the “Policy”). A trial was conducted the week of May 22, 2023, but several issues remained for resolution before a judgment could be entered. For the reasons discussed below, the Court (1) **GRANTS** Defendant’s Motion to Partially Decertify the Class, (Doc. 299), (2) **DISMISSES** Count V without prejudice and (3) **DIRECTS** that judgment be entered.

I. BACKGROUND

The Court starts with a summary of the claims asserted in the Amended Complaint:

- Count I alleges Defendant breached the Policy by considering factors other than the policyholder’s age, sex, and risk class and its own expectations as to future mortality experience when calculating the COI Rate;

- Count II alleges Defendant breached the Policy by deducting expense charges in excess of the amount allowed by the Policy;
- Count III alleges Defendant breached the Policy by failing to apply its updated mortality expectations when calculating the COI Rate;
- Count IV asserts a conversion claim; and
- Count V seeks declaratory and injunctive relief.

(See Doc. 8.) At trial the Court agreed with Plaintiff's counsel that Count I subsumes Count III.

In February 2022, the Court granted in part Plaintiff's Motion for Class Certification. As relevant here, it determined Kansas law governs Plaintiff's claims, (Doc. 136, p. 16),¹ and Kansas's statute of limitations applies. (Doc. 136, pp. 22-23 & n.10.) Based on these determinations (and others that need not be detailed here) the Court certified the following Class:

All persons who own or owned [certain specified life insurance policies] issued or administered by Defendant, or its predecessors in interest, that [were] active on or after January 1, 2002, and [who] purchased the life insurance policy while domiciled in Kansas. Excluded from the Class are: KC Life; any entity in which KC Life has a controlling interest; any of the officers, directors, employees, or sales agents of KC Life; the legal representatives, heirs, successors, and assigns of KC Life; anyone employed with Plaintiff's counsel's firms; and any Judge to whom this case is assigned, and his or her immediate family.

(Doc. 136, p. 25.) The Class was certified only for Counts I through IV. (Doc. 136, p. 25.)

On March 27, 2023, the Court granted in part the parties' separate motions for summary judgment. One of the critical issues addressed in that Order related to the statute of limitations.

The Court:

¹ All page numbers are those generated by the Court's CM/ECF system.

1. Adhered to its conclusion that Kansas's statute of limitations applied;
2. Held the statute of limitations for the contract claims (Counts I – III) was five years, and all breaches occurring within five years of the suit's filing (June 18, 2019) were timely;
3. Held that, under certain circumstances, Kansas will equitably estop a defendant from asserting the statute of limitations as a defense; and
4. The parties' arguments did not permit the Court to determine whether equitable estoppel applied in this case.

(Doc. 243, pp. 6-12.) The Court then construed the meaning of relevant Policy provisions and determined (1) Defendant had considered improper factors (including, among other things, expenses and profits) in determining the COI Rate, but (2) factual disputes precluded summary judgment on any aspect of Plaintiff's claims that Defendant failed to apply its then-current expectations as to future mortality experience when setting the COI rate. (Doc. 243, pp. 12-17.) These determinations (which need not be detailed further here) essentially granted Plaintiff summary judgment on liability with respect to (1) a portion of Count I and (2) Count II. Finally, the Court granted Defendant summary judgment on the conversion claim (Count IV). (Doc. 243, pp. 18-19.)

Shortly after the summary judgment order was issued, the Court participated in a telephone conference with the parties, and thereafter the parties submitted supplemental briefs. Among other things, the parties agreed the facts relevant to equitable estoppel were to be determined by the Court and not the jury. (Doc. 253, pp. 14-15; Doc. 254, pp. 18-19.)

At the pretrial conference, the Court indicated it needed to hear evidence before it could rule on the issue of equitable estoppel and decided the appropriate course was to proceed to trial and allow the parties to present any additional evidence that related solely to equitable estoppel

outside the jury's hearing. (Doc. 292, p. 10.) To avoid the need for a second trial, the Court also proposed having the jury return a verdict regarding damages for two time periods based on the application (or not) of equitable estoppel. (Doc. 292, pp. 10-11.)²

At trial, the Court largely adopted Plaintiff's proposed approach with respect to the verdict directing instructions. The first Verdict Director, (Doc. 309, p. 23 (Instruction No. 18)), told the jury that Defendant breached the Policy if it "(1) considered factors other than age, sex, and risk class and its expectations as to future mortality experience when setting the COI rate" *or* "(2) failed to use . . . its then-current mortality rates when setting the monthly COI charge." The jury was then told it had previously been determined Defendant considered impermissible factors when setting the COI Rate, but it had not been determined whether Defendant failed to apply its then-current mortality rates. The jury was also told it had not been determined whether the Class suffered damages. On the corresponding Verdict Form, the jury was directed to determine (for the two separate periods) damages for Defendant's consideration of impermissible factors. The jury was also directed to indicate whether it found Defendant failed to apply its then-current mortality rates by inserting the amount of damages; if it found Defendant did not breach the policy in this manner, it was to leave the line for damages blank. (Doc. 311, pp. 1-2 (Verdict Form A).) In this way, the first Verdict Director and Verdict Form A addressed Counts I and III.

The second Verdict Director, (Doc. 309, p. 24 (Instruction No. 19)), addressed Count II. The jury was told it had been determined that (1) "Defendant cannot consider expenses when setting the COI rate" but (2) it had done so, and the jury had to "determine whether Plaintiffs were damaged by Defendant's consideration of expenses and, if so, the amount of damages."

² Conducting a hearing before trial solely with respect to equitable estoppel would not have been efficient because some evidence relevant to liability and damages also potentially applied to equitable estoppel. A separate hearing before trial would have required that evidence to be presented twice.

For the two time periods at issue, the jury

1. Awarded damages for Defendant's consideration of improper factors in setting the COI Rate,
2. Determined damages for Defendant's consideration of expenses was zero, and
3. Determined Defendant did not breach the Policy by failing to apply its then-current mortality rates.

(Doc. 311.) The Court must determine whether equitable estoppel applies so the appropriate monetary award can be included in the judgment. The Court must also adjudicate Count V.

II. DISCUSSION

A. Statute of Limitations

As stated earlier, the statute of limitations for a breach of contract claim under Kansas law is five years. Under Kansas law a breach of contract claim accrues when the breach occurs; Kansas law does not apply a “discovery rule” and accrual does not depend on when the plaintiff learned (or should have learned) about the breach. *E.g.*, *Great Plains Trust Co. v. Union Pac. R. Co.*, 492 F.3d 986, 993 (8th Cir. 2007) (citing *Pizel v. Zuspahn*, 795 P.2d 42, 54 (Kan. 1990)); *Dunn v. Dunn*, 281 P.3d 540, 548 (Kan. Ct. App. 2012). Kansas law also does not recognize the “fraudulent concealment” doctrine, under which the statute of limitations is tolled against a party that has tried to conceal its breach. *E.g.*, *Freebird, Inc. v. Merit Energy Co.*, 883 F. Supp. 2d 1026, 1035 (D. Kan. 2012) (analyzing Kansas law). However, there are circumstances in which Kansas courts will hold a party is estopped from asserting the statute of limitations as a defense.

In briefing on this issue, the parties extensively discuss the elements of equitable estoppel. The Court, however, declines to analyze whether equitable estoppel applies because it finds one of the requirements for equitable estoppel—reliance—is an individualized determination that cannot be decided for the entire Class.

1. Reliance

A defendant is equitably estopped from asserting the statute of limitations as a defense if, by acts, representations, admissions, or silence when [the defendant] had a duty to speak, [it] induced the [plaintiff] to believe certain facts existed. The [plaintiff] must also show that [he] *reasonably relied and acted upon such belief* and would now be prejudiced if the [defendant] were permitted to deny the existence of such facts.

L. Ruth Fawcett Trust v. Oil Producers Inc. of Kansas, 507 P.3d 1124, 1144 (Kan. 2022) (quotation omitted; emphasis supplied) (hereafter “*Ruth Fawcett Trust*”). More succinctly, the defendant’s actions must create “a false sense of security that prevented the plaintiff from timely suing.” *Id.* at 291; *see also Dunn*, 281 P.3d at 544; *Newman Mem. Hosp. v. Walton Const. Co.*, 149 P.3d 525, 542 (Kan. Ct. App. 2007); *Robinson v. Shah*, 936 P.2d 784, 798 (Kan. Ct. App. 1997). “To determine whether the doctrine applies, courts must look at the facts and circumstances of each case and should not apply it in a formulaic manner.” *Ruth Fawcett Trust*, 507 P.3d at 1144.

Here, Plaintiff argues the Annual Statements Defendant sent to policy holders established reliance.³ The Annual Statements disclose, among other things, deductions for Cost of Insurance and Expense Charges. The Court sets aside any questions about whether equitable estoppel can be based on the Annual Statements. Instead, the Court concludes equitable estoppel can be based on the Annual Statements only if they were seen and read by a would-be plaintiff.

Ruth Fawcett Trust repeatedly described the reliance element as requiring the plaintiff to demonstrate he “detrimentally relied” on the defendant’s representations. *Ruth Fawcett Trust*, 507 P.3d at 290-91. It also upheld application of equitable estoppel because the defendant in that case

³ To the extent Plaintiff argues the Policy holders relied on Defendant to comply with the contract, the Court rejects this argument. All parties to a contract rely on the other party to comply, but equitable estoppel requires the would-be plaintiff to rely on something that caused him or her to not sue. A general expectation that the other party will comply with the contract, or a general statement from the defendant that it complied, is insufficient. To hold otherwise would allow equitable estoppel to be the norm or effectively create a discovery rule where Kansas law does not provide one. *See McCaffree Fin. Corp. v. Nunnink*, 847 P.2d 1321, 1332 (Kan. Ct. App. 1993); *see also Murray v. Miracorp, Inc.*, 522 P.3d 805, at *9 (Kan. Ct. App. 2023) (citing *McCaffree*).

“made affirmative misrepresentations that deterred the Class members from pursuing timely legal action.” *Id.* at 292. This explanation demonstrates there must be a causal relationship between the defendant’s actions and plaintiff’s deterrence. As a factual matter, the deterrence required by the Kansas Supreme Court cannot be ascribed to the defendant’s statements unless the plaintiff is aware of those statements. Thus, in this case, a Class member could not have suffered detriment based on anything in the Annual Statements unless that Class member read the Annual Statements.

Cases decided before *Ruth Fawcett Trust* support this analysis. For instance, in *Iola State Bank v. Biggs*, the Kansas Supreme Court stated the party asserting estoppel must have been “induced . . . to believe certain facts existed. It must also show it rightly relied and acted upon such belief” 662 P.2d 563, 571 (Kan. 1983). However, Class members could not be induced to believe anything in the Annual Statements unless they read them. Similarly, in *Dunn*, the Kansas Court of Appeals cited another Kansas Supreme Court decision for the proposition that the defendant’s actions must have caused the plaintiff to “act[] in good faith in reliance thereon to his prejudice whereby he failed to commence the action within the statutory period.” *Dunn*, 281 P.3d at 550 (quoting *Klepper v. Stover*, 392 P.2d 957, 959 (Kan. 1964)). A Class member cannot rely on the Annual Statements, and nothing in the Annual Statements could have caused a Class member to “fail[] to commence the action within the statutory period,” unless the Class member saw the Annual Statements.

2. Rule 23 of the Federal Rules of Civil Procedure

Rule 23 of the Federal Rules of Civil Procedure allows a class to be certified if, among other things, (1) there are questions of law or fact common to the class and (2) the common questions of law or fact predominate over individual questions. *See* Fed. R. Civ. P. 23(a)(2), 23(b)(3). As the Court discussed in more detail when it certified the class, the common questions

included determinations regarding choice of law issues, the appropriate statute of limitations, and whether certain doctrines (such as fraudulent concealment or the discovery rule) applied. (Doc. 136, pp. 23-25.) However, equitable estoppel was not discussed by the parties when the issue of class certification was raised, so the Court did not have occasion to consider its impact on the Rule 23 analysis. Defendant has raised the issue subsequently; in fact, currently pending is its Motion to Partially Decertify the Class because the issue of equitable estoppel cannot be decided on a class-wide basis. Given the inquiry required to determine if equitable estoppel applies, the Court agrees and concludes the motion, (Doc. 299), should be **GRANTED**.

Plaintiffs allege the Annual Statements misled class members into not realizing they had a cause of action. However, as explained above, the Annual Statements could only mislead those Class members who read the Annual Statements. Whether a plaintiff read the Annual Statements is not a fact common to the class members, so it is not capable of determination on a class-wide basis. *See Wal-Mart Stores v. Dukes*, 564 U.S. 338, 350 (2011) (discussing what qualifies as a “common question”). This conclusion is consistent with other cases holding (in a variety of legal contexts) that the issue of reliance is not amenable to class-wide determination because it requires an individualized determination of what information each class member saw or what each class member thought. *E.g.*, *Hucock v. LG Elec. U.S.A., Inc.*, 12 F.4th 773, 777 (8th Cir. 2021); *Johannessohn v. Polaris Indus. Inc.*, 9 F.4th 981, 985-86 (8th Cir. 2021); *In re St. Jude Med., Inc.*, 522 F.3d 836, 839-40 (8th Cir. 2008); *see also Amgen Inc. v. Connecticut Retirement Plans & Trust Funds*, 568 U.S. 455, 462-3 (2013) (“Absent the fraud-on-the-market theory, the requirement that [securities fraud] plaintiffs establish reliance would ordinarily preclude certification of a class

action seeking money damages because individual reliance issues would overwhelm questions common to the class.”).⁴

Plaintiff argues he can rely on class-wide circumstantial evidence to establish reliance; however, he does not identify any such evidence. Facts about Defendant’s billing practices, mailing practices, and the format of and information contained in the Annual Statements could be decided class-wide; however, none of this evidence permits the Court to conclude, for each and every class member, whether they looked at the Annual Statements and thereby relied on anything Defendant said therein. Plaintiff’s argument cites *Ruth Fawcett Trust*, but there are significant differences between the facts and procedural posture in this case and in *Ruth Fawcett Trust*. The defendant in that case (Oil Producers Incorporated of Kansas, or “OPIK”) had leased mineral rights from the plaintiffs. OPIK was required to pay a monthly royalty and was allowed to deduct certain costs (including taxes) from those royalty payments; it itemized those deductions on the monthly check stubs. OPIK was not permitted to deduct conservation fees from the royalty payments, but it did so anyway. To avoid detection, it “disguised” the conservation fees as taxes on the monthly check stubs. *Ruth Fawcett Trust*, 507 P.3d at 1143-44.

The issue of reliance was discussed in greater detail by the trial court and the Kansas Court of Appeals than it was by the Kansas Supreme Court. The trial court made specific findings regarding the check stubs and the information they contained and concluded the class members must have seen the information OPIK provided because they cashed the checks. *L. Ruth Fawcett*

⁴ On at least two occasions, the District of Kansas has declined to certify a class to resolve assertions of equitable estoppel because of the individualized nature of the inquiry. “Whether the Court would apply an equitable doctrine to toll a particular class member’s statute of limitations must depend on the particular circumstances of that class member’s closing, including the particular representations made to the member and the facts available to him.” *Doll v. Chicago Title Ins. Co.*, 246 F.R.D. 683, 688 (D. Kan. 2007) (emphasis deleted); see also *Commander Properties Corp. v. Beech Aircraft Corp.*, 164 F.R.D. 529, 539 (D. Kan. 1995) (“[A] determination of whether the doctrine of equitable tolling or fraudulent concealment can be invoked by a particular plaintiff requires individual inquiries into [the defendant’s] conduct with regard to that plaintiff.”)

Trust v. Oil Producers, Inc. of KS, 2016 WL 11775738, at * 2-5, 8 (Kan. Dist. Ct. Sept. 1, 2016). The Kansas Court of Appeals affirmed the finding “that *by cashing the monthly checks* and not questioning the deductions, the royalty owners demonstrated reliance on the check stubs being truthful and accurate.” *L. Ruth Fawcett Trust v. Oil Producers, Inc. of KS*, 475 P.3d 1268, 1281 (Kan. Ct. App. 2020) (emphasis added). In addition to the trial court’s explanations, the court of appeals opined that reliance could “be inferred because there is no other way to explain why they would not question the deduction. The only reasonable explanation is that the Class members relied on the misrepresentation.” *Id.* at 1283.

In this case, there is another plausible and obvious reason why the Class members might not have taken action: they did not look at the Annual Statements. In *Ruth Fawcett Trust*, the trial judge found the class members were aware of the check stubs’ contents because the class members cashed the checks; here, there is no similar fact that would permit the Court to find the class members were aware of the Annual Statements’s contents. Plaintiff makes much of the Kansas Court of Appeals’s observation that “[i]t would not be feasible to take the testimony of every Class member,” *id.*, but this does not permit the Court to make a class-wide determination of an individualized fact. To the contrary, it explains why such a determination cannot be made under Rule 23: this individual issue predominates over common issues by requiring testimony from each class member. Moreover, the Kansas Court of Appeals also observed “OPIK does not challenge the Class certification on appeal,” *id.*, which may explain why OPIK’s challenge to the class-wide determination was rejected. In contrast, here, Defendant has challenged the certification through its Motion to Partially Decertify, so the Court must consider the Rule 23 implications of this significant, individualized question’s emergence after the class was certified.

3. Decertification

“[A]fter initial certification, the duty remains with the district court to assure that the class continues to be certifiable throughout the litigation,” *In re Target Corp. Customer Data Sec. Breach Litig.*, 847 F.3d 608, 612 (8th Cir.), *amended*, 855 F.3d 913 (8th Cir. 2017), and when (as is the case here) the Court concludes the original certification’s scope is too broad, it may alter or amend the order certifying the class. Fed. R. Civ. P. 23(c)(1)(C). Accordingly, the Court amends the class definition to obviate the individualized inquiry related to equitable estoppel.

The Court previously determined claims related to improper charges imposed within five years of the filing of suit (that is, on or after June 18, 2014) are timely. The Court will therefore amend the class definition to limit the claims to this period; the new class definition is:⁵

All persons (1) who own or owned a Better Life Plan, Better Life Plan Qualified, LifeTrack, AGP, MGP, PGP, Chapter One, Classic, Rightrack (89), Performer (88), Performer (91), Prime Performer, Competitor (88), Competitor (91), Executive (88), Executive (91), Protector 50, LowerMax, Ultra 20 (93), Competitor II, Executive II, Performer II, or Ultra 20 (96) life insurance policy issued or administered by Defendant, or its predecessors in interest, (2) that was active on or after January 1, 2002, (3) purchased the life insurance policy while domiciled in Kansas, **and (4) incurred charges for “Cost of Insurance” or “Expense Charges” between June 18, 2014 and February 28, 2021.** Excluded from the Class are: KC Life; any entity in which KC Life has a controlling interest; any of the officers, directors, employees, or sales agents of KC Life; the legal representatives, heirs, successors, and assigns of KC Life; anyone employed with Plaintiff’s counsel’s firms; and any Judge to whom this case is assigned, and his or her immediate family.

Consistent with the Court’s ruling and to minimize prejudice to the class members, all claims based on charges incurred before June 18, 2014, are dismissed without prejudice. The Court will enter judgment based on the jury’s verdict for the period between June 18, 2014, and February 28, 2021.

⁵ The only substantive change is to add the portion in bold.

B. Count V

Count V is entitled “Declaratory and Injunctive Relief.” A request for declaratory or injunctive relief is not an independent claim, and Plaintiff has not demonstrated he is entitled to these remedies.

Plaintiff seeks a declaration establishing “the parties’ respective rights and duties under the Policy” and that Defendant’s conduct was “unlawful and in material breach of the Policy” (Doc. 8, ¶ 95.) However, any declaration to which Plaintiff is entitled has already been issued as part of the Court’s prior rulings and the jury’s verdict; any further relief in the form of a declaration would be redundant and unnecessary.

Plaintiff also asks for an injunction to prevent Defendant from further breaches of the Policy, (Doc. 8, ¶ 96), but he has not satisfied the requirements for an injunction under Kansas law. In particular, Plaintiff has not demonstrated a reasonable probability of irreparable future injury or that an action for damages would not be an adequate remedy. *See Empire Mfg. Co. v. Empire Candle, Inc.*, 41 P.3d 798, 808 (Kan. 2002) (discussing availability of injunctive relief to prevent future breaches of a contract). Therefore, the Court dismisses Count V without prejudice to the Court’s other rulings in the case.

III. CONCLUSION

The Court directs that judgment be entered with respect to the following Class:

All persons (1) who own or owned a Better Life Plan, Better Life Plan Qualified, LifeTrack, AGP, MGP, PGP, Chapter One, Classic, Rightrack (89), Performer (88), Performer (91), Prime Performer, Competitor (88), Competitor (91), Executive (88), Executive (91), Protector 50, LowerMax, Ultra 20 (93), Competitor II, Executive II, Performer II, or Ultra 20 (96) life insurance policy issued or administered by Defendant, or its predecessors in interest, (2) that was active on or after January 1, 2002, (2) purchased the life insurance policy while domiciled in Kansas, and (4) incurred charges for “Cost of Insurance” or “Expense Charges” between June 18, 2014 and February 28, 2021. Excluded from the Class are: KC Life; any entity in which KC Life has a controlling interest; any of

the officers, directors, employees, or sales agents of KC Life; the legal representatives, heirs, successors, and assigns of KC Life; anyone employed with Plaintiff's counsel's firms; and any Judge to whom this case is assigned, and his or her immediate family.

The judgment to be entered is as follows:

1. Pursuant to the Court's March 27, 2023, Order, the jury's May 25, 2023, verdict, and this Order, judgment is entered in favor of the Class and against Defendant on Count I in the amount of \$908,075.00.
2. Pursuant to the Court's March 27, 2023, Order, the jury's May 25, 2023, verdict and this Order, judgment is entered in favor of the Class and against Defendant on Count II in the amount of zero dollars.
3. Pursuant to the jury's May 25, 2023, verdict, and this Order, judgment is entered in favor of Defendant and against the Class on Count III.
4. Pursuant to the Court's March 27, 2023, Order, judgment is entered in favor of Defendant and against the Class on Count IV.
5. Pursuant to this Order, Count V is dismissed without prejudice to the other rulings in this case.

IT IS SO ORDERED.

DATE: June 20, 2023

/s/ Beth Phillips
BETH PHILLIPS, CHIEF JUDGE
UNITED STATES DISTRICT COURT