

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY**

DAVID B. KARR, individually and on behalf of)	
others similarly situated,)	
)	Case No. 1916-CV26645
Plaintiff,)	
)	Division 14
vs.)	
)	
KANSAS CITY LIFE INSURANCE)	
COMPANY)	
)	
Defendant.)	

**SUGGESTIONS IN SUPPORT OF
MOTION FOR ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARD**

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Following this hard-fought litigation, which resulted in a jury verdict of \$28,362,830.96 in favor of the Missouri class (“Class”) of owners of more than 8,000 universal life insurance policies issued by Defendant Kansas City Life Insurance Company (“KCL”), Class Counsel respectfully request: an award of attorneys’ fees equal to one-third of the common fund at the time of distribution; reimbursement of expenses in the amount of \$276,431.13; and a service award of \$100,000 for the named Plaintiff and Class representative, David Karr—each to be paid from the common fund generated for the benefit of the Class.

INTRODUCTION

It is well settled that when counsel and a class representative recover a fund for a class, they are entitled to attorneys’ fees, expense reimbursement, and a service award. Here, Class Counsel and the named Plaintiff, David Karr, have achieved an extraordinary result. The judgment in this case confers \$28,362,830.96 million in damages to Class Members, *plus pre-judgment interest and post-judgment interest*,¹ the latter of which continues to accrue until KCL satisfies the judgment (“Common Fund”). This remarkable outcome is the product of more than three years of work by the attorneys representing Plaintiff and the Class. The time and money spent by Class Counsel were advanced on a fully contingent basis. To that end, Class Counsel now ask this Court to approve the award of attorneys’ fees, expenses, and a service award for Plaintiff in connection with the judgment obtained in this case.

Given the extraordinary results, the time, expense, risk, and skill required to achieve those results, including the complex nature of this class action and the fact that it was successfully tried to a jury verdict, the requested fees and expenses are reasonable. The Court should likewise

¹ Plaintiff has filed his motion for application of prejudgment and post-judgment interest contemporaneously herewith.

approve Class Counsel's request for a service award of \$100,000 for Plaintiff David Karr for many of the same reasons, including Mr. Karr's significant commitment of time and resources to the case, including his participation and testimony at trial, without which the result achieved for the Class could not have been obtained.

LEGAL STANDARD

The "percentage of recovery" approach, or the "common fund doctrine," permits an award of attorneys' fees from a common fund "when a plaintiff, on behalf of a class, successfully maintains an action that benefits the class members in a manner that benefits himself." *Hale v. Wal-Mart Stores, Inc.*, No. 01-CV-218710, 2009 WL 2206963, at ¶ 5 (Mo. Cir. May 15, 2009) (citing *Lett v. City of St. Louis*, 24 S.W.3d 157, 163 (Mo. App. E.D. 2000)) (internal quotations omitted). "The common fund doctrine is applied when 'each member of a certified class has an undisputed and mathematically ascertainable claim to part of a lump-sum judgment recovered on his behalf.'" *Id.* (quoting *Boeing v. VanGemert*, 444 U.S. 472, 479 (1980)). "Missouri circuit courts recognize recovery of attorneys' fees as a percentage of the common fund." *Id.* at ¶ 6 (citing *In re State ex rel. Byrd v. Chadwick*, 956 S.W.2d 369, 388 (Mo. App. W.D. 1997)); see also *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1157 (8th Cir. 1999) (citing *Johnston v. Comerica Mortgage Corp.*, 83 F.3d 241, 244-45 (8th Cir. 1996)).

The Missouri Supreme Court has identified factors that bear on the reasonableness of attorneys' fees in class actions, including "the result achieved," "the nature and character of the services rendered," "the degree of professional ability required," "the nature and importance of the subject matter," and "the vigor of the opposition," among others. *Berry v. Volkswagen Grp. of Am., Inc.*, 397 S.W.3d 425, 431 (Mo. 2013) (citations omitted). Given these factors, Class Counsel details for the Court the factually and legally complex nature of the claims, the vigorous litigation

history, and the significant results achieved. These factors all support the conclusion that the award of attorneys' fees and expenses is reasonable, as is the service award requested for Mr. Karr.

FACTUAL BACKGROUND

I. The Litigation Was Complex, Lengthy, and Contested.

A. The Nature of the Claims.

On October 1, 2019, Plaintiff David Karr filed this lawsuit individually and on behalf of other KCL life insurance policyholders who were issued certain universal life insurance policies in Missouri that provided for the deduction of separately identified monthly charges, including a Cost of Insurance (“COI”) Charge that these policies (“Class Policies” or “Policies”) stated was to be calculated each month using a COI Rate determined based on KCL’s expectations as to future mortality experience. *See*, the Affidavit of Joseph M. Feierabend (“Feierabend Affidavit”) attached hereto as Exhibit A, ¶ 5. Plaintiff alleged KCL repeatedly violated the COI Rate provisions of his policy and others, and repeatedly deducted COI Charges from each Class Policy’s “Cash Value” in amounts in excess of those permitted by the terms of the contract. *Id.* Plaintiff also contended KCL breached the Class Policies by loading COI Rates and Charges with undisclosed expense factors in addition to and in excess of the fixed expense charges authorized by the Policies. *Id.* Plaintiff further contended KCL breached the Policies by failing to reduce its COI Rates when its expectations as to future mortality experience improved. *Id.* Plaintiff also sought declaratory and injunctive relief, a claim in tort—alleging KCL had unlawfully converted funds from his Cash Value (*id.*)—and later amended his Petition to request punitive damages.²

² On February 22, 2022, Plaintiff amended his petition to add a claim for punitive damages. Feierabend Affidavit, ¶ 18.

B. Class Counsel Defeated KCL's Early Attempt at Removal.

At the onset of the case, KCL attempted to remove the case to federal court and have it consolidated with another case against KCL. Specifically, in November 2019, KCL removed the litigation to the U.S. District Court for the Western District of Missouri and immediately moved to consolidate it with *Meek v. Kansas City Life Ins. Co.*, No. 4:19-CV-00472 (W.D. Mo.). Feierabend Affidavit, ¶ 7. Class Counsel, however, filed a motion to remand the litigation back to the Circuit Court of Jackson County, asserting that the federal district court did not possess subject matter jurisdiction over the case. *Id.* After full briefing from the parties, the Hon. Beth Phillips granted the motion to remand and denied KCL's motion to consolidate with *Meek* as moot. *Id.*

C. Class Counsel Obtained Class Certification.

Thereafter, in October 2020, Class Counsel and Plaintiff moved to certify a class pursuant to Rule 52.08, including:

All Missouri citizens who own or owned a life insurance policy issued by Defendant in the State of Missouri, the terms of which provide or provided for: (1) an insurance or cost of insurance charge or deduction calculated using a rate that is determined based on Defendant's expectations as to future mortality experience; (2) additional but separate policy charges, deductions, or expenses; (3) an investment, interest-bearing, or savings component; and (4) a death benefit.

Id., ¶ 8. The parties briefed class certification between October and December 2020.³ *See, id.* The Court heard oral argument on February 8, 2021. *Id.* The Court granted Plaintiff's motion for class certification. *Id.*, ¶ 9. The following day, Plaintiff moved to amend the class definition to identify the Missouri-owned life insurance products at issue in the case more specifically. *Id.* Plaintiff's

³ The filings of Plaintiff on class certification also included notices of supplemental authority on March 31, 2021, and April 20, 2021. Feierabend Affidavit, ¶ 8.

motion was granted in August 2021 with the class definition being modified to include specific reference to the at-issue policy forms underlying the Class Policies as follows:

All Missouri citizens 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 in the State of Missouri, or its predecessors in interest, that was active on or after January 1, 2002.⁴

Id.

D. Class Counsel Conducted Significant Discovery.

Plaintiff's Discovery Requests. Substantial discovery was conducted by the parties in this case, including several sets of discovery requests. Specifically, Plaintiff served his First Requests for Production of Documents with his Petition on October 4, 2019. *Id.*, ¶ 10. Thereafter, on March 3, 2020, Plaintiff served his first Requests for Admission and Interrogatories on KCL. *Id.* On March 9, 2020, KCL served its Objections and Responses to Plaintiff's First Set of Requests for Production of Documents; on April 30, 2020, KCL served its Objections and Responses to Plaintiff's First Interrogatories; and, on May 15, 2020, KCL served its Objections and Responses to Plaintiff's First Set of Requests for Admission. *Id.* KCL served supplemental objections and responses to Plaintiff's First Interrogatories on November 20, 2020, and again on February 19, 2021. *Id.* Plaintiff served his Second Requests for Admissions in May 2021. *Id.* Plaintiff additionally served Second and Third Interrogatories, Second and Third Sets of Requests for

⁴ Excluded from the Class were KCL; any entity in which KCL has a controlling interest; any of the officers, directors, employees, or sales agents of KCL; the legal representatives, heirs, successors, and assigns of KCL; anyone employed with Plaintiffs counsel's firms; and any Judge to whom this case is assigned, and his or her immediate family. *Id.*, ¶ 9.

Production of Documents, and Third Requests for Admission between May and June 2022. *Id.* KCL responded in June and July 2022. *Id.*

With respect to document discovery, in the end KCL produced over 76,000 pages of documents, including documents provided in the days leading up to trial with KCL's Supplemental Responses and Objections to Plaintiff's Second Interrogatories and Requests for Production of Documents. *Id.*, ¶ 11. Class Counsel and counsel for KCL engaged in numerous meet-and-confer teleconferences as well as lengthy email correspondence detailing discovery issues and disputes over the course of the litigation. *Id.*, ¶ 13. By way of example, four meet and confers were held between counsel for the parties in just a little more than a one-month period between March 30, 2020, to May 6, 2020. *Id.*, ¶ 14. This back and forth on discovery issues was commonplace throughout the litigation, and several of the discovery disputes between the parties culminated in motions and briefing before the Court (*see* "Discovery Disputes" below).

KCL's Discovery Requests. KCL served its First Set of Requests for Production and First Set of Interrogatories on Plaintiff on September 21, 2020. *Id.*, ¶ 12. Plaintiff served his objections and responses one month later. *Id.* Plaintiff served supplemental responses to KCL's interrogatories on November 23, 2020, and July 28, 2021. *Id.* KCL served its Second Set of Interrogatories, Second Set for Requests for Production, and First Requests for Admission to which Plaintiff responded in April 2022. *Id.* Then in May 2022, KCL served a Second Set of Requests of Admission on Plaintiff to which Plaintiff responded in June of that year. *Id.*

Discovery Disputes. The parties had several disputes related to the aforementioned discovery requests that required substantial briefing and argument before resolution by the Court. For example, following lengthy email correspondence and several meet and confers in March, April, and May 2020, Class Counsel filed a Motion for Enforcement of Discovery on May 22,

2020, seeking to compel production of documents that KCL filed with, sent to, or received from regulatory authorities concerning the Class Policies. *Id.*, ¶ 14. After briefing from the parties and a hearing, the Court granted Plaintiff's motion to enforce on August 24, 2020. *Id.* This proved to be just one of many discovery disputes to go before the Court.

For instance, again in January 2021, Class Counsel moved to compel KCL to produce all individual policy-level data for the Class Policies and all "expectations as to future mortality experience for each Product." *Id.*, ¶ 15. Once again, only after briefing on this issue and putting argument before the Court was the dispute finally resolved when the Court granted Plaintiff's motion on February 3, 2021. *Id.* Numerous additional discovery-related issues arose throughout the case necessitating further meet and confers, briefing, and argument before the Court, including, but not limited to, Plaintiff's motion to enforce the Court's February 3, 2021, order, which also was granted. *See, id.* Class Counsel also briefed and argued several motions to enforce discovery filed by KCL throughout the case. *See, id.* Thus, the time, effort, and skill dedicated to obtaining necessary discovery in this case and to addressing discovery issues throughout was substantial.

Expert Witnesses. Both parties engaged expert witnesses whose declarations were used in support of the parties' positions at various stages of the litigation, including briefing class certification and summary judgment. For Plaintiff and the Class, Class Counsel disclosed actuary Scott J. Witt to provide testimony on the nature and extent of injury suffered by the Class, including providing a calculation of the class-wide loss attributable to KCL's COI overcharges. KCL identified actuary Timothy Pfeifer to testify about the pricing, development, and aspects of the administration of the products at issue, as well as the COI Rate provisions of the Class Policies. KCL also identified Mary Jo Hudson to provide opinions about the insurance regulatory framework. Ultimately, Mr. Witt and Mr. Pfeifer offered expert opinion at trial. *Id.*, ¶ 16.

Depositions. Several depositions were conducted by the parties over the course of the litigation. Class Counsel produced both Plaintiff and Plaintiff's expert witness, Scott Witt, for depositions. Class Counsel also deposed several KCL witnesses, including KCL's designated corporate representatives, David Metzler and Mark Milton, and additional witnesses, including Matthew Dolliver, Don Krebs, Karen Dierker, Jill Daniel, Marc Bensing, Lendy Kesler, and Stephen Bader. *Id.*, ¶ 17.

E. Motion to Dismiss Plaintiff's Punitive Damages Claim.

In July 2021, Plaintiff moved for leave to amend the Petition to add a request for punitive damages. KCL opposed, and after briefing and oral argument, the Court permitted Plaintiff to amend.⁵ After Plaintiff amended his petition in February 2022, KCL moved to dismiss Plaintiff's claim for punitive damages. Plaintiff opposed in March 2022. Ultimately, KCL's motion to dismiss Plaintiff's claim for punitive damages was denied following argument before the Court on November 21, 2022. *Id.*, ¶ 18.

F. Summary Judgment.

In July 2021, KCL filed a motion for summary judgment on Plaintiff's claims, arguing that Plaintiff's claims were time-barred by the applicable statute of limitations period, that Plaintiff's testimony could not support his breach of contract claim, and that Plaintiff's conversion claim was without support. *Id.*, ¶ 19. Class Counsel opposed the motion arguing, principally, that under Missouri law: Plaintiff's claims were not discoverable such that the applicable statute of limitations had yet to run on Plaintiff's or any Class Member's claims; the language KCL drafted into its non-negotiated policies plainly supported Plaintiff's proposed interpretation of the COI and expense

⁵ In the first instance, Plaintiff also successfully argued and received an extension of time for leave to amend the Petition to file a claim for a punitive damages award. *Id.*, ¶ 18.

charge provisions; and, KCL had admitted to the conduct demonstrating the breaches under Plaintiff's proposed interpretation. *Id.*

Class Counsel also filed a motion for partial summary judgment in favor of the Class on KCL's statute of limitations defense and on its liability for breach on Plaintiff's three breach of contract claims (as well as Plaintiff's claim for declaratory relief). *Id.*, ¶ 20. Briefing on summary judgment continued through the end of August 2021. *Id.* In briefing the summary judgment motions, Class Counsel relied on, among other cases, *Vogt v. State Farm Life Insurance Co.*, 963 F.3d 753 (8th Cir. 2020), which had interpreted a substantially similar COI rate provision on another policy form under Missouri law consistent with Plaintiff's proposed interpretation in this case. The Court ultimately denied KCL's motion for summary judgment in February 2022, and the Court granted Plaintiff's motion for partial summary judgment in favor of the Class. *Id.*

Additional contested briefing followed KCL's motion for summary judgment. KCL filed a motion for leave to file a second motion for summary judgment, which was denied following briefing and oral argument because the Court found KCL failed to demonstrate excusable neglect and show good cause for extending the summary judgment deadline. *Id.*, ¶ 21. Furthermore, even though Class Counsel prevailed on Plaintiff's motion for partial summary judgment in favor of the Class and in defeating KCL's motion, KCL filed a motion to reconsider, vacate, and/or modify, and in so doing, asked the Court to refer the case to the Missouri Department of Insurance. *Id.* Class Counsel opposed, arguing that KCL had raised no new issues that would call into question the Court's summary judgment decision or that necessitated referral of case issues to the Department of Insurance. *Id.* Following oral argument at the pretrial conference on November 21, 2022, this motion was also denied. *Id.* KCL sought a writ of prohibition on November 22, 2022, seeking to bar the Court from taking any action other than vacating its orders on summary

judgment and KCL's motion to reconsider, vacate, and/or modify, and thereafter referring claims to the Missouri Department of Insurance or dismissing Plaintiff's claims. *Id.*, ¶ 22. The petition was denied one day later. *Id.*

Finally, KCL also moved to exclude the declaration and testimony of Plaintiff's expert Scott J. Witt. *Id.*, ¶ 23. Class Counsel opposed KCL's motion to exclude; and, once again, after oral argument at the pretrial conference, this motion was also denied. *Id.*

G. Class Counsel Defeated KCL's Motion to Decertify the Class.

In January 2022, KCL moved for class decertification with a 72-page brief containing a host of arguments, including that: Class Counsel was inadequate; Plaintiff was inadequate; Plaintiff's claims were not typical; a "more robust record" demonstrated a failure of commonality and predominance; the case lacked superiority and manageability; the class definition was overbroad because it included uninjured Class Members; the claims for injunctive and declaratory relief should be decertified; and KCL's constitutional rights would be violated. In response, Class Counsel again demonstrated class treatment was appropriate; and, after substantial and contested briefing as well as oral argument, the Court denied KCL's motion to decertify the Class. *Id.*, ¶ 24.

II. The Class Prevails at Trial.

Having successfully defeated KCL's motions: for summary judgment; to reconsider, vacate, and or modify; to exclude Plaintiff's expert; and to decertify; and after various pretrial filings, including motions in limine and proposed jury instructions (as well as extensive argument on several of the above identified motions at the November 21, 2022, pretrial conference), the jury trial commenced on Tuesday, December 6, 2022, with voir dire and jury selection. *Id.*, ¶ 25. After rigorous argument from counsel for the parties on how to best structure the trial, the Court determined that the trial would proceed as trifurcated with a damages-only first stage on Plaintiff's

breach of contract claims and additional stages on conversion and punitive damages to follow. *Id.* On Wednesday, December 7, 2022, the parties presented their opening statements to the jury, and Class Counsel began presenting evidence for Plaintiff and the Class, including the testimony of Plaintiff and his expert, Scott Witt. On the morning of December 8, 2022, Plaintiffs continued their presentation of evidence with the video deposition testimony of KCL witness, Mark Milton, and concluded by moving for the admission of certain documents into the record. *Id.*, ¶ 26.

At the close of Plaintiffs' evidence, KCL moved for a directed verdict on Plaintiffs' breach of contract claims, arguing that Mr. Witt's testimony was insufficient to prove damages for KCL's breach of the COI Rate provision by not providing COI Rates that should have been charged under the Court's interpretation of the Policies, and that Mr. Witt used unreliable mortality assumptions in his calculations. *Id.*, ¶ 27. KCL also argued that Mr. Witt had not established the damages for KCL's breach of the fixed expense charge provisions and its breaches for failing to change COI Rates when its mortality expectations improved. *Id.* KCL also moved to decertify the Class, contending Mr. Karr was not an adequate class representative because he had no damages (according to the calculation of damages that KCL's witnesses offered at trial), and because, as a Death Option A policyholder, he is not entitled to the amount of the Cash Value in his Policy if he receives a death benefit, and Mr. Karr testified that he desired to get his death benefit. *Id.* KCL further argued the Option A and B death benefit options created individualized damages issues. *Id.* And, despite the Court's entry of summary judgment in favor of the Class on KCL's statute of limitations defense, KCL argued the Class should be decertified because the claims of some former policyholders may be barred by the statute of limitations. The Court denied KCL's motions and ruled that Plaintiff had made a submissible case that he and the Class were damaged. *Id.*

KCL then presented its case with the testimony of Mark Milton and Aaron Bush, and its expert, Timothy Pfeifer. *Id.*, ¶ 28. At the close of all the evidence, KCL moved again for directed verdict and to decertify the Class, which the Court again denied. *Id.* Plaintiff moved for directed verdict on KCL's affirmative defenses requiring KCL to prove the Class had knowledge of KCL's breaching conduct, including failure to mitigate damages, voluntary payment doctrine, ratification, waiver, and the unpled defense of consent, because, given the Court's summary judgment order concluding as a matter of law that no reasonable policyholder could have known KCL was breaching the Policies, KCL could likewise not establish these other defenses requiring policyholders' knowledge. *Id.* KCL then confirmed that the only such defense it intended to present to the jury on Plaintiffs' breach of contract claims was the failure to mitigate damages. The Court took the motion under advisement. *Id.* That same day, the Court began a jury instruction conference but continued it to the next morning before closing arguments. *Id.*

The following morning, Class Counsel informed the Court that it would not be proceeding with additional stages of the trial on Plaintiff's conversion and punitive damages claims. *Id.*, ¶ 29. Thereafter, the Court reconvened the jury instruction conference. During the conference, the Court granted Plaintiff's motion for directed verdict on KCL's failure to mitigate damages defense. *Id.* The parties also made a record on their objections to the Court's rulings on other instructions and a final packet of jury instructions were prepared. Closing arguments were then presented, and the instructions were read to the jury. After approximately 2 hours of deliberation, the jury reached its verdict. *Id.* The jury returned to the courtroom shortly thereafter and announced its verdict, which was unanimous in favor of the Class on all three breach of contract claims. The jury found damages of \$28,362,830.96 on each claim. *Id.*

ARGUMENT

I. Class Counsel’s Requested Fee Is Reasonable

In this case, Class Counsel have created a common benefit to Class Members in an amount of \$28,362,830.96, plus pre-judgment interest and post-judgment interest,⁶ from which equity permits them to a reasonable percentage-based fee. Class Counsel seeks one-third of that Common Fund. The only inquiry before the Court is whether this fee is reasonable. In evaluating the reasonableness of attorneys’ fees in class actions, Missouri courts can employ percentage of the benefit method.⁷ *State ex rel. Byrd*, 956 S.W.2d at 388. This method confirms that the requested fee is reasonable.

The percentage-of-the-benefit method of calculating attorneys’ fees serves to underscore the reasonableness of the fee for Class Counsel in this case. The one-third requested is on par with the percentages that Missouri courts have recognized as typical and reasonable in cases involving common benefit contingency fees. *See Hale*, 2009 WL 2206963, at ¶¶ 30-31 (including that 38.3% of a \$90 million settlement was “customary and well in line with attorneys’ fees awards in similar cases” as well as “well in line with attorneys’ fees awards by federal courts in class actions throughout the county, as well as other circuit courts in Jackson County”); *Bachman v. A.G. Edwards, Inc.*, 344 S.W.3d 260, 267 (Mo. App. E.D. 2011) (affirming award of \$21 million, or

⁶ Because the Class seeks post-judgment interest, the final amount of common benefit will change as post-judgment interest continues to accumulate pending KCL’s funding of the Common Fund (e.g., if there is an appeal, post-judgment interest will continue to accumulate while the appeal is pending).

⁷ Missouri courts also permit consideration of the lodestar approach. Though Class Counsel does not offer that analysis here, the requested fee is also justified under the lodestar approach and Class Counsel can provide analysis under that method if requested by the Court.

one-third of settlement value, in attorneys' fees and noting that "in cases involving complex litigation or in the class action context, a one-third contingent fee award is not unreasonable").

The requested fee is likewise consistent with percentages awarded in federal courts around the country, including the Eighth Circuit. *See, e.g., Theodore Eisenberg & Geoffrey P. Miller, Attorney Fees in Class Action Settlements: an Empirical Study*, 1 J. of Empirical Legal Studies 27, 35 (2004) (In cases that do *not* proceed to trial, "[s]ubstantial empirical evidence indicates that a one-third fee is a common benchmark in private contingency fee cases."); *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002) (36% common-fund fee award reasonable in class action settlement). Notably, the requested fee is consistent with percentages awarded in nearly identical class action cases involving COI overcharges. *See, Vogt*, 2021 WL 247958, at *3 (W.D. Mo. Jan. 25, 2021) (finding that a "one-third of the common fund is a reasonable fee for Class Counsel"); *Spegele v. USAA Life Ins. Co.*, No. 5:17-CV-967-OLG, Dkt. 117 (W.D. Tex. Aug. 26, 2021) (approving attorneys' fees of 30% of the \$90 million settlement fund as "a reasonable percentage" that "fits comfortably within the range of typical percentage of common funds awarded as reasonable fees" and "is comparable to awards in similar cases."); *see also* Affidavit of Patrick J. Stueve ("Stueve Affidavit") attached hereto as Exhibit B. Thus, viewed as a percentage-of-the-benefit, the requested fee is typical as to cases involving awards in successful class action cases like this one.

As detailed at length above, KCL's vigorous and thorough defense required Class Counsel to exhaustively litigate this case for more than three years. There were numerous sets of discovery requests and depositions. The parties exchanged and reviewed tens-of-thousands of pages of documents. There were numerous discovery disputes that, following extensive meet and confer conferences and lengthy email correspondence, required briefing and argument before the Court.

Class Counsel obtained class certification, defeated KCL's motion for summary judgment, defeated KCL's motion to exclude the testimony of its expert, defeated KCL's motion to reconsider, modify, and/or vacate the Court's summary judgment order, defeated KCL's motion to decertify the class, and succeeded on its own motion for partial summary judgment. And, critically, Class Counsel successfully prepared and litigated this case to trial, obtaining a verdict representing 100% of the damages sought with requested interest on each of the Class's breach of contract claims.

The Missouri Supreme Court has identified factors that bear on the reasonableness of attorneys' fees in class actions, including "the result achieved," "the nature and character of the services rendered," "the degree of professional ability required," "the nature and importance of the subject matter," and "the vigor of the opposition," among others. *Berry, Inc.*, 397 S.W.3d at 431 (citations omitted). These factors all support the conclusion that the requested award of attorneys' fees and expenses is reasonable.

A. Class Counsel Achieved an Extraordinary Result for the Class.

The first factor Missouri courts consider in assessing the reasonableness of a fee request is the result achieved for the class. Here, Class Counsel achieved an extraordinary result for the Class. Through Class Counsel's efforts, the Class is receiving 100% of the maximum damages requested at trial, plus requested prejudgment and post-judgment interest. That is an excellent result for a breach-of-contract action. Class Counsel here undertook a risky case, litigated it against a tireless defendant, took the case to trial, and obtained a jury verdict in the Class's favor. Every stage of the case presented significant risk that Class Counsel would recover nothing, and a fee award of one-third of the Common Fund is easily justified based on this result.

B. This Case Required a High Degree of Professional Ability.

Next, as to the skill they bring to the case, Class Counsel are recognized as among the top class action and commercial litigation lawyers in the country, and they have particular expertise in cases involving complex life insurance products and claims like those brought here. *See* the Firm Resumes of Class Counsel attached as Exhibits to the Feierabend and Stueve Affidavits. All of that skill was brought to bear in this case. Class Counsel obtained and maintained class certification, defeated summary judgment, succeeded on their own motion for partial summary judgment, and obtained a unanimous verdict for the exact dollar amount requested for the Class at trial. Therefore, the experience, skill, and reputation of Class Counsel justify the requested fee. *Hale*, 2009 WL 2206963, at ¶ 24 (attorneys' fees justified as "the results obtained for the Class . . . evidence the skill and quality of Class Counsel.").

C. The Nature and Subject Matter of This Case Justifies the Requested Fee.

The important nature of this case justifies the requested fee. This case is about products that insure the lives of Missourians and provide benefit to families when they need it most. For more than three years, Class Counsel prosecuted this case against vigorous opposition to obtain the verdict, which exactly compensates the Class for the wrongfully taken overcharges, plus pre- and post-judgment interest. Class Counsel's important work on behalf of Missourians—who were unaware of and could not have discovered the wrongful conduct at issue—should be compensated accordingly.

D. Class Counsel Achieved this Result Over Significant and Vigorous Opposition.

KCL was defended by three different law firms at various times throughout this case, including some of the most sophisticated defense firms in the country. At various times, KCL's primary counsel included Berkowitz Oliver LLP, Squire Patton Boggs (US) LLP, and Alston &

Bird LLP. KCL vigorously defended this case, both substantively and procedurally, and at every stage. As detailed above, the parties engaged in numerous discovery disputes, including several resolved by this Court. KCL retained expert witnesses to oppose and rebut Plaintiffs' experts, contested class certification, then tried to decertify the Class, and filed a motion for summary judgment that sought to dismiss the entire case. And ultimately, KCL took this case right up to and through trial. Yet despite this well-funded and vigorous defense, Class Counsel obtained the exact relief sought for Class Members.

In sum, considering the adversarial nature of each stage of the litigation, the nature of the claims, the skill of counsel, and the excellent result achieved, this Court can readily conclude that Class Counsel's requested fee of one-third of the Common Fund is reasonable.⁸

II. Class Counsel's Expenses are Reasonable.

Class Counsel requests reimbursement of their reasonable expenses totaling \$276,431.13. These advanced expenses include expert witness fees, travel expenses (including those related to depositions that occurred in this case), transcript costs, costs of online legal research, and ESI and document hosting fees, among others. These are the types of expenses that Class Counsel would typically bill to non-contingent fee-paying clients. *Hale*, 2009 WL 2206963, at ¶¶ 39-40 ("Attorneys may recover their reasonable expenses that would typically be billed to paying clients in non-contingency matters... [such as] computer-assisted research, photocopying, telephone, facsimile charges, postal, messenger, express mail, deposition fees, transcripts, expert witnesses, travel and meals, and subpoena services are reasonably incurred in connection with the prosecution of a modem, complex litigation.").

⁸ Class Counsel will provide detailed records of the Class Counsel's work in this case to the Court *in camera* should the Court request it.

Although these expenses are considerable, they are commonplace in complex litigation and are in-line with the significant work required over the three-year prosecution of this case through trial. *See, e.g., id.* ¶¶ 38-41 (in settlement of \$90 million Missouri wage and hour class action, awarding \$2.7 million for “expenses incurred in pursuing this litigation”). Class Counsel’s expenses are reasonable and should be approved.⁹

III. The Requested Service Award is Reasonable.

Plaintiff Karr was instrumental in the filing, litigating, and trial of this important class action. Absent Plaintiff’s willingness to subject himself to litigation on behalf of his fellow Class Members, the benefit would not have been attained. In recognition of his crucial role in achieving this result, Plaintiff should receive a \$100,000 service award, separate from and in addition to his share of the damages and interest awards.

The “purpose of incentive awards ... for class representatives is to encourage people with significant claims to pursue actions on behalf of others similarly situated.” *Hale*, 2009 WL 2206963, at ¶ 43 (citing *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 535 (E.D. Mich. 2003)). To that end, relevant considerations in assessing the reasonableness of a requested service award include: (1) the actions the named class representatives have taken to protect the interests of the class; (2) the degree to which the class has benefited from those actions; and (3) the amount of time and effort the named class representatives expended in pursuing the litigation. *Id.* (citing *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998)). Here, each factor weighs in favor of approving the requested service award.

⁹ Class Counsel will provide detailed expense records to the Court *in camera* should the Court request it.

Plaintiff reviewed numerous documents and pleadings throughout the three-year case, searched for documents and information, remained apprised of the status of the litigation and engaged with the litigation throughout, sat for a deposition, participated in numerous telephone calls and in-person meetings regarding the case (many of which lasted several hours), testified at trial, attended the entire trial (while missing work to do so), and attended numerous hearings, including the multi-hour hearing on summary judgment and pre-trial conference. Plaintiff's significant work as a class representative produced a material benefit for Class Members, who but for Plaintiff coming forward were unaware of the breaching conduct and whose overcharges would have remained unremedied. As explained at length above, the amount awarded by the jury in this case is the total amount of the actual alleged overcharges taken from the Cash Values of Class Members, plus requested pre- and post-judgment interest. A \$100,000 service award is warranted and consistent with service awards in other cases that required such significant efforts by the class representative.¹⁰

¹⁰ See, e.g., *In re Syngenta AG Mir162 Corn Litig.*, No. 2:14-MD-02591-JWL-JPO, 2018 WL 7254709, at *40 (D. Kan. Nov. 21, 2018) (recommending \$100,000 to four class representatives in class action that required trial), *report and recommendation adopted in material parts*, 2018 WL 6839380, at *16 (D. Kan. Dec. 31, 2018); *In re: Urethane Antitrust Litig.*, No. 04-1616-JWL, 2016 WL 4060156, at *8 (D. Kan. July 29, 2016) (granting requested incentive payments of \$150,000-200,000 for representatives who went to trial); see also *Erica P. John Fund, Inc. v. Halliburton Company, et al.*, No. 3:02-cv-1152-M, ECF No. 844 at 29 (N.D. Texas Apr. 25, 2018) (awarding \$100,000 to class representative); *Castro v. Sanofi Pasteur Inc.*, No. CV117178JMVMAH, 2017 WL 4776626, at *10 (D.N.J. Oct. 23, 2017) (awarding \$100,000 to each of three class representatives for their "significant roles," including participation in depositions and production of "thousands of pages of documents"); *In re High-Tech Employee Antitrust Litig.*, No. 11-CV-02509-LHK, 2015 WL 5158730, at *17-18 (N.D. Cal. Sept. 2, 2015) (awarding \$100,000-\$140,000 to each of five class representatives who had significant involvement in litigation that resulted in "a substantial benefit" to the class); *Marchbanks Truck Serv. v. Comdata Network, Inc.*, No. 07-CV-1078, ECF Doc. 713 at 6-8 (E.D. Pa. July 14, 2014) (awarding \$150,000 to one class representative and \$75,000 to two other class representatives); *In re Neurontin Antitrust Litig.*, No. Civ. A. No. 02-1830, ECF No. 114 at ¶ 31 (D. N.J. Aug. 6, 2014)

CONCLUSION

Based on the foregoing, Class Counsel request the Court award attorneys' fees equal to one-third of the Common Fund at the time of distribution; reimbursement of expenses in the amount of \$276,431.13; and a service award of \$100,000 for the Named Plaintiff and Class representative, David Karr.

Dated: December 21, 2022

Respectfully submitted,

MILLER SCHIRGER, LLC

/s/ Joseph M. Feierabend

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- And -

(awarding \$100,000 to each class representative for “their active participation and assistance in the prosecution of this case, including responding to document requests . . . appearing for deposition” and thus “contribut[ing] to the benefits conferred upon the Class through the Settlement.”); *In re Titanium Dioxide Antitrust Litig.*, No. 10-CV-00318 RDB, 2013 WL 6577029, at *1 (D. Md. Dec. 13, 2013) (awarding \$125,000 to one class representative and \$25,000 to each of two class representatives); *Been v. O.K. Indus., Inc.*, No. CIV-02-285-RAW, 2011 WL 4478766, at *12-13 (E.D. Okla. Aug. 16, 2011), *report and recommendation adopted*, No. CIV-02-285-RAW, 2011 WL 4475291 (E.D. Okla. Sept. 26, 2011) (awarding \$100,000 to each of 5 class representatives who had “devoted substantial time and energy representing the interests of the Class” and were “critical to the Class obtaining a successful judgment in this case.”); *Columbus Drywall & Insulation, Inc. v. Masco Corp.*, No. 1:04-CV-3066-JEC, 2008 WL 11319972, at *3 (N.D. Ga. Mar. 4, 2008) (awarding \$100,000 to each class representative as they had been “actively engaged in this litigation,” including by giving depositions and reviewing documents, and have thus “conferred a significant benefit to the class.”); *Ivax Corp. v. Aztec Peroxides, LLC*, No. 1:02CV00593, ECF Doc. 78 at 2 (D.D.C. Aug. 24, 2005) (awarding \$100,000 to each of two class representatives “for their respective roles in bringing about the recovery on behalf of the class”).

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COUNSEL FOR PLAINTIFF
DAVID B. KARR AND THE CLASS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this December 21, 2022, the foregoing document was filed with the Clerk of the Court using the Missouri e-filing system, which sent notification of such filing to all counsel of record.

/s/ Joseph M. Feierabend
Counsel for Plaintiff

EXHIBIT A

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY**

DAVID B. KARR, individually and on behalf of)	
others similarly situated,)	
)	Case No. 1916-CV26645
Plaintiff,)	
)	Division 14
vs.)	
)	
KANSAS CITY LIFE INSURANCE)	
COMPANY)	
)	
Defendant.)	

**AFFIDAVIT OF JOSEPH M. FEIERABEND
IN SUPPORT OF MOTION FOR
ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARD**

I, Joseph M. Feierabend, attest as follows:

1. I respectfully submit this Affidavit in Support of the Motion for Attorneys' Fees, Expenses, and Service Award. I am over the age of 18, of sound mind, and have personal knowledge of the facts stated herein and would competently testify to them if called to do so. I am a partner at the law firm Miller Schirger, LLC and was appointed Class Counsel (along with my colleagues from Miller Schirger, LLC, and Stueve Stueve Siegel Hanson LLP)¹ by this Court on July 12, 2021.

Miller Schirger Experience

2. The Miller Schirger attorneys rendering services in this case practice in the area of litigation on a full-time basis and have over 60 years of combined legal experience. We have substantial nationwide experience in complex business and commercial litigation, including multi-party and class action litigation involving a wide range of contract, tort, and consumer fraud

¹ For purposes of this Affidavit, "Class Counsel" refers to all of the lawyers who have entered their appearance in this case on behalf of Plaintiff and the Class.

violations, and have a history of prosecuting class action lawsuits across the country, including class action lawsuits concerning breaches of cost of insurance provisions of universal life insurance products.

a. John J. Schirger

John obtained a B.A. from the University of Notre Dame in 1988, and a J.D. from Creighton University School of Law in 1992. He is currently admitted and licensed to practice in the states of Missouri and Nebraska (inactive), as well as before numerous federal district and appellate courts and the Supreme Court of the United States.

He began his legal career at McGrath, North, Mullin & Kratz, PC LLO, a large regional law firm located in Omaha, Nebraska, where he was elected partner after four years of practice. After 12 years of private practice, he spent approximately three years as in-house counsel in the insurance industry, including approximately two years as a senior legal officer for a Fortune 500 life and health insurance company. He returned to private practice in 2008, when he became a founding and named partner in Miller Schirger. He has been recognized by *Best Lawyers* – Commercial Litigation, named a “Top 100 Missouri & Kansas Super Lawyer” by Missouri and Kansas Super Lawyers, “Best of the Bar” by the Kansas City Business Journal, a member of the “Power 30 – Commercial and Consumer Litigation” by Missouri Lawyers Media, and has been “AV” rated by Martindale-Hubbell for 25 years.

Throughout his career, he has represented clients ranging from individuals to Fortune 500 companies in various complex business and commercial matters, including class actions and other multi-party actions, in state and federal courts across the United States. In addition, his 30 years of experience includes representing clients, both

individuals and insurers, in a wide variety of litigation and regulatory matters within the insurance area in both the life/health and property/casualty industries. His substantial insurance experience includes:

- Drafting and revising the following types of insurance policies: term life; whole life; universal life; variable universal life; disability; long-term-care; and Medicare supplement.
- Negotiating with state insurance regulators regarding issues related to, among others, policy approval, agency issues, and financial capital and reserve requirements.
- Representing and advising plaintiffs and defendants in a wide variety of litigation matters including class actions.
- Analyzing and advising clients on: cost of insurance charges; general policy charges; underwriting; policy guarantees; and policy pricing with respect to universal life and/or variable universal life policies.
- Analyzing and advising clients on various premium financing issues, and third-party owned life insurance arrangements.
- Representing plaintiffs in cost of insurance class actions brought in a number of state and federal courts throughout the United States.

b. Matthew W. Lytle

Matt obtained a B.A. from Creighton University in 1996, and a J.D. from Creighton University School of Law (magna cum laude) in 2004. He is currently admitted and licensed to practice in the states of Missouri and Nebraska (inactive), as well as before numerous federal district and appellate courts.

Matt began his legal career at McGrath, North, Mullin & Kratz, PC LLO, a large regional law firm located in Omaha, Nebraska. Matt then spent approximately three years practicing at Shughart Thomson & Kilroy and Bryan Cave LLP, large national and international law firms in Kansas City, Missouri. In 2009, Matt left Bryan Cave LLP to join Miller Schirger, and was named a partner in the firm in 2013.

Throughout his career, Matt has represented clients ranging from individuals to Fortune 500 companies in various complex business and commercial matters, including class actions and other multi-party actions, in state and federal courts across the United States. Matt has significant experience representing plaintiffs in class action lawsuits brought in a number of state and federal courts throughout the United States.

Matt has been named a “Super Lawyer” by Missouri and Kansas Super Lawyers and was also named to the 2012 BTI Client Service All-Stars, a select group of only 272 lawyers nationwide chosen solely on unprompted, unequivocal recommendations by corporate counsel for their understanding of business issues, innovative approaches to legal services, and commitment to client needs.

c. Joseph M. Feierabend

I obtained my B.B.A. from the University of Notre Dame in 2005, with a major in accounting, and a J.D. from the University of Missouri School of Law in 2008. I am currently admitted and licensed to practice in the State of Missouri, as well as before the United States District Courts for the Western District of Missouri, the District of Colorado, and the District of Kansas.

In 2010, I joined Miller Schirger as an associate and was named a partner in the firm in 2018. I focus my practice in the areas of insurance, business, banking and securities litigation, and my experience includes complex business and commercial matters and disputes involving insurance coverage and bad faith claims. I have significant experience representing plaintiffs in cost of insurance class actions brought in state and federal courts throughout the United States. I have been selected as a “Rising Star” by Missouri and Kansas Super Lawyers.

Miller Schirger, and specifically the attorneys identified above, have significant experience handling class action cases directly involving insurance policies generally, and cost of insurance (“COI”) overcharge class actions in particular. In 2016, Miller Schirger, along with co-counsel Stueve Siegel Hanson LLP, secured a class action settlement on behalf of approximately 77,000 life insurance policy owners against The Lincoln National Life Insurance Company. The settlement provided additional death benefits to the class valued at approximately \$2.25 billion, and a market value of approximately \$171.8 million. *See Bezich v. The Lincoln Nat. Life Ins. Co.*, No. 02C01-0906-PL-73 (Allen Co, IN). The claims in *Bezich* focused on COI overcharges on variable universal life insurance policies, similar to the claims pled in this case. In 2018, Miller Schirger and Stueve Siegel Hanson, with other co-counsel, obtained certification of another nationwide class of life insurance policy owners asserting similar COI overcharge claims on life insurance policies, and, thereafter, secured a \$59.75 million settlement on behalf of the class. *See Larson v. John Hancock Life Ins. Co.*, Case No. RG16813803 (Superior Court of California, County of Alameda).

In June 2018, the Miller Schirger attorneys responsible for rendering services in this case were on the team of attorneys that tried a class case on behalf of approximately 24,000 Missouri

life insurance policy owners in the United States District Court for the Western District of Missouri, which resulted in a jury verdict of \$34.3 million on behalf of the class. *See Vogt v. State Farm Life Insurance Co.*, No. 2:16-cv-04170-NKL (W.D. Mo.). The claims in *Vogt* focused on COI overcharges in universal life insurance policies, and the verdict was affirmed by the United States Court of Appeals for the Eighth Circuit. *See Vogt*, 963 F.3d 753 (8th Cir. 2020).

And, in September 2020, Miller Schirger and Stueve Siegel Hanson, with other co-counsel, obtained certification of a nationwide class of approximately 85,000 life insurance policy owners asserting claims for COI overcharges on their policies in *Spegele v. USAA Life Ins. Co.*, No. 5:17-CV-967-OLD (W.D. Tex. Sept. 23, 2020). Thereafter, Miller Schirger, along with co-counsel, secured a \$90 million settlement on behalf of a settlement class. *Id.* at Doc. 116 (Aug. 26, 2021) (Order and Final Judgment Granting Final Approval of Class Action Settlement). Miller Schirger, along with co-counsel, was appointed class counsel in each of the cases identified above.

Miller Schirger (together with Stueve Siegel Hanson) is also simultaneously prosecuting similar life insurance COI overcharge cases against the following insurance companies: Connecticut General Life Insurance Company; Lincoln National Life Insurance Company; Kansas City Life Insurance Company; Symetra Life Insurance Company; and Genworth Life & Annuity Insurance Company.

3. As reflected in the firm resume attached to this Affidavit as Exhibit 1, Miller Schirger has extensive experience litigating complex commercial cases and class action lawsuits.

The Procedural History of the Litigation

4. Class Counsel has vigorously and intensively prosecuted the claims of Plaintiff David Karr and the similarly situated Class Members. For more than three years of highly-contested litigation, Class Counsel has achieved an extraordinary result. The judgment in this case

confers \$28,362,830.96 million in damages to Class Members, plus pre-judgment interest and post-judgment interest, the latter of which continues to accrue until Defendant Kansas City Life Insurance Company (“KCL”) satisfies the judgment (“Common Fund”). This is an excellent result for Class Members, who number more than 8,000 Missourians who were unaware of and could not have discovered the conduct at issue. Class Counsel’s remarkable success in this action speaks to the unique skill and commitment that they brought to this case.

5. On October 1, 2019, Plaintiff David Karr filed this lawsuit individually and on behalf of other Missouri life insurance policyholders who were issued one or more of certain universal life insurance policies by KCL that provided for the deduction of separately identified monthly charges, including a Cost of Insurance (“COI”) Charge that these policies (“Class Policies” or “Policies”) stated was to be calculated each month using a COI Rate determined based on KCL’s expectations as to future mortality experience. *See, generally*, Petition (Oct. 1, 2019). Plaintiff alleged KCL repeatedly violated the COI Rate provisions of his policy and others, and deducted COI Charges from each Class Policy’s “Cash Value” in amounts in excess of those permitted by the terms of the contract. *Id.* Plaintiff also contended KCL breached the Class Policies by loading COI Rates and Charges with undisclosed expense factors in addition to and in excess of the fixed expense charges authorized by the Policies. *Id.* Plaintiff further contended KCL breached the Policies by failing to reduce its COI Rates when its expectations as to future mortality experience improved. *Id.* Plaintiff also sought declaratory and injunctive relief, a claim in tort—alleging KCL had unlawfully converted funds from his Cash Value (*id.*)—and later amended his Petition to request punitive damages.

6. The scope of this case was significant. Plaintiff sought to represent himself and a class of more than 8,000 Missouri policyholders. The vigorous and contested nature of the litigation that would follow reflected the significant stakes of the case.

7. On November 1, 2019, KCL removed the litigation to the U.S. District Court for the Western District of Missouri and immediately moved to consolidate it with *Meek v. Kansas City Life Ins. Co.*, No. 4:19-CV-00472 (W.D. Mo.). *See* Notice of Filing of Notice of Removal (Nov. 1, 2019); *Meek*, Dkt. 5 (W.D. Mo. Nov. 1, 2019). Class Counsel, however, filed a motion to remand the litigation back to the Circuit Court of Jackson County, asserting that the federal district court did not possess subject matter jurisdiction over the case. *Meek*, Dkt. 11 (Nov. 18, 2019). After full briefing from the parties, the Hon. Beth Phillips granted the motion to remand and denied KCL's motion to consolidate with *Meek* as moot. *Id.*, Dkt. 27 (Feb. 7, 2020).

8. Thereafter, on October 2, 2020, Class Counsel and Plaintiff moved to certify a class pursuant to Rule 52.08, including:

All Missouri citizens who own or owned a life insurance policy issued by Defendant in the State of Missouri, the terms of which provide or provided for: (1) an insurance or cost of insurance charge or deduction calculated using a rate that is determined based on Defendant's expectations as to future mortality experience; (2) additional but separate policy charges, deductions, or expenses; (3) an investment, interest-bearing, or savings component; and (4) a death benefit.

Pl.'s Mot. for Class Certification (Oct. 2, 2020). KCL filed its opposition on December 4, 2020, and Plaintiff filed his reply on December 22, 2020. *See, id.*; KCL's Suggestions in Opposition to Pl.'s Mot. for Class Certification (Dec. 4, 2020); Pl.'s Reply in Support of Mot. for Class Certification (Dec. 22, 2020). The Court heard oral argument on February 8, 2021. Hearing (Feb. 8, 2021). The filings of Plaintiff on class certification also included notices of supplemental authority on March 31, 2021, and April 20, 2021. Notice (Mar. 31, 2021); Notice (Apr. 20, 2021).

9. The Court granted Plaintiff's motion for class certification on July 12, 2021. Findings of Fact, Conclusions of Law and Order of Class Certification (July 12, 2021). The following day, July 13, 2021, Plaintiff moved to amend the Class definition to identify the Missouri-owned life insurance products at issue in the case more specifically. Pl.'s Mot. to Amend Class Certification Order to Modify Class Definition (July 13, 2021). Plaintiff's motion was granted in August 2021 with the Class definition being modified to include specific reference to the at-issue policy forms underlying the Class Policies as follows:

All Missouri citizens 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 in the State of Missouri, or its predecessors in interest, that was active on or after January 1, 2002.

Order (Aug. 17, 2021). Excluded from the Class were KCL; any entity in which KCL has a controlling interest; any of the officers, directors, employees, or sales agents of KCL; the legal representatives, heirs, successors, and assigns of KCL; anyone employed with Plaintiff's counsel's firms; and any Judge to whom this case is assigned, and his or her immediate family. Order (Aug. 17, 2021).

10. Substantial discovery starting with Plaintiff's service of his First Requests for Production of Documents with his Petition on October 4, 2019. Notice of Service (Oct. 15, 2019). On March 3, 2020, Plaintiff also served his first Requests for Admission and Interrogatories on KCL. Certificate of Service (Mar. 3, 2020). On March 9, 2020, KCL served its Objections and Responses to Plaintiff's First Set of Requests for Production of Documents. Certificate of Service (Mar. 9, 2020). On April 30, 2020, KCL served its Objections and Responses to Plaintiff's First Interrogatories. Certificate of Service (Apr. 30, 2020). On May 15, 2020, KCL served its

Objections and Responses to Plaintiff's First Set of Requests for Admission. Certificate of Service (May 15, 2020). KCL served supplemental objections and responses to Plaintiff's First Interrogatories on November 20, 2020, and again on February 19, 2021. Certificate of Service (Nov. 20, 2020); Certificate of Service (Feb. 19, 2021). Plaintiff served his Second Requests for Admissions on May 4, 2021. Certificate of Service (May 4, 2021). Plaintiff additionally served Second and Third Interrogatories, Second and Third Sets of Requests for Production of Documents, and Third Requests for Admission on May 9, 2022, and June 3, 2022. Certificate of Service (May 9, 2022); Certificate of Service (June 3, 2022). KCL responded on June 8, 2022, July 2, 2021, and July 6, 2022. Certificate of Service (June 8, 2022); Certificate of Service (July 1, 2021); Certificate of Service (July 6, 2022).

11. KCL ultimately produced over 76,000 pages of documents, including documents and discovery responses served within a week prior to the start of trial with KCL's Supplemental Responses and Objections to Plaintiff's Second Interrogatories and Requests for Production of Documents. Certificate of Service (Nov. 30, 2022).

12. KCL served its First Set of Requests for Production and First Set of Interrogatories on Plaintiff on September 21, 2020. Certificate of Service (Sept. 21, 2020). Plaintiff served his objections and responses one month later on October 21, 2020. Certificate of Service (Oct. 21, 2020). Plaintiff served supplemental responses to KCL's interrogatories on November 23, 2020, and July 28, 2021. Certificate of Service (Nov. 23, 2020); Certificate of Service (July 28, 2021). KCL served its Second Set of Interrogatories, Second Set for Requests for Production, and First Requests for Admission to which Plaintiff responded on April 4, 2022. Certificate of Service (Apr. 4, 2022). Then on May 17, 2022, KCL served a Second Set of Requests of Admission on Plaintiff

to which Plaintiff responded on June 16, 2022. Certificate of Service (May 17, 2022); Certificate of Service (June 16, 2022).

13. Counsel for the parties engaged in numerous meet-and-confer teleconferences as well as lengthy email correspondence detailing discovery issues and disputes over the course of the litigation.

14. By way of example, four meet and confers were held between counsel for the parties in just little more than a one-month period between March 30 to May 6 of 2020. Following the meet and confers, as well as lengthy email correspondence that accompanied the meet and confer process, Class Counsel filed a Motion for Enforcement of Discovery on May 22, 2020, seeking to compel production of documents that KCL filed with, sent to, or received from regulatory authorities concerning the Class Policies. Pl.'s Mot. For Enforcement of Discovery (May 22, 2020). After briefing from the parties and a hearing, the Court granted Plaintiff's motion to enforce on August 24, 2020. Order (Aug. 24, 2020).

15. As another example, Class Counsel again filed a motion to enforce discovery on January 8, 2021, when they sought to compel KCL to produce all individual policy-level data for the Class Policies and all "expectations as to future mortality experience for each Product." Pl.'s Mot. To Enforce Discovery and Suggestions in Support (Jan. 8, 2021). After briefing and argument before the Court, the Court granted Plaintiff's motion on February 3, 2021. Order (Feb. 3, 2021), including, but not limited to, Plaintiff's motion to enforce the Court's February 3, 2021, order, which also was granted. *See*, Pl.'s Mot. To Enforce the Court's Feb. 3, 2021, Order, for Civil Contempt, and for Sanctions and Suggestions in Support Thereof (Feb. 22, 2021); Order (July 16, 2021). Class Counsel also briefed and argued several motions to enforce discovery filed by KCL throughout the case. *See, e.g.*, Pl.'s Suggestions in Opposition to KCL's Mot. to Enforce Discovery

(Dec. 21, 2020); Pl.'s Suggestions in Opposition to KCL's Mot. to Enforce Discovery (June 28, 2021); Pl.'s Suggestions in Opposition to KCL's Mot. to Enforce (Sept. 2, 2021); Pl.'s Suggestions in Opposition to KCL's Mot. to Enforce Discovery (Aug. 5, 2022). Numerous additional discovery-related issues arose throughout the case necessitating further meet and confers, briefing, and argument before the Court.

16. Both parties engaged expert witnesses. These witnesses offered declarations that were used in support of the parties' positions at various stages of the litigation, including briefing class certification and summary judgment. For Plaintiff and the Class, Class Counsel disclosed actuary Scott J. Witt to provide testimony on the nature and extent of injury suffered by the Class, including providing a calculation of the class-wide loss attributable to KCL's COI overcharges. KCL identified actuary Timothy Pfeifer to testify about the pricing, development, and aspects of the administration of the products at issue, as well as the COI Rate provisions of the Class Policies. KCL also identified Mary Jo Hudson to provide opinions about the insurance regulatory framework. Mr. Witt and Mr. Pfeifer offered expert opinion at trial.

17. Several depositions were conducted. Class Counsel produced both Plaintiff and Plaintiff's expert witness, Scott Witt, for depositions. Class Counsel also deposed several KCL witnesses, including KCL's designated corporate representatives, David Metzler and Mark Milton, and additional witnesses, including Matthew Dolliver, Don Krebs, Karen Dierker, Jill Daniel, Marc Bensing, Lendy Kesler, and Stephen Bader.

18. Plaintiff also successfully argued and received an extension of time for leave to amend the Petition to file a claim for a punitive damages award. *See* Pl.'s Amended Mot. for Extension of Time to Move for Leave to Amend to File a Claim for a Punitive Damage Award (June 25, 2021); KCL's Response to Plaintiff's Amended Mot. for Extension of Time to Move for

Leave to Amend (July 6, 2021); Pl.'s Reply (July 12, 2021). On July 20, 2021, Plaintiff moved for leave to amend the Petition to add a request for punitive damages. Pl.'s Mot for Leave to File Amended Petition (July 20, 2021). KCL opposed, and after briefing and oral argument, the Court permitted Plaintiff to amend. KCL's Response in Opposition to Pl.'s Mot. for Leave to Amend Petition (July 30, 2021); Pl.'s Reply Suggestions in Support of Mot. for Leave to File Amended Petition (Aug. 4, 2021); Order (Feb. 22, 2022). After Plaintiff amended his petition in February 2022, KCL moved to dismiss Plaintiff's claim for punitive damages. KCL's Motion to Dismiss Punitive Damages (Mar. 4, 2022). Plaintiff opposed in March 2022. Pl.'s Suggestions in Opposition to Mot. to Dismiss (Mar. 14, 2022). Ultimately, KCL's motion to dismiss Plaintiff's claim for punitive damages was denied following argument before the Court on November 21, 2022. Order Denying Motion to Dismiss Punitive Damages Claim (Nov. 23, 2022).

19. On July 8, 2021, KCL filed a motion for summary judgment on Plaintiff's claims, arguing that Plaintiff's claims were time-barred by the applicable statute of limitations period, that Plaintiff's testimony could not support his breach of contract claim, and that Plaintiff's conversion claim was without support. KCL's Suggestions in Support of Mot. for Summary Judgment (July 8, 2021). Class Counsel opposed the motion arguing, principally, that under Missouri law: Plaintiff's claims were not discoverable such that the applicable statute of limitations had yet to run on Plaintiff's or any Class Member's claims; the language KCL drafted into its non-negotiated policies plainly supported Plaintiff's proposed interpretation of the COI and expense charge provisions; and, KCL had admitted to the conduct demonstrating the breaches under Plaintiff's proposed interpretation. Pl.'s Opposition to KCL's Mot. for Summary Judgment (Aug. 17, 2021).

20. Class Counsel also filed a motion for partial summary judgment in favor of the Class on KCL's statute of limitations defense and on its liability for breach on Plaintiff's three

breach of contract claims and Plaintiff's claim for declaratory relief). Pl.'s Mot. for Partial Summary Judgment (July 8, 2021). Briefing on summary judgment continued through the end of August 2021. Pl.'s Reply in Support of Mot. for Partial Summary Judgment (Aug. 25, 2021); KCL's Reply in Support of Mot. for Summary Judgment (Aug. 25, 2021). In briefing the summary judgment motions, Class Counsel relied on, among other cases, *Vogt v. State Farm Life Insurance Co.*, 963 F.3d 753 (8th Cir. 2020), which had interpreted a substantially similar COI rate provision on another policy form under Missouri law consistent with Plaintiff's proposed interpretation in this case. The Court denied KCL's motion for summary judgment in February 2022, and the Court granted Plaintiff's motion for partial summary judgment in favor of the Class. Order Granting Pl.'s Mot. for Partial Summary Judgment on Counts I, II, and III and Denying Defendant's Motion for Summary Judgment (Feb. 22, 2022).

21. KCL filed a motion for leave to file a second motion for summary judgment, which was denied following briefing and oral argument because the Court found KCL failed to demonstrate excusable neglect and show good cause for extending the summary judgment deadline. KCL's Mot. for Leave to File a Second Mot. for Summary Judgment (Aug. 17, 2021); Order (Feb. 22, 2022). Furthermore, even though Class Counsel prevailed on Plaintiff's motion for partial summary judgment in favor of the Class and in defeating KCL's motion, KCL filed a motion to reconsider, vacate, and/or modify, and in so doing, asked the Court to refer the case to the Missouri Department of Insurance. KCL's Suggestions in Support of Mot. to Reconsider, Vacate, and/or Modify (Aug. 5, 2022). Class Counsel opposed, arguing that KCL had raised no new issues that would call into question the Court's summary judgment decision or that necessitated referral of case issues to the Department of Insurance. Pl.'s Suggestions in Opposition

to KCL's Mot. to Reconsider, Vacate, and/or Modify (Aug. 22, 2022). Following oral argument at the pretrial conference on November 21, 2022, this motion was also denied. Order (Nov. 21, 2022).

22. KCL sought a writ of prohibition on November 22, 2022, seeking to bar the Court from taking any action other than vacating his orders on summary judgment and KCL's motion to reconsider, vacate, and/or modify, and thereafter referring claims to the Missouri Department of Insurance or dismissing Plaintiff's claims. The petition was denied one day later.

23. KCL also moved to exclude the declaration and testimony of Plaintiff's expert Scott J. Witt. KCL's Mot. to Exclude the Declaration and Testimony of Scott J. Witt (Feb. 16, 2022). Class Counsel opposed KCL's motion to exclude. Pl.'s Suggestions in Opposition to KCL's Mot. to Exclude (Feb. 28, 2022). After oral argument at the pretrial conference, this motion was also denied. Order Regarding Pending Motions (Nov. 22, 2022).

24. On January 24, 2022, KCL moved for class decertification with a 72-page brief, arguing that: Class Counsel was inadequate; Plaintiff was inadequate; Plaintiff's claims were not typical; a "more robust record" demonstrated a failure of commonality and predominance; the case lacked superiority and manageability; the class definition was overbroad because it included uninjured Class Members; the claims for injunctive and declaratory relief should be decertified; and KCL's constitutional rights would be violated. KCL's Suggestions in Support of Mot. to Decertify the Class (Jan. 24, 2022). In response, Class Counsel again demonstrated class treatment was appropriate; and, after substantial and contested briefing as well as oral argument, the Court denied KCL's motion to decertify the Class. Order Regarding Pending Motions (Nov. 22, 2022); Pl.'s Suggestions in Opposition to KCL's Motion to Decertify the Class (Feb. 17, 2022).

25. KCL'S motion to reconsider, vacate, and or modify, motion to exclude Plaintiff's expert, and motion to decertify, as well as pretrial filings, including motions in limine and proposed

jury instructions were addressed and argued at the November 21, 2022, pretrial conference. The jury trial commenced on Tuesday, December 6, 2022, with voir dire and jury selection. After argument from counsel for the parties on how to best structure the trial, the Court determined that the trial would proceed as trifurcated with a damages-only first stage on Plaintiff's breach of contract claims and additional stages on conversion and punitive damages to follow.

26. On Wednesday, December 7, 2022, the parties presented their opening statements to the jury, and Class Counsel began presenting evidence for Plaintiff and the Class, including the testimony of Plaintiff and his expert, Scott Witt. On the morning of December 8, 2022, Plaintiffs continued their presentation of evidence with the video deposition testimony of KCL witness, Mark Milton, and concluded by moving for the admission of certain documents into the record.

27. At the close of Plaintiffs' evidence, KCL moved for a directed verdict on Plaintiffs' breach of contract claims, arguing that Mr. Witt's testimony was insufficient to prove damages for KCL's breach of the COI Rate provision by not providing COI Rates that should have been charged under the Court's interpretation of the Policies, and that Mr. Witt used unreliable mortality assumptions in his calculations. KCL also argued that Mr. Witt had not established the damages for KCL's breach of the fixed expense charge provisions and its breaches for failing to change COI Rates when its mortality expectations improved. KCL also moved to decertify the Class, contending Mr. Karr was not an adequate class representative because he had no damages (according to the calculation of damages that KCL's witnesses offered at trial), and because, as a Death Option A policyholder, he was not entitled to the amount of the Cash Value in his Policy if he receives a death benefit, and Mr. Karr testified that he desired to get his death benefit. KCL further argued the Option A and B death benefit options created individualized damages issues. KCL further argued the Class should be decertified because the claims of some former

policyholders may be barred by the statute of limitations. The Court denied KCL's motions and ruled that Plaintiff had made a submissible case that he and the Class were damaged.

28. KCL then presented its case with the testimony of Mark Milton and Aaron Bush, and its expert, Timothy Pfeifer. At the close of all the evidence, KCL moved again for directed verdict and to decertify the Class, which the Court again denied. Plaintiff moved for directed verdict on KCL's affirmative defenses requiring KCL to prove the Class had knowledge of KCL's breaching conduct, including failure to mitigate damages, voluntary payment doctrine, ratification, waiver, and the unpled defense of consent, because, given the Court's summary judgment order concluding as a matter of law that no reasonable policyholder could have known KCL was breaching the Policies, KCL could likewise not establish these other defenses requiring policyholders' knowledge. KCL then confirmed that the only such defense it intended to present to the jury on Plaintiffs' breach of contract claims was the failure to mitigate damages. The Court took the motion under advisement. That same day, the Court began a jury instruction conference but continued it to the next morning before closing arguments.

29. The following morning, Class Counsel informed the Court that it would not be proceeding with additional stages of the trial on Plaintiff's conversion and punitive damages claims. Thereafter, the Court reconvened the jury instruction conference. During the conference, the Court granted Plaintiff's motion for directed verdict on KCL's failure to mitigate damages defense. The parties also made a record on their objections to the Court's rulings on other instructions and a final packet of jury instructions were prepared. Closing arguments were then presented, and the instructions were read to the jury. After approximately 2 hours of deliberation, the jury reached its verdict. The jury returned to the courtroom shortly thereafter and announced

its verdict, which was unanimous in favor of the Class on all three breach of contract claims. The jury found damages of \$28,362,830.96 on each claim.

Expenses

30. As to expenses, in litigating this action, Class Counsel advanced the total amount of \$276,431.13. This amount includes expenses for litigating this case up to and through trial, including significant expert witness fees (for deposition and trial testimony); online legal research; expenses associated with depositions that took place, including for travel, meals, lodging, and transcripts; and, fees and expenses associated with the ultimate distribution of the Common Fund. It also includes incidental costs such as duplicating, postage, and delivery fees. These expenses—which were all necessary and reasonably expended in connection with Class Counsel’s vigorous prosecution of this case—are the type that hourly fee-paying clients routinely cover.

31. This time and money was advanced by Class Counsel on a fully contingent basis, with no guarantee that Plaintiff would recover the resources that they committed to this case. In other words, Class Counsel took on substantial risk in advancing their time and these fees over the three-year course of this litigation.

Service Award

32. Plaintiff committed significant time and resources to prosecuting this action on behalf of the class. The Plaintiff initiated this litigation in consultation with counsel and continued to be actively involved throughout. Plaintiff reviewed numerous documents and pleadings throughout the three-year case, searched for documents and information, remained apprised of the status of the litigation and engaged with the litigation throughout, sat for a deposition, participated in numerous telephone calls and in-person meetings regarding the case (many of which lasted several hours), testified at trial, attended the entire trial (while missing work to do so), and attended

numerous hearings, including the multi-hour hearing on summary judgment and pre-trial conference.

STATE OF MISSOURI)
) SS.
COUNTY OF JACKSON)

IN WITNESS WHEREOF, the undersigned executed this Affidavit on this 21st day of December, 2022.


Joseph M. Feierabend

Subscribed and sworn to before me this 21st day of December, 2022.


Notary Public

My Commission Expires: 1-30-2026



EXHIBIT 1

Miller | Schirger_{LLC}



**Nationwide representation of plaintiffs and defendants
in complex legal disputes.**

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Kansas City, MO 64111
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FIRM OVERVIEW

Miller Schirger is a Kansas City, Missouri-based law firm focused on resolving complex disputes on behalf of businesses and individuals nationwide. Information regarding the firm, the scope of its practice, and its honors is available at www.millerschirger.com. Below is a partial listing of the firm's experience in plaintiff-side class actions. The firm has also obtained significant results in a wide range of lawsuits representing individual plaintiffs and defendants.

CLASS ACTIONS

- Appointed and currently serving as class counsel to a certified class of Arizona life insurance policy owners in a class action against State Farm asserting claims for, among other things, breach of contract resulting in alleged life insurance policy overcharges, including “cost of insurance” overcharges. *McClure v. State Farm Life Ins. Co.*, Case No. CV-20-01389, (USDC, Arizona).
- Appointed and currently serving as class counsel to a certified class of Minnesota life insurance policy owners in a class action against State Farm asserting claims for, among other things, breach of contract resulting in alleged life insurance policy overcharges, including “cost of insurance” overcharges. *Jaunich v. State Farm Life Ins. Co.*, Case No. 20-1567 (USDC, Minnesota).
- Appointed and currently serving as class counsel to a certified class of Missouri life insurance policy owners in a class action against Kansas City Life Insurance Company asserting claims for breach of contract resulting in alleged policy overcharges. *Sheldon v. Kansas City Life Ins. Co.*, Case No. 1916-CV26689 (16th Jud. Cir., Jackson Cty., Mo.).
- Appointed and currently serving as class counsel to a certified class of Kansas life insurance policy owners in a class action against Kansas City Life Insurance Company asserting claims for breach of contract resulting in alleged policy overcharges. *Meek v. Kansas City Life Ins. Co.*, Case No. 4:19-CV-472 (W.D. Mo.).
- Appointed and currently serving as class counsel to a certified class of Missouri life insurance policy owners in a class action against Kansas City Life Insurance Company asserting claims for breach of contract resulting in alleged policy overcharges. *Karr v. Kansas City Life Ins. Co.*, Case No. 1916-CV26645 (16th Jud. Cir., Jackson Cty., Mo.).
- Appointed and currently serving as class counsel to a certified class of California life insurance policy owners in a class action against State Farm asserting claims for, among other things, breach of contract resulting in alleged life insurance policy overcharges, including “cost of insurance” overcharges. *Bally v. State Farm Life Ins. Co.*, 335 F.R.D. 288 (N.D. Cal. 2020).
- Appointed and currently serving as class counsel to a certified class of Washington life insurance policy owners in a class action against State Farm asserting claims for, among other things, breach of contract resulting in alleged life insurance policy overcharges, including “cost of insurance” overcharges. *Whitman v. State Farm Life Ins. Co.*, 2021 WL4264271 (W.D. Wash. Sept. 20, 2021).

- After two hours of deliberations, on June 6, 2018, a federal jury in Missouri awarded \$34.3 million to State Farm policyholders in a class action trial. The class action was brought on behalf of approximately 24,000 current and former owners of universal life insurance policies issued in Missouri. Universal life insurance is a type of life insurance that includes an interest-bearing savings account from which the insurer deducts money each month to cover the cost of the life insurance. The jury found that State Farm systematically overcharged its policyholders for 23 years. *Vogt v. State Farm Life Insurance Co.*, No. 2:16-cv-04170-NKL, (W.D. Mo.). The case was affirmed on appeal. *Vogt v. State Farm Life Insurance Co.*, 963 F.3d 753 (8th Cir. 2020), *cert. denied*, No. 20-1008, 2021 WL 1521013 (U.S. Apr. 19, 2021).
- Settled a nationwide class action lawsuit asserting policy overcharges and claims for breach of contract against USAA Life Insurance Co. The settlement was approved by a Texas federal court in August 2021 for the amount of \$90 million (less fees and expenses) in cash compensation to over 120,000 policyholders. *Spegele v. USAA Life Insurance Co.*, No. 5:17-CV-00967-OLG (W.D. Tex.).
- Settled a nationwide class action lawsuit against John Hancock Life Insurance Company (U.S.A.) over alleged life insurance policy overcharges. The settlement was approved by the court in May 2018 and provided that John Hancock pay \$59.75 million (less fees and expenses) in cash compensation to approximately 103,000 policyholders who own or owned a Flex V-II variable whole life insurance policy sold and administered by John Hancock over the last several decades. *Larson v. John Hancock Life Ins. Co.*, Case No. RG16 813803 (Superior Court of California, County of Alameda).
- Represented plaintiff class of policyholders in nationwide class action against The Lincoln National Life Insurance Company alleging life insurance policy overcharges including “cost of insurance” overcharges. Lincoln National agreed to settle the case by, among other things, issuing term life insurance certificates to a settlement class consisting of approximately 77,000 policy owners across 30 states. The term life insurance certificates have a total face amount of death benefits estimated at \$2.25 billion, with a market value of approximately \$171.8 million. *Bezych v. The Lincoln Nat. Life Ins. Co.*, No. 02C01-0906-PL-73 (Allen Co, IN).
- Represented plaintiff in alleged class action involving cost of insurance overcharges in life insurance policies. Case of first impression holding Class Action Fairness Act’s (CAFA) securities exception allowed alleged class action involving variable life insurance policy to proceed forward in state court; case was not subject to removal to federal court. *Lincoln Nat’l. Life Ins. Co. v. Bezych*, 610 F.3d 448 (7th Cir. 2010).
- Represented plaintiff in alleged class action involving cost of insurance overcharges in life insurance policies. Securities Litigation Uniform Standards Act (SLUSA) did not preclude plaintiff’s claim for breach of contract even though such claim was related to the purchase or sale of a covered security under SLUSA. *Freeman Investments, L.P. v. Pac. Life Ins. Co.*, 704 F.3d 1110 (9th Cir. 2013).

PLAINTIFF RESULTS

- \$90 million nationwide settlement in life insurance class action
- \$59.75 million nationwide settlement in life insurance class action
- \$34.3 million verdict to Missouri life insurance policyholders
- \$2.25 billion nationwide class action settlement
- \$116 million verdict for general contractor in bad faith claim against surety
- Substantial recovery for institutional investor from mortgage-backed securities broker
- Groundbreaking class-action decision against Fortune 500 life insurance company
- \$4.3 million settlement of highway construction case
- \$4.9 million verdict in water utility case
- \$11.4 million case involving development rights resolved in client's favor during trial
- \$4 million professional malpractice claims settled in trustee's favor
- Antitrust claim settled on behalf of client
- Judgment for injunction relief and damages obtained in unfair competition and fraud case
- Wrongful death settlement in product liability case

DEFENSE RESULTS

- \$1.2 billion whistleblower claim dismissed on summary judgment
- \$100 million in claims successfully resolved for broker/dealer
- NY investment bank pays nothing in settlement of unfair competition claim
- Win for IBM in \$8.5 million alleged fraud case
- Multi-billion dollar product liability exposure resolved to client's satisfaction
- \$7 million claim against propane company defeated at trial
- Intellectual property claim resolved for manufacturer
- \$12 million workout for commercial borrower

- \$30 million environmental mass tort claims against Beatrice dismissed on summary judgment

TRIAL FIRM

EXPERIENCED

We have a proven track record of success representing plaintiffs and defendants in state and federal trial and appellate courts, before administrative and regulatory tribunals and in arbitration and other alternative dispute resolution proceedings nationwide.

PRACTICAL

From the beginning of an engagement, we seek to truly understand your business in order to provide strategic counsel and insightful guidance tailored to your objectives.

FOCUSED ON RESULTS

We measure success not by the hours billed, but by the results obtained for our clients. Although we are skilled trial lawyers who prepare each case as though it will go to trial, we never stop seeking the most efficient, cost-effective strategy for obtaining results.

Firm members who make up the trial team on plaintiff-side class actions are identified below.



John J. Schirger

For over 30 years John has represented businesses and individuals nationwide in disputes concerning breach of contract, fraud, business torts, consumer protection, insurance and reinsurance, securities and commodities, whistle-blower claims, and environmental matters. He also has significant experience in personal injury and wrongful death cases. John has successfully handled cases in federal or state courts in over 20 states, has argued before federal and state appellate courts, and has represented parties in AAA and Financial Industry Regulatory Authority (FINRA) arbitrations.

John began his career at a large regional law firm where he was elected partner after four years of practice. After only five years of practice, he obtained an "AV" rating from law publisher Martindale-Hubbell, the highest rating a lawyer can receive for competence and ethics. Among other honors and awards, John has been recognized by *The Best Lawyers in America* for Commercial Litigation, ranked a Top 100 Missouri & Kansas Super Lawyer, named Best of the Bar by the Kansas City Business Journal and nominated to the Power 30 List for Commercial and Consumer Litigation by Missouri Lawyers Media.

John is currently representing clients in a wide variety of cases involving business and commercial disputes, securities litigation matters, and class actions. In these cases, his clients include business owners, individuals and family members, investors including community banks and hedge funds, and members of the Forbes 400. John is known for his disciplined and thorough approach in cases, but also for being practical and creative in resolving disputes. One client recently stated: "John has the ability to sort through complex information and decide what is most important. He'll develop a litigation plan, and execute on it, but looks for opportunities to creatively resolve a case."

AREAS OF PRACTICE

- Banking Litigation
- Commercial Litigation
- Class-Action Lawsuits
- Insurance Litigation
- Mass Torts Litigation
- Personal Injury & Wrongful Death Litigation
- Products Liability Litigation
- Real Estate Litigation
- Securities Litigation
- Antitrust, Unfair Competition and Deceptive Trade Practices Litigation

- Whistleblower Litigation

BAR ADMISSIONS

- Missouri
- Nebraska (inactive)
- U.S. District Court District of Nebraska
- U.S. District Court Northern District of Illinois
- U.S. District Court District of Colorado
- U.S. District Court District of Kansas
- U.S. District Court Western District of Missouri
- U.S. District Court Eastern District of Wisconsin
- U.S. Court of Appeals 1st Circuit
- U.S. Court of Appeals 3rd Circuit
- U.S. Court of Appeals 5th Circuit
- U.S. Court of Appeals 7th Circuit
- U.S. Court of Appeals 8th Circuit
- U.S. Court of Appeals 9th Circuit
- U.S. Court of Appeals 10th Circuit
- United States Supreme Court

EDUCATION

- **Creighton University School of Law**
 - Juris Doctor - 1992
- **University of Notre Dame**
 - Bachelor of Arts - 1988

HONORS & AWARDS

- *Best Lawyers* – Commercial Litigation, 2023
- *The National Law Journal's* Top 100 Verdicts 2018
- Missouri Lawyers Awards – Top 5 Verdict in 2018
- Multi-Million Dollar Advocates Forum – Top Trial Lawyers in America
- Best of the Bar – Kansas City Business Journal
- Rated “AV” by Martindale Hubbell since 1997 (highest rating)
- SuperLawyers – SuperLawyer Magazine, 2011-2022
- *The Power 30 List for Commercial and Consumer Litigation* – Missouri Lawyers Media
- America's Top 100 Bet-the-Company Litigators
- Fellow – American Bar Foundation

PROFESSIONAL ASSOCIATIONS & MEMBERSHIPS

- American Bar Association
 - Section on Tort Trial and Insurance Practice
 - Section on Litigation

- Missouri Bar Association
- Kansas City Metropolitan Bar Association
 - Civil Litigation Section
 - Business Litigation Committee (Former Chair)
- Missouri Association of Trial Attorneys
- Nebraska Bar Association
- American Association for Justice
 - Section on Business Torts
 - Section on Insurance Law
 - Section on Product Liability

REPRESENTATIVE CASES

Business Litigation — Represented plaintiff in action on a guaranty related to a securities purchase. Defeated defendant's attempt to force the case to arbitration; affirmed on appeal.

Business Litigation – Represented defendant in alleged internet fraud case where plaintiff claimed \$2.5 million in damages; favorable settlement reached for client shortly before trial.

Business Litigation – Represented defendant majority owner in minority shareholder dispute where plaintiff claimed \$1.5 million in damages; case dismissed in favor of defendant after full evidentiary hearing and plaintiff elected not to appeal.

Business Litigation – American Shizuki Corp. v. International Business Machines, Represented defendant IBM in alleged fraud case where plaintiff claimed \$8.5 million in damages; summary judgment granted in favor of defendant on all counts and affirmed by the Eighth Circuit. (8th Cir. 2001)

Mass Torts (Environmental) Litigation – Truck Components, Inc., et al. v. Beatrice Company, Inc. et al., Represented defendant Beatrice Company in complex environmental case where plaintiff claimed \$30 million in damages in connection with acquisition and divestiture of a foundry plant; summary judgment granted in favor of defendant on all counts and affirmed by Seventh Circuit. (7th Cir. 1998)

Construction Litigation – Represented defendant steel contractor in lawsuit involving the construction of a power plant; defeated 90% of plaintiff's claims and damages in week-long arbitration.

Construction Litigation – Represented plaintiff underground utility contractor in complex lien foreclosure lawsuit resulting in settlement the morning of trial where plaintiff received 100% of monies claimed.

Construction Litigation – Represented general contractor in dispute with surety concerning the construction of a food processing facility; favorable settlement reached for client without initiating lawsuit.

Cost of Insurance Class Action – Spegele v. USAA Life Insurance Company, Represented plaintiff class of policyholders in nationwide class action involving cost of insurance overcharges in life insurance policies. USAA agreed to settle the case for \$90 million that will be distributed to approximately 120,000 policyholders. (Western District of Texas, San Antonio Division 2017)

Cost of Insurance Class Action – Vogt v. State Farm Life Insurance Company, Represented plaintiff Missouri class of policyholders in class action trial involving cost of insurance overcharges in life insurance policies. Jury awarded policyholder class \$34.3 million and determined that State Farm had systematically overcharged policyholder class (Western District of Missouri, Central Division 2018); affirmed on appeal. (8th Cir. 2020)

Cost of Insurance Class Action – Larson v. John Hancock Life Insurance Company (U.S.A.), Represented plaintiff class of policyholders in nationwide class action involving cost of insurance overcharges in life insurance policies. John Hancock agreed to settle the case for \$59.75 million that will be distributed to approximately 103,000 policyholders. (Superior Court of California, County of Alameda, Oakland, CA 2018)

Cost of Insurance Class Action — Bezich v. Lincoln Nat'l. Life Ins. Co., Represented plaintiff class of policyholders in nationwide class action against The Lincoln National Life Insurance Company alleging life insurance policy overcharges including “cost of insurance” overcharges. Lincoln National agreed to settle the case by, among other things, issuing term life insurance certificates to a settlement class consisting of approximately 77,000 policy owners across 30 states. The term life insurance certificates have a total face amount of death benefits estimated at \$2.25 billion, with a market value of approximately \$171.8 million. (Allen County Circuit Court, Fort Wayne, IN 2016)

Cost of Insurance Class Action - Bezich v. Lincoln Nat'l. Life Ins. Co., Represented plaintiff in alleged class action involving cost of insurance overcharges in life insurance policies. Case of first impression holding Class Action Fairness Act’s (CAFA) securities exception allowed alleged class action involving variable life insurance policy to proceed forward in state court; case was not subject to removal to federal court. (7th Cir. 2010)

Cost of Insurance Class Action – Freeman Investments, L.P. v. Pac. Life Ins. Co., Represented plaintiff in alleged class action involving cost of insurance overcharges in life insurance policies. Securities Litigation Uniform Standards Act (SLUSA) did not preclude plaintiff's claim for breach of contract even though such claim was related to the purchase or sale of a covered security under SLUSA (9th Cir. 2013)

Employment Law and Litigation – Represented defendant manufacturer in dispute with former employee. Summary judgment entered in favor of defendant on all counts. Plaintiff elected not to proceed with an appeal.

Insurance Litigation – Represented plaintiff property-owner in direct action against property-casualty insurer involving risk of loss provision in purchase and sale agreement. Case settled through mediation shortly before trial where plaintiff recovered 125% of specified damages.

Mass Torts Litigation – Represented defendants nationwide in lead paint products liability cases; cases resolved through successful summary judgment practice or mediation.

Personal Injury and Wrongful Death Litigation – Represented widower and young children in personal injury and wrongful death case; obtained maximum recovery for clients under various insurance policies without initiating a lawsuit.

Products Liability Litigation – Represented plaintiff widow and family members in wrongful death case of husband/father involving a defective consumer product. Confidential settlement reached after minimal discovery.

Real Estate Litigation – Represented defendant owner/landlord in complex dispute with tenant; favorable settlement reached for client after successful trial.

Securities Litigation – Represented plaintiff Colorado Bank in dispute with its broker-dealer involving the marketing and sale of mortgage-backed securities. Confidential settlement reached for client resulting in substantial recovery. Within two weeks of finalizing the settlement, regulatory officials substantially upgraded the Bank's rating.

Securities Litigation – Represented plaintiff Texas bank in dispute with its broker-dealer involving the marketing and sale of mortgage-backed securities. Confidential settlement reached for client resulting in substantial recovery.

Securities Litigation – Represented individual investor in alleged ponzi scheme. Seven-figure settlement reached with broker/advisor; all invested funds were recovered for client.

Securities Litigation – Represented defendant broker/dealer in complex securities and commodities' ponzi scheme cases where plaintiffs claimed damages in excess of \$100 million; after close of discovery, favorable settlements reached for client through mediation.

Unfair Competition and Deceptive Trade Practices Litigation – Represented defendant New York investment banking firm in commercial dispute involving alleged breach of nondisclosure agreement. Successful settlement reached for client after minimal discovery; client paid no money to Plaintiff.

Whistleblower Litigation - U.S. ex rel. Bahrani v. ConAgra, Inc., Represented defendant ConAgra Foods, Inc. in alleged civil false claims case where plaintiff claimed \$1.2 billion in damages; summary judgment granted in favor of defendant on all counts. (D. Colorado 2004)

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Matthew W. Lytle

Throughout his practice, Matt has represented clients ranging from individuals to privately held and publicly traded corporations in various state and federal courts nationwide, and in arbitrations with the AAA and the Financial Industry Regulatory Authority (FINRA). Matt's experience covers all phases of the litigation process including case strategy, pre-trial briefing and motion practice, depositions and discovery, dispositive motion practice, trial preparation, trial, and appeals.

Matt's representative litigation experience includes representing both plaintiffs and defendants in disputes involving claims for fraud, breach of fiduciary duty, breach of trust, breach of contract, and civil RICO, as well as consumer class action and whistleblower claims.

In addition to litigation, Matt has experience in the area of white collar defense and investigations, and has represented clients in investigations by various federal agencies including the CFTC and the USDA.

Matt was named a "Rising Star" (2011, 2012) and a "Super Lawyer" (since 2013) by *Missouri & Kansas Super Lawyers*. Matt was also named to the 2012 BTI Client Service All-Stars, a select group of only 272 lawyers nationwide who are chosen solely on unprompted, unequivocal recommendations by corporate counsel for their understanding of business issues, innovative approaches to legal services, and commitment to client needs.

Matt began his legal career at a large regional law firm in Omaha, Nebraska. After moving to Kansas City, he practiced in large national and international law firms before joining Miller Schirger.

AREAS OF PRACTICE

- Banking Litigation
- Commercial Litigation
- Class-Action Lawsuits

- Fiduciary Litigation
- Insurance Litigation
- Personal Injury & Wrongful Death Litigation
- Products Liability Litigation
- Real Estate Litigation
- Securities Litigation
- Antitrust, Unfair Competition and Deceptive Trade Practices Litigation
- Whistleblower Litigation

BAR ADMISSIONS

- Missouri
- Nebraska (inactive)
- U.S. District Court Western District of Missouri
- U.S. District Court District of Nebraska
- U.S. District Court District of Kansas
- U.S. District Court District of Colorado
- U.S. District Court Eastern District of Wisconsin
- U.S. Court of Appeals 8th Circuit
- U.S. Court of Appeals 9th Circuit
- U.S. Court of Appeals 10th Circuit

EDUCATION

- **Creighton University School of Law**
 - Juris Doctor (*Magna Cum Laude*) - 2004
- **Creighton University**
 - Bachelor of Arts - 1996

HONORS & AWARDS

- *The National Law Journal's* Top 100 Verdicts 2018
- Missouri Lawyers Awards – Top 5 Verdict in 2018
- Rising Star, SuperLawyers, 2011-2012
- SuperLawyers – SuperLawyer Magazine 2013-present
- BTI Client Service All-Stars, 2012
- Fellow – American Bar Foundation

PROFESSIONAL ASSOCIATIONS & MEMBERSHIPS

- American Bar Association
- Missouri Bar Association
- Kansas City Metropolitan Bar Association
- Nebraska Bar Association

REPRESENTATIVE CASES

Business Litigation — Multivac, Inc. vs. Rotella's Italian Bakery, Inc., Represented defendant / counterclaimant in case involving claims for breach of contract, and counterclaims for repudiation of contract and breach of express and implied warranties, among others, related to the purchase of a vacuum-seal packaging machine. A four-day jury trial in the United States District Court for the Western District of Missouri, resulted in verdicts in client's favor on the plaintiff's claim for breach of contract, and the client's counterclaims for repudiation of contract and breach of express warranty.

Business Litigation – Represented plaintiff and counter-defendant propane company in protracted litigation involving claims for alleged overcharges related to vehicle refurbishing services and counterclaims against client seeking damages of \$6.97 million for alleged breach of contract and business torts. A nine day jury trial in the Circuit Court for Jackson County, Missouri, produced a favorable result for the client, including the client paying less than 10% of the counter-claim damages sought.

Cost of Insurance Class Action – Spegele v. USAA Life Insurance Company, Represented plaintiff class of policyholders in nationwide class action involving cost of insurance overcharges in life insurance policies. USAA agreed to settle the case for \$90 million that will be distributed to approximately 120,000 policyholders. (Western District of Texas, San Antonio Division 2017)

Cost of Insurance Class Action – Vogt v. State Farm Life Insurance Company, Represented plaintiff Missouri class of policyholders in class action trial involving cost of insurance overcharges in life insurance policies. Jury awarded policyholder class \$34.3 million and determined that State Farm had systematically overcharged policyholder class (Western District of Missouri, Central Division 2018); affirmed on appeal. (8th Cir. 2020)

Cost of Insurance Class Action – Larson v. John Hancock Life Insurance Company (U.S.A.), Represented plaintiff class of policyholders in nationwide class action involving cost of insurance overcharges in life insurance policies. John Hancock agreed to settle the case for \$59.75 million that will be distributed to approximately 103,000 policyholders. (Superior Court of California, County of Alameda, Oakland, CA 2018)

Cost of Insurance Class Action — Bezich v. Lincoln Nat'l. Life Ins. Co., Represented plaintiff class of policyholders in nationwide class action against The Lincoln National Life Insurance Company alleging life insurance policy overcharges including “cost of insurance” overcharges. Lincoln National agreed to settle the case by, among other things, issuing term life insurance certificates to a settlement class consisting of approximately 77,000 policy owners across 30 states. The term life insurance certificates have a total face amount of death benefits estimated at \$2.25 billion, with a market value of approximately \$171.8 million. (Allen County Circuit Court, Fort Wayne, IN 2016)

Cost of Insurance Class Action - Bezich v. Lincoln Nat'l. Life Ins. Co. — Represented plaintiff in alleged class action involving cost of insurance overcharges in life insurance policies. Case of first impression holding Class Action Fairness Act's (CAFA) securities exception allowed alleged class action involving variable life insurance policy to proceed forward in state court; case was not subject to removal to federal court. (7th Cir. 2010)

Cost of Insurance Class Action - Freeman Investments, L.P. v. Pac. Life Ins. Co. — Represented plaintiff in alleged class action involving cost of insurance overcharges in life insurance policies. Securities Litigation Uniform Standards Act (SLUSA) did not preclude plaintiff's claim for breach of contract even though such claim was related to the purchase or sale of a covered security under SLUSA (9th Cir. 2013)

Securities Litigation — Represented plaintiff Colorado Bank in dispute with its broker-dealer involving the marketing and sale of mortgage-backed securities. Confidential settlement reached for client resulting in substantial recovery. Within two weeks of finalizing the settlement, regulatory officials substantially upgraded the Bank's rating.

Securities Litigation — Represented plaintiff Texas bank in dispute with its broker-dealer involving the marketing and sale of mortgage-backed securities. Confidential settlement reached for client resulting in substantial recovery.

Securities Litigation — Represented individual investor in alleged ponzi scheme. Seven-figure settlement reached with broker/advisor; all invested funds were recovered for client.



Joseph M. Feierabend

Joe focuses his practice primarily in the areas of complex business and commercial litigation. He represents businesses and individuals in state and federal courts and before arbitration panels nationwide in disputes involving breach of contract, business torts, and other commercial claims. His expertise extends to class actions, insurance coverage and bad faith claims, personal injury claims, claims asserting violations of constitutional rights, as well as counseling institutional investors in broker/dealer disputes involving complex, structured financial products and transactions. In addition, Joe has significant experience representing plaintiffs in cost-of-insurance class-action litigation in state and federal courts throughout the United States.

Joe obtained his B.B.A. degree from the University of Notre Dame where he majored in accounting and obtained his J.D. from the University of Missouri School of Law, where he focused his studies in the areas of finance and tax. Before beginning his legal career, Joe spent two years running the daily operations of a Kansas City company. His prior work experience and financial background provide a unique perspective in analyzing business disputes, and consistently prove to be a significant advantage in advising clients.

AREAS OF PRACTICE

- Banking Litigation
- Commercial Litigation
- Class-Action Lawsuits
- Constitutional Law/Civil Rights Litigation
- Construction Law
- Construction Litigation
- Insurance Litigation
- Real Estate Litigation
- Securities Litigation
- Antitrust, Unfair Competition and Deceptive Trade Practices Litigation
- Whistleblower Litigation

BAR ADMISSIONS

- Missouri
- U.S. District Court District of Colorado
- U.S. District Court Western District of Missouri
- U.S. District Court District of Kansas
- U.S. Court of Appeals 8th Circuit
- U.S. Court of Appeals 9th Circuit

- U.S. Court of Appeals 10th Circuit

EDUCATION

- **University of Missouri School of Law**
 - Juris Doctor - 2008
- **University of Notre Dame**
 - Bachelor of Business Administration - 2005

HONORS & AWARDS

- Rising Star, Super Lawyers, 2019-present
- *The National Law Journal's* Top 100 Verdicts 2018
- Missouri Lawyers Awards – Top 5 Verdict in 2018

PROFESSIONAL ASSOCIATIONS & MEMBERSHIPS

- American Association for Justice
- American Bar Association
- Missouri Bar Association
- Kansas City Metropolitan Bar Association
- Missouri Association of Trial Attorneys

REPRESENTATIVE CASES

Business Litigation – Represented individual and brought action to recover on claims arising from breach of settlement agreement and non-compliance with judgment of a Missouri circuit court. A favorable settlement was reached soon after initiating enforcement proceedings with the court.

Business Litigation – Represented business in contract dispute with multinational insurance brokerage. Negotiated and obtained a settlement in client's favor, without filing a lawsuit.

Civil Rights – Represented plaintiff in a tort/civil rights action which alleged 12 claims against police, hospital and the doctors who treated plaintiff in the emergency room, the municipality emergency services personnel and the municipality which employed the individual defendants. The claims included Excessive Force, Unlawful Seizure, False Arrest, Unlawful Search, Interference With and Denial of Medical Care, Delay of Plaintiff's Release, Municipal Liability, Assault, Battery, Intentional Infliction of Emotional Distress, False Imprisonment, and Negligence, and sought relief for violation of civil rights secured by 42 § U.S.C. 1983. The defense settled with plaintiff for relief of \$11.4 million. (W.D. Missouri – Kansas City, 2018)

Cost of Insurance Class Action – Spegele v. USAA Life Insurance Company, Represented plaintiff class of policyholders in nationwide class action involving cost of insurance overcharges in life insurance policies. USAA agreed to settle the case for \$90 million that will be distributed to approximately 120,000 policyholders. (Western District of Texas, San Antonio Division 2017)

Cost of Insurance Class Action – Vogt v. State Farm Life Insurance Company, Represented Missouri class of policyholders in class action trial involving cost of insurance overcharges in life

insurance policies. Jury determined that State Farm had systematically overcharged policyholder class and awarded \$34.3 million (Western District of Missouri, Central Division 2018); affirmed on appeal. (8th Cir. 2020)

Cost of Insurance Class Action – Larson v. John Hancock Life Insurance Company (U.S.A.), Represented class of approximately 103,000 plaintiff policyholders in nationwide class action involving cost of insurance overcharges on life insurance policies. John Hancock agreed to settle the case for \$59.75 million. (Superior Court of California, County of Alameda, Oakland, CA 2018).

Cost of Insurance Class Action — Bezich v. Lincoln Nat'l. Life Ins. Co., Represented class of policyholders in nationwide class action against The Lincoln National Life Insurance Company alleging life insurance policy overcharges including “cost of insurance” overcharges. Lincoln National agreed to settle the case by, among other things, issuing term life insurance certificates to a settlement class consisting of approximately 77,000 policy owners across 30 states. The term life insurance certificates had a total face amount of death benefits estimated at \$2.25 billion, with a market value of approximately \$171.8 million. (Allen County Circuit Court, Fort Wayne, IN 2016).

Insurance Litigation – Represented plaintiffs in various disputes regarding defendant insurance companies’ failure to pay on property loss claims. Favorable outcomes have been reached for clients soon after initiating lawsuits.

Intellectual Property Litigation – Represented plaintiff in a trademark infringement case resulting in a positive outcome ensuring protection of client’s intellectual property rights into the future.

Property Rights Litigation – Represented plaintiff in dispute involving rights to use of land and alleged adverse possession, among other claims; negotiated and obtained a favorable settlement for client.

Securities Litigation – Represented plaintiff bank in dispute with its broker-dealer. The dispute involved the marketing and sale of asset-backed securities. Confidential settlement was reached for client resulting in a substantial recovery.

EXHIBIT B

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY**

DAVID B. KARR, individually and on behalf of)
others similarly situated,)

)

)

Case No. 1916-CV26645

)

Division 14

)

)

**KANSAS CITY LIFE INSURANCE
COMPANY**

)

)

Defendant.

**AFFIDAVIT OF PATRICK J. STUEVE
IN SUPPORT OF MOTION FOR
ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARD**

5. In addition to my practice, I have served on the Board of Directors and Executive Committee of the YMCA of the Rockies in Estes Park, Colorado and President of the Board of Kansas City Habitat For Humanity. I currently serve on the Board of Benedictine College and the Alfred Friendly Press Fellowship Foundation headquartered at the University of Missouri, Columbia, Missouri which grants fellowships each year to 8-10 international journalists who come to the United States for five months and work at the leading news media organizations in the country. I am a recipient of the Honorable H. Michael Coburn Community Service Award from Legal Aid of Western Missouri for my pro bono efforts in our community.

6. I have been recognized by my peers as one of the top commercial trial lawyers in the country for my efforts over the past 30+ years. I am a fellow in the International Academy of Trial Lawyers Association, limited to the top 500 trial lawyers in the United States as well as a Fellow in the American College of Trial Lawyers. The *National Law Journal* recognized me as an "Elite Boutique Trailblazer" for my work in contingency fee business litigation. I have been named to *The Best Lawyers® in America* for Bet the Company, Antitrust and Commercial Litigation, Top 100 Super Lawyers in Kansas and Missouri, "Local Litigation Star" by *Benchmark Plaintiffs*, and "Best of the Bar" by the *Kansas City Business Journal* and top 100 lawyers in Missouri by *Missouri Lawyers Weekly*. *Ingram's* magazine has repeatedly named me in its list of "The Most Powerful Business Leaders in Greater Kansas City."

7. I founded Stueve Siegel Hanson in 2001. It is an AV rated law firm with 25 lawyers in Kansas City, Missouri. Stueve Siegel Hanson handles large-scale and high-stakes litigation. Most of the firm's attorneys practiced at large law firms across the country prior to joining Stueve Siegel Hanson. We employ several former government lawyers and former law clerks for the United States Circuit Courts of Appeals and United States District Courts. The firm has a nationwide practice that focuses on complex commercial and class litigation and trials involving a

wide range of contract, business torts, antitrust, consumer fraud, environmental contamination, ERISA, and securities violations.

8. The firm has successfully litigated cases of the type at issue here, including securing settlements on behalf of 77,000 policyholders against Lincoln National Life Insurance Company providing additional death benefits valued at \$2.25 billion, with a market value of approximately \$171.8 million (*see Bezich v. The Lincoln Nat. Life Ins. Co.*, No 02C01-0906-PL-73 (Allen Co., Ind.)), nearly \$60 million on behalf of approximately 90,000 John Hancock Life Insurance Company policyholders (*Larson v. John Hancock Life Ins. Co.*, No. RG16813803 (Alameda Co., Cal.)), and \$90 million on behalf of approximately 110,000 USAA Life Insurance Company policyholders (*Spegele v. USAA Life Ins. Co.*, No. 5:17-cv-967-OLG (W.D. Tex.)). Additionally, in June 2016, Stueve Siegel Hanson and Miller Schirger commenced litigation against State Farm on behalf of Plaintiff Michael Vogt and a putative class of similarly situated universal life insurance company policy owners. *See Vogt v. State Farm Life Ins. Co.*, No. 16-CV-04170-NKL. After extensive litigation, in June 2018, we successfully tried the action to a jury verdict in favor of approximately 24,000 Missouri policy owners for \$34,333,495.81, which was affirmed on appeal by the Eighth Circuit Court of Appeals. *See Vogt*, Dkts. 358 & 360 (W.D. Mo. June 6, 2018), *aff'd*, 963 F.3d 753 (8th Cir. 2020). The Supreme Court subsequently denied State Farm's petition for certiorari. 141 S. Ct. 2551 (Apr. 19, 2021). The firm, along with Miller Schirger, recently obtained preliminary approval of a class action settlement on behalf of owners of approximately 760,000 State Farm universal life insurance policy owners nationwide for \$325,000,000. *See Rogowski v. State Farm Life Insurance Co.*, No. 4:22-cv-00203-RK (W.D. Mo.). The firm (together with Miller Schirger) is also simultaneously prosecuting similar cases against Connecticut General Life Insurance Company, Genworth Life and Annuity Insurance Company, Symetra Life Insurance Company, and Columbus Life Insurance Company.

9. Stueve Siegel Hanson practices predominantly in the area of complex litigation in state and federal courts across the country and primarily represents plaintiffs on a contingency basis. The firm is unique in that it is capable of handling large scale and high stakes litigation on a fully contingent basis. We are in a position to advance substantial litigation costs, including expert fees, and to prosecute complex and lengthy litigation that includes many thousands of clients. We do this with the hope that we will ultimately recover as much as, or more than, we would in a traditional hourly billable practice. Like this case, many of our cases are taken on a contingency basis such that the firm advances all expenses and time with no guarantee of recovery absent a judgment or settlement.

10. As evidence of the firm's unique position in the legal market, Stueve Siegel Hanson is one of the few firms in the country that has prosecuted multiple class and collective action cases through trial and appeal. Beyond this case, in which we secured a class action jury verdict of \$28.36 million on behalf of the Class, as set forth above, in 2018, we tried a case against State Farm Life Insurance Company resulting in a jury verdict of over \$34 million on behalf of the class of approximately 24,000 policyholders. *See Vogt v. State Farm Life Ins. Co.*, No. 2:16-cv-04170-NKL, Dkt. 358 (W.D. Mo. June 6, 2018). In June 2017, Stueve Siegel Hanson tried a class action in *In re: Syngenta AG MIR162 Corn litigation*, Case No. 14-MD-2591-JWL (D. Kan.) and secured a class action jury verdict of \$217.7 million on behalf of Kansas corn farmers. And, in 2011, Stueve Siegel Hanson tried a class and collective action in *Garcia v. Tyson Foods, Inc.*, No. 06-2198-JTM (D. Kan.), and secured a total class and collective action jury verdict and judgment of \$785,894.23 on behalf of hourly employees at a meat processing plant who were not paid certain straight and overtime wages. Stueve Siegel Hanson has prosecuted all manner of class action and complex commercial litigation matters.

11. As the representative cases contained in Stueve Siegel Hanson LLP's attached firm

résumé demonstrate, I and my firm have an extensive history of achieving significant monetary relief for class members. *See* Ex. 1 hereto.

12. Several judges in state and federal court have previously recognized the skill and professionalism of the attorneys at Stueve Siegel Hanson:

- In *Nobles v. State Farm Mutual Automobile Insurance Co.*, the Honorable Nanette K. Laughrey stated the following in regards to Stueve Siegel Hanson's work in that case: "I've always been impressed with the professionalism and the quality of work that has been done in this case by both the plaintiffs and the defendants. On more than one occasion, it has made it difficult for the Court because the work has been so good."
- Recently, the Honorable Andrew J. Guilford in certifying a contested class action in the Central District of California remarked:

The most compelling evidence of the qualifications and dedication of proposed class counsel is their work in this case. Considering how far this action has come despite a grant of summary judgment in Defendant's favor and a reversal on appeal, proposed class counsel have made a strong showing of their commitment to helping the class vigorously prosecute this case.

- The Honorable John W. Lungstrum on the United States District Court for the District of Kansas stated the following about Stueve Siegel Hanson attorneys in the

In Re: Syngenta AG MIR 162 Corn Litigation:

The complex and difficult nature of this litigation, which spanned across multiple jurisdictions and which involved multiple types of plaintiffs and claims, required a great deal of skill from plaintiffs' counsel, including because they were opposed by excellent attorneys retained by Syngenta. That high standard was met in this case, as the Court finds that the most prominent and productive plaintiffs' counsel in this litigation were very experienced had very good reputations, were excellent attorneys, and performed excellent work. In appointing lead counsel, the various courts made sure that plaintiffs would have the very best representation...

In this Court's view, the work performed by plaintiffs' counsel was consistently excellent, as evidenced at least in part by plaintiffs' significant victories with respect to dispositive motion practice, class certification, and trial.

- The Honorable Audrey G. Fleissig on the United States District Court for the Eastern District of Missouri, in *Perrin v. Papa John's International, Inc.*, which Stueve Siegel Hanson prosecuted, stated:

I believe this was an extremely difficult case. I also believe that it was an extremely hard fought case, but I don't mean hard fought in any negative sense. I think that counsel for both sides of the case did an excellent job...I congratulate the plaintiffs and I also congratulate the defense lawyers on the very, very fine job that both sides did in a case that did indeed pose novel and difficult issues.

- The Honorable Michael Manners of this court, who presided over the case, *Berry v. Volkswagen Group of America, Inc.*, which Stueve Siegel Hanson prosecuted, stated: "The experience, reputation and ability of class counsel is outstanding."

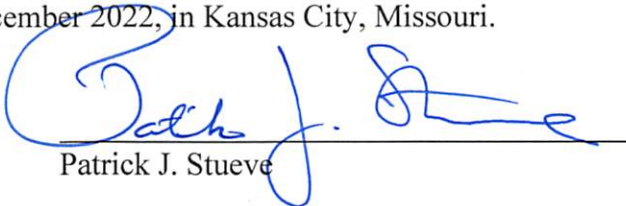
12. Courts across the country have approved attorneys' fees for my firm using similar percentages of the fund as requested in this case. For example, in 2021, the Western District of Missouri approved an attorneys' fee award of one-third of a common fund, including the jury's damages award of \$34.3 million with and pre- and post-judgment interest. *Vogt v. State Farm Life Ins. Co.*, No. 2:16-CV-04170-NKL, 2021 WL 247958, at *1 (W.D. Mo. Jan. 25, 2021) (finding that a "one-third of the common fund is a reasonable fee for Class Counsel"). Also in 2021, the Western District of Texas approved fees of 30% of the \$90 million settlement fund. *Spegele v. USAA Life Ins. Co.*, No. 5:17-CV-967-OLG, Dkt. 117 (W.D. Tex. Aug. 26, 2021) (approving attorneys' fees of 30% of the \$90 million settlement fund as "a reasonable percentage" that "fits comfortably within the range of typical percentage of common funds awarded as reasonable fees" and "is comparable to awards in similar cases."). In December 2018, the U.S. District Court for

the District of Kansas approved a fee award of 33% of a \$1.51 billion class action settlement fund. *See In Re Syngenta AG MIR162 Corn Litig.*, Case No. 2:14-md-02591-JWL-JPO, MDL No. 2591, Dkts. 3587, 3849, 4128 (D. Kan.). In May 2018, the Superior Court of Alameda County, California approved a fee award of 30% of a \$59.75 million class action settlement fund. *See Larson v. John Hancock Life Ins. Co. (U.S.A.)*, Case No. RG16813803 (Sup. Ct. Alameda Cty. Cal. May 8, 2018). In July 2019, the U.S. District Court for the District of Maryland approved a fee award of 30% of a \$3.25 million class action settlement fund. *See Hutton v. Nat'l Bd. of Exam'rs in Optometry, Inc.*, Case No. 16:cv-3025-JKB, Dkt. 51 (D. Md.).

13. In non-class action cases, a typical contingent fee arrangement provides that the attorney representing the plaintiff receives 25 to 50 percent of the plaintiffs' recovery, exclusive of costs. Moreover, Class Counsel often represents sophisticated businesses in complex commercial litigation on a contingency basis, where these business clients commonly agree to pay fees amounting to 30 to 50 percent of any recovery.

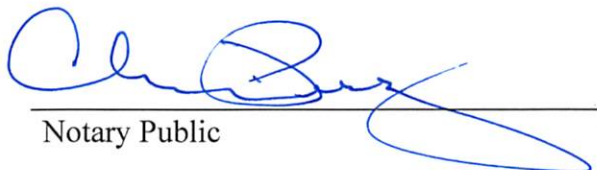
I attest under penalty of perjury that the foregoing is true and correct.

Executed on this 21st day of December 2022, in Kansas City, Missouri.


Patrick J. Stueve

Subscribed and sworn to before me this 21 day of December, 2022.

My Commission Expires:


Notary Public

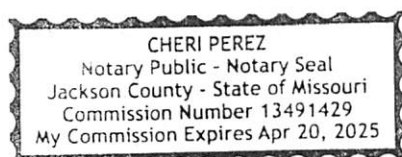


EXHIBIT 1



WHO WE ARE

Stueve Siegel Hanson was launched in 2001 on a foundational business model where our payment for legal services would depend on the results delivered and the value provided rather than the hours spent on a case. Since then, this model has been a hallmark of our success, which has included the recovery of billions of dollars in damages and relief for consumers, entrepreneurs, employees, small and large businesses, and a variety of economic underdogs. The cases we handle frequently arise in some of the most complex areas of the law, including antitrust, intellectual property, FLSA collective actions, consumer and securities class actions, data breach, franchise disputes and other complex business litigation.

Our team of lawyers includes some of the best trained and most experienced trial lawyers in the country. Stueve Siegel Hanson's founding partners were partners at some of the country's largest law firms. The firm has also been fortunate in its ability to attract, retain and promote lawyers educated at top law schools and groomed at nationally prominent law firms, many of whom also have had valuable experiences as judicial law clerks at both the trial court and appellate levels.

Stueve Siegel Hanson is a national litigation firm based in Kansas City, Missouri, with offices in the heart of The Country Club Plaza.

OUR MISSION

Stueve Siegel Hanson provides aggressive, cutting-edge representation in litigation. Our law firm serves companies in business disputes as well as individuals harmed by dangerous products, unjust employers or unfair business practices.


Because we work on a contingency model, our fees are based on the results we achieve. This means our trial lawyers have the same interests you do: Succeed for you and we succeed ourselves, fail you and we fail ourselves.

We believe the pursuit of justice should not be subject to the dysfunction of the billable hour, which rewards attorneys more for time than the results achieved. We take pride in winning efficiently and effectively as our clients' partner in the courtroom.

We invest in our firm, our profession and our community. We recruit the brightest attorneys from the nation's top law firms, and together we maintain a culture of camaraderie and respect. We apply new technology to further our efficiency, communication and creativity. We give our time and talents to pro bono projects, community service and bar organizations. While we take considerable pride in our awards and recognition, we are most fulfilled by results, referrals and repeat business.

RECENT RECOVERIES AS LEAD COUNSEL IN COMPLEX AND CONSUMER LITIGATION

- \$2.25 billion in death benefits settlement, with a market value of approximately \$171.8 million, on behalf of 77,000 policyholders against Lincoln National Life Insurance Company.
- \$218 million jury trial verdict as lead trial counsel on behalf of class of Kansas farmers, followed by a \$1.51 billion settlement on behalf of a nationwide class of corn growers, grain-handling facilities and ethanol plants against biotech giant Syngenta related to its marketing and launch of genetically modified corn seed.
- \$1.5 billion settlement in a nationwide class action stemming from credit reporting firm Equifax's massive 2017 data breach.
- \$500 million, plus additional benefits, for victims of the T-Mobile data breach.
- \$220 million settlement for all Missouri residents who purchased the prescription pain reliever Vioxx before it was removed from the market.
- \$190 million, plus additional benefits, for victims of the Capitol One data breach.
- \$95 million, plus additional benefits, in settlements for U.S. dairy farmers regarding allegedly defective robotic milkers.
- \$90 million settlement in a nationwide class action lawsuit against USAA Life Insurance Company over alleged life insurance policy overcharges.
- \$75 million settlement in relief for purchasers of Hyundai vehicles for Hyundai's overstatement of horsepower in vehicles.
- \$73 million settlement on behalf of a class of bank employees improperly classified under the Fair Labor Standards Act.
- \$59.75 million settlement on behalf of life insurance policyholders against John Hancock Life Insurance Company (U.S.A.).
- \$53.5 million in settlements between a class of direct purchasers of automotive lighting products and manufacturers accused of participating in a wide-ranging price fixing scheme.
- \$44.5 million settlement to resolve a class action accusing U.S. Bank of facilitating the theft of customer funds at now-bankrupt futures merchant Peregrine Financial Group Inc.
- \$44 million in restitution and \$7.9 million in cash settlement for dentists against Align Technology, Inc. in a nationwide deceptive trade practices case.
- \$39.5 million in settlements from three refiners on behalf of adjacent homeowners who were living above a large plume of gasoline leaked from the refineries and connecting pipelines.
- \$35 million settlement for consumer fraud and antitrust claims brought on behalf of retail customers of pre-filled propane tanks.
- \$34.3 million jury verdict on behalf of 24,000 State Farm Life Insurance Co. policyholders who were overcharged for life insurance policies.
- \$33 million settlement for Mitsubishi and Chrysler owners related to defective wheel rims.

- 
- \$33 million settlement in nationwide class action alleging price fixing for certain polyurethanes in Urethanes antitrust case.
 - \$29 million in settlements against Experian, one of the “big three” credit reporting agencies, arising out of Experian’s reporting of delinquent loan accounts.
 - \$29.5 million in settlements for overdraft fees charged to customers from UMB Bank, Bank of Oklahoma and Intrust Bank.
 - \$25.4 million settlement for purchasers of H&R Block’s Express IRA product related to allegedly false representations made during the sales presentation.

CLASS AND COLLECTIVE ACTIONS

Since opening its doors in 2001, Stueve Siegel Hanson has obtained substantial results in a wide range of complex commercial, class, and collective actions while serving as lead or co-lead counsel.

Over the past decade, verdicts and settlements include:

Antitrust

- Obtaining \$53 million in settlements between a class of direct purchasers of automotive lighting products and several manufacturers accused of participating in a wide-ranging price fixing scheme.
- Obtaining a \$25 million settlement in a nationwide antitrust class action regarding price fixing of aftermarket automotive sheet metal parts.
- Obtaining a \$7.25 billion settlement in a massive price-fixing case brought by a class of U.S. merchants against Visa, Mastercard and their member banks.
- Obtaining \$33 million in nationwide class action alleging price fixing for certain polyurethanes in Urethanes antitrust case.
- Obtaining a \$25 million settlement in a class action lawsuit that alleged Blue Rhino and certain competitors conspired to reduce the amount of propane gas in cylinders sold to customers. The firm obtained a \$10 million settlement in a related suit against AmeriGas.

Catastrophic Injury

- Obtaining \$39.5 million in settlements from three refiners on behalf of adjacent homeowners who were living above a large plume of gasoline leaked from the refineries and connecting pipelines.

Commercial Litigation

- Obtaining a \$1.51 billion settlement – the largest agribusiness settlement in U.S. history – for U.S. corn growers, grain handling facilities and ethanol production plants that purchased corn seeds prematurely sold by Syngenta.
- Obtaining a \$218 million jury verdict for a class of Kansas corn producers who purchased corn seeds prematurely sold by Syngenta.
- Obtaining a \$55 million settlement for U.S. dairy farmers who purchased the Classic model of the voluntary milking system (VMS) manufactured and sold by DeLaval Inc.
- Obtaining a \$56 million settlement on behalf of a class of government entities against Trinity Industries and its manufacturing arm, Trinity Highway Products, to remove and replace the companies' 4-inch ET Plus guardrail end terminals on Missouri roads.
- Obtaining more than \$44 million in restitution and \$7.9 million in cash for dentists against Align Technology, Inc. in a nationwide deceptive trade practices case.

Consumer Class Action

- Obtaining two settlements totaling \$29 million to resolve consumer class action claims against Experian, one of the "big three" credit reporting agencies, arising out of the company's reporting of delinquent loan accounts.
- Obtaining up to \$220 million in damages for all Missouri residents who purchased the prescription pain reliever Vioxx before it was removed from the market.
- Obtaining more than \$75 million in relief for purchasers of Hyundai vehicles for Hyundai's overstatement of horsepower in vehicles.
- Obtaining \$29.5 million in settlements for overdraft fees charged to customers from UMB Bank, Bank of Oklahoma and Intrust Bank.
- Obtaining \$19.4 million for purchasers of H&R Block's Express IRA product related to allegedly false representations made during the sales presentation.

Cost of Insurance

- Obtaining a \$2.25 billion death benefit settlement in a class action lawsuit against The Lincoln National Life Insurance Company over alleged life insurance policy overcharges.
- Obtaining a \$90 million settlement in a class action against USAA Life Insurance Company over alleged life insurance policy overcharges.
- Obtaining a \$59.75 million settlement in a nationwide class action lawsuit against John Hancock Life Insurance Company (U.S.A.) over alleged life insurance policy overcharges.
- Obtaining a \$34 million jury verdict in a class action trial against State Farm Insurance regarding alleged life insurance policy overcharges.

Data Privacy

- Obtaining a historic \$1.5 billion settlement in a nationwide class action stemming from credit reporting firm Equifax's massive 2017 data breach.
- Obtaining \$500 million, plus additional benefits, for victims of the T-Mobile data breach.
- Obtaining a \$115 million settlement (at the time, the largest data breach settlement in U.S. history) resulting from a 2015 data breach affecting Anthem, Inc., one of the nation's largest for-profit managed health care companies.
- Obtaining a \$10 million settlement in a class action resulting from a data breach at Target Corp.
- Obtaining a \$3.25 million settlement in a class action stemming from a data breach at the National Board of Examiners in Optometry.
- Obtaining a \$2.3 million settlement in a class action stemming from a data breach at global technology company Citrix's internal network.
- Obtaining a \$3.25 million settlement in data privacy litigation on behalf of more than 61,000 optometrists whose personal information was compromised by the national optometry board.

Wage and Hour

- Obtaining a \$73 million settlement on behalf of current and former Bank of America retail banking and call center employees who alleged violations of the Fair Labor Standards Act.
- Obtaining a \$27.5 million settlement for a class of loan originators who were misclassified as exempt and denied overtime.
- Obtaining a \$25 million settlement for a class of mortgage consultants for unpaid overtime as lead counsel in multidistrict litigation.
- Obtaining a \$24 million settlement to resolve a collective arbitration and more than 50 federal mass actions involving misclassified satellite technicians denied overtime and minimum wages.
- Obtaining a \$14.5 million settlement for a class of inventory associates for unpaid overtime.
- Obtaining a \$12.5 million settlement for multiple classes and collective of pizza delivery drivers alleging vehicle expenses reduced their wages below the minimum wage.
- Obtaining a \$12.5 million settlement for classes of workers at two MGM casinos for tip credit violations.
- Obtaining a \$10.5 million settlement for a class of bank employees for misclassification as being exempt from overtime.
- Obtaining a \$9.8 million settlement for collectives of workers at three Rush Street Gaming casinos for tip credit and wage deduction violations.
- Obtaining a \$8.5 million settlement for a collective of employees in the hospitality industry for unpaid minimum wages.
- Obtaining a \$7.7 million settlement for a class of loan account servicers misclassified as exempt and denied overtime.
- Obtaining a \$7.5 million settlement for class of loan processors in multidistrict litigation.
- Obtaining \$6 million settlement for a class of workers at Wind Creek Casino for tip credit and wage deduction violations.
- Obtaining numerous settlements for \$5 million or less for classes and collective seeking unpaid overtime and minimum wages.

CONSUMER CLASS ACTIONS

Stueve Siegel Hanson devotes a significant portion of its practice to representing consumers across the country in large class and collective actions.

Representative cases include:

- *Smith v. Experian Information Solutions*, Case No. 8:17-cv-00629, United States District Court for the Central District of California (class action lawsuit alleging violations of the Fair Credit Reporting Act; class settlement of \$5 million approved in November 2020).
- *Reyes v. Experian Information Solutions*, Case No. 8:16-cv-563-AG-AFMx, United States District Court for the Central District of California (class action lawsuit alleging violations of the Fair Credit Reporting Act; class settlement of \$24 million approved in July 2020).
- *Spegele v. USAA Life Insurance Co.*, Case No. 5:17-cv-967-OLG, United States District Court for the Western District of Texas (class action alleging life insurance policy overcharges, class settlement of \$90 million approved in August 2021).
- *Vogt v. State Farm Life Insurance Co.*, Case No. 16:4170-CV-C-NKL, United States District Court for the Western District of Missouri (class action for life insurance policy overcharges; \$34 million jury verdict affirmed by the Eighth Circuit Court of Appeals in June 2020).
- *Larson v. John Hancock Life Ins. Co.*, Case No. RG16813803, Superior Court for Alameda County, California (class action alleging life insurance policy overcharges; class settlement of \$59.75 million approved in May 2018).
- *Bezich v. Lincoln National Life Insurance Co.*, Case No. 1:09-CV-200-JVB, United States District Court for the Northern District of Indiana (class action alleging life insurance policy overcharges; settlement terms include \$2.25 billion in death benefits, with a market value of approximately \$171.8 million; settlement approved in February 2016).
- *Plubell v. Merck & Co.*, Case No. 04-CV-235817, Circuit Court of Jackson County, Missouri at Independence (consumer fraud class action alleging unlawful and unfair business practices under the Missouri Merchandising Practices Act; up to \$220 million settlement approved in March 2013).
- *In re: Underfilled Propane Tank Litigation*, Case No. 4:09-md-02086-GAF, United States District Court for the Western District of Missouri (MDL consumer protection case alleging Ferrellgas and AmeriGas conspired to reduce the fill levels of retail propane tanks; \$35 million in settlements approved in 2012).
- *Molina et al. v. Intrust Bank, N.A.*, Case No. 10-CV-3686, in the Eighteenth Judicial District, District Court, Sedgwick County, Kansas (case based on Intrust Bank's alleged unfair and deceptive overdraft fee practices; \$2.75 million settlement obtained in January 2012).
- *Eaton, et. al v. Bank of Oklahoma, N.A.*, Case No. CJ-2010-05209, in the District Court in and For Tulsa County State of Oklahoma (case based on Bank of Oklahoma's alleged unfair and deceptive overdraft fee practices; \$19 million settlement obtained in November 2011).
- *Allen et al. v. UMB Bank, N.A.*, Case No. 1016-CV34791, in the Circuit Court of Jackson County, Missouri at Kansas City (case based on UMB's alleged unfair and deceptive overdraft fee practices; \$7.8 million settlement in May 2011).
- *Hyundai Horsepower Litigation*, Case No. 02CC00303, Superior Court for Orange County, California (consumer claims alleging Hyundai overstated horsepower ratings in more than 1 million vehicles sold in the United States over a 10 year period; settlement approved in May 2010 valued at between \$75 million and \$125 million).



CONSUMER CLASS ACTIONS

- *In Re: H&R Block, Inc. Express IRA Marketing Litigation*, Case No. 4:06-md01786-RED, United States District Court for the Western District of Missouri (consumer protection case alleging H&R Block improperly marketed and sold its Express IRA product; \$19.4 million class settlement approved May 2010).
- *Parkinson v. Hyundai Motor America*, Case No. 8:06-cv-345-AHS, United States District Court for the Central District of California (consumer protection case alleging Hyundai knowingly sold vehicles with defective flywheel systems; class settlement for reimbursement of repair expenses approved in April 2010).



UNIVERSAL LIFE INSURANCE OVERCHARGE LITIGATION

Stueve Siegel Hanson has been litigating cases involving universal life insurance for more than 10 years. These policies are often sold as a combination solution for death benefit protection and investment growth.

Some life insurance companies have been overcharging policy owners for the cost of insurance and expenses. As a result, money that should be building up for the policy owner's benefit is going instead to the insurance company's coffers. Worse, for many policy owners, overcharges or rate increases have made policies simply unaffordable — exactly when they are needed the most.

This puts policy owners in a tough spot:

- Do they continue to pay overcharges and premiums just to maintain their life insurance?
- Do they give up their policies after they've paid so much into them?
- Can they still get life insurance?

Stueve Siegel Hanson advocates for policy owners nationwide. We have recovered more than \$2 billion in cash and death benefits for policy owners. Recent experience includes obtaining:

- A \$90 million settlement with USAA Life on behalf of policy owners in a nationwide class action alleging that USAA Life overcharged policy owners by including undisclosed expenses and profits in its cost of insurance charge in violation of the insurance policies.
- A \$34 million jury verdict against State Farm on behalf of Missouri policy owners alleging the insurer improperly included non-mortality factors in calculating the cost of insurance charge under the insurance contract.
- A \$59 million settlement with John Hancock on behalf of policy owners in a nationwide class action alleging that John Hancock overcharged policy owners by including expenses in its cost of insurance charge in violation of the insurance contract.
- A settlement for \$2.25 billion in potential death benefits with Lincoln National Life on behalf of policy owners who purchased a variable universal life insurance policy and alleged the insurer overcharged them for the cost of insurance in violation of the policy.

AWARDS AND RECOGNITION

We are proud to have been recognized by local, regional and national publications for our work and results.

Representative Rankings:



- Titans of the Plaintiffs Bar
- Food & Beverage: Practice Group of the Year | MVP of the Year
- Cybersecurity & Privacy: Practice Group of the Year | MVP of the Year | Rising Stars



- Ranked Band 1 in Missouri: Litigation - Mainly Plaintiffs | Department
- Ranked Band 2 in Missouri: Labor & Employment - Mainly Plaintiffs | Department
- Ranked Band 1 in Missouri: Litigation - Mainly Plaintiffs | Norman Siegel and Patrick Stueve



- Elite Trial Lawyers Finalist: Business Torts | Financial Products | Privacy/Data Breach
- Top 100 Jury Verdicts of 2017, No. 10 Verdict in the U.S.



- 2022 Lawyer of the Year:
 - George Hanson | Employment
 - Steve Six | Appellate
 - Patrick Stueve | Antitrust Litigation
- 2020 Lawyer of the Year:
 - Norman Siegel | Mass Tort & Class Actions



Regional Rankings: Kansas City-Mo.

- Tier 1 in Antitrust | Appellate | Bet-the-Company Litigation | Commercial Litigation | Employment Law- Individuals | Mass Tort & Class Actions-Plaintiffs
- Tier 2 in Litigation-Labor & Employment | Litigation-Securities | Personal Injury Litigation-Plaintiffs

National Ranking:

- Tier 3 in Mass Tort Litigation / Class Actions-Plaintiffs

JUDICIAL PRAISE

"I've always been impressed with the professionalism and the quality of work that has been done in this case by both the plaintiffs and the defendants. On more than one occasion, it has made it difficult for the Court because the work has been so good."

Hon. Nanette Laughrey

U.S. District Court for the Western District of Missouri
Nobles, et al., v. State Farm Mutual Automobile Insurance Co.

"The complex and difficult nature of this litigation, which spanned across multiple jurisdictions and which involved multiple types of plaintiffs and claims, required a great deal of skill from plaintiffs' counsel, including because they were opposed by excellent attorneys retained by Syngenta. That high standard was met in this case, as the Court finds that the most prominent and productive plaintiffs' counsel in this litigation were very experienced had very good reputations, were excellent attorneys, and performed excellent work. In appointing lead counsel, the various courts made sure that plaintiffs would have the very best representation..."

In this Court's view, the work performed by plaintiffs' counsel was consistently excellent, as evidenced at least in part by plaintiffs' significant victories with respect to dispositive motion practice, class certification, and trial."

Hon. John Lungstrum

U.S. District Court for the District of Kansas
In Re: Syngenta AG MIR 162 Corn Litigation

"The most compelling evidence of the qualifications and dedication of proposed class counsel is their work in this case. Considering how far this action has come despite a grant of summary judgment in Defendant's favor and a reversal on appeal, proposed class counsel have made a strong showing of their commitment to helping the class vigorously prosecute this case."

Hon. Andrew J. Guilford

U.S. District Court for the Central District of California
Reyes v. Experian

"I believe this was an extremely difficult case. I also believe that it was an extremely hard fought case, but I don't mean hard fought in any negative sense. I think that counsel for both sides of the case did an excellent job..."

I congratulate the plaintiffs and I also congratulate the defense lawyers on the very, very fine job that both sides did in a case that did indeed pose novel and difficult issues."

Hon. Audrey G. Fleissig

U.S. District Court for the Eastern District of Missouri
William Perrin, et al., v. Papa John's International, Inc.

"The experience, reputation and ability of class counsel is outstanding."

Hon. Michael Manners

Circuit Court of Jackson County, Missouri
Berry v. Volkswagen Grp. of Am., Inc.

PATRICK J. STUEVE

PARTNER



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Recognized as a *National Law Journal* "Elite Boutique Trailblazer" for his work in contingency fee business litigation, Patrick Stueve has prosecuted claims in federal and state courts nationwide against some of the largest companies in the world, including Syngenta, Merck, Formula 1 Racing, ITW, Citigroup, UnitedHealthcare and AIG. He has secured more than \$2.5 billion in jury verdicts, arbitration awards and settlements. Patrick focuses his practice on:

"Bet-the-Company" Commercial Litigation. Patrick represents entrepreneurs, privately held companies and publicly traded Fortune 500 corporations. He has tried and won several high stakes commercial cases in federal and state courts and through arbitration. His success has resulted in being named "Lawyer of the Year" for antitrust and bet-the-company litigation by *Best Lawyers in America*, and rated Band 1 by Chambers USA. He is one of only a select few trial lawyers to become a Fellow of both the International Academy of Trial Lawyers Association and the American College of Trial Lawyers.

Class Actions. Patrick has served as lead counsel in numerous nationwide, multi-state and statewide class actions on behalf farmers, business owners, and individuals against the world's largest financial institutions, insurance carriers, manufacturers, and biotech companies. He has tried class actions to verdict, pursued several cases through appeals to the highest state and federal courts and secured several historic settlements.

Antitrust. Patrick works for companies that have been subject to unfair or illegal business tactics. In one case, he settled a landmark Sherman Act I antitrust lawsuit brought against the largest managed care organizations and hospital systems in Kansas City. The case ultimately settled after the court denied summary judgment and ruled Heartland had a damages case in excess of \$140 million.

Food and Agriculture. Named one of Law360's "MVPs of the Year" for Food & Beverage, Patrick served as co-lead and class counsel for a landmark case against agribusiness giant Syngenta on behalf of corn growers, grain-handling facilities and ethanol plants nationwide. The resulting \$1.51 billion settlement – believed to be the largest agricultural settlement in U.S. history – resolved thousands of cases nationwide related to Syngenta's marketing and launch of genetically modified corn seed. Pat also has handled matters including corn and rice farming, commercial fishing, and various commodities.

LINDSAY TODD PERKINS

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Lindsay Todd Perkins focuses her practice on legal writing and oral advocacy. Lindsay develops strategies and arguments for briefings to the court; argues key dispositive motions in court hearings; and drafts complaints, memoranda, and appellate briefs.

Lindsay served on the trial team in *Vogt v. State Farm Life Insurance Co.*, a class-action lawsuit in the U.S. District Court for the Western District of Missouri that alleged the insurance company overcharged its policyholders for 23 years. The case resulted in a \$34 million verdict after just two hours of jury deliberations. Lindsay prepared the jury instructions and post-trial and appellate briefing.

In another matter, *Larson v. John Hancock Life Insurance Company*, Lindsay drafted the class certification briefing in a case alleging the defendant life insurance company improperly charged its policyholders excessive fees for the cost of insurance. The California state court ultimately certified a nationwide class. The lawsuit settled soon thereafter for \$59,750,000.

Lindsay took primary drafting responsibility for the appeal in a class action matter, *Bezich v. The Lincoln National Life Insurance Co.* She successfully defended the certification of the class of plaintiffs who alleged inappropriate fees and charges on their life insurance policies. The lawsuit ultimately resolved with a settlement valued at approximately \$171.8 million.

Lindsay also focuses a significant portion of her practice on data and privacy litigation, taking a lead role in preparing the pleadings and briefing in cases against Marriott and the National Board of Examiners in Optometry, among others.

Lindsay honed her legal writing and analysis during two clerkships after law school; she served as a law clerk for Judge Duane Benton of the U.S. Court of Appeals for the Eighth Circuit and Judge Ortrie Smith of the U.S. District Court for the Western District of Missouri. She credits this experience with building her understanding of the inner workings of the court and the most persuasive arguments.

Prior to joining Stueve Siegel Hanson, she practiced commercial and employment litigation at Spencer Fane LLP.

ETHAN M. LANGE

PARTNER



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Ethan Lange represents individuals and businesses in a wide variety of high-stakes cases, including business disputes, nationwide class actions, multidistrict litigation, antitrust lawsuits, patent infringement matters, personal injury cases, civil rights cases and will contests. He has served clients from all walks of life, ranging from Fortune 500 companies to prisoners; regardless of the size of the case or the means of his clients, Ethan works tirelessly to secure the most favorable outcome possible.

Ethan's practice is concentrated in litigation, arbitration and other trial work that includes first-chair federal and state jury trial experience. In addition to his trial exposure, he has handled numerous hearings, depositions, mediations and motions.

Ethan served on the trial team in *Vogt v. State Farm Life Insurance Co.*, a class-action lawsuit in the U.S. District Court for the Western District of Missouri that alleged the insurance company overcharged its policyholders for 23 years. He picked the jury, cross-examined the key expert witness, and assisted with jury arguments.

The case resulted in a substantial verdict after just two hours of jury deliberations. The verdict has since been affirmed on appeal. In other recent matters, Ethan, along with his colleagues, successfully briefed class certification motions, resulting in the certification of two different classes with more than 80,000 policyholders in each.

Ethan began his legal career at a national trial boutique, Diamond McCarthy; then served as a law clerk for Judge Ed Kinkeade of the U.S. District Court for the Northern District of Texas. Ethan was involved in hundreds of different lawsuits, including civil and criminal trials. Following his clerkship, Ethan practiced at Locke Lord, where he represented clients in jury and bench trials in federal and state courts, as well as arbitration and mediation proceedings. He joined Stueve Siegel Hanson in 2015.

Ethan is a founding board member for the National Board of Complex Litigation Lawyers, a division of the National Board of Trial Advocacy, where he will work with federal and state judges and nationally recognized lawyers to shape the future of complex litigation. He is also a board member of the Federal Bar Association Chapter for the Districts of Kansas and Western Missouri, and the Lawyers Association of Kansas City.

DAVID A. HICKEY

ATTORNEY



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An engineer by training, David Hickey advises individuals and companies in high-stakes litigation requiring in-depth technical and factual analysis. David leverages his knowledge of financial, scientific, and actuarial practices to develop winning legal strategies. He prides himself on learning every intricacy in each of his cases.

He has successfully litigated complex cases in both state and federal courts around the nation, advocating for clients in areas including:

Antitrust. David helps businesses that have suffered losses from price fixing, monopolization, conspiracy to restrain trade, and more. He represented one of the largest grocery wholesalers in an antitrust matter against the country's largest potato sellers, who were alleged to have fixed the price of fresh and processed potatoes nationwide; he previously represented the same client in an antitrust dispute surrounding a conspiracy to increase the price of eggs under the guise of animal welfare. Stueve Siegel Hanson achieved favorable settlements in both lawsuits.

Cost of Insurance. David works on behalf of consumers who are being improperly overcharged for life insurance policies; he is a part of the Stueve Siegel Hanson team that pursues class action litigation against life insurance companies for unauthorized hidden fees and rate increases. The team's recent accomplishments include a \$59.75 million settlement in a class action lawsuit against John Hancock, a \$34.3 million jury verdict in a class action lawsuit against State Farm, and a \$90 million settlement in a class action lawsuit against USAA Life Insurance Company.

Before joining Stueve Siegel Hanson in 2010, David worked as a summer clerk for Judge David Waxse at the U.S. District Court for the District of Kansas and practiced at another Kansas City law firm.

He volunteers with Legal Aid of Western Missouri's Volunteer Attorney Project, where he represents low-income individuals in civil matters. David is an avid Kansas City sports fan and runs in a wide variety of local road races.

BENJAMIN J. STUEVE

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Benjamin J. Stueve represents individuals and companies in a variety of business matters, consumer cases, and class action litigation. He has played key roles in litigation involving data breaches, insurance practices and contract disputes and has argued before the Kansas Supreme Court. He brings considerable legal writing experience that includes drafting motions to dismiss, discovery, pleadings, and a dispositive motion that succeeded in federal court.

As former defense attorney, federal law clerk and English teacher, Ben is adept at finding creative solutions in difficult situations and developing focused strategies for complex matters. He credits his experience teaching numerous grade levels in both private and public schools with forging an individual-centered approach and steadfastness while pursuing resolutions for clients.

While attending law school, Ben worked as a legal intern at Kansas Legal Services and as a judicial intern for U.S. District Court for the District of Kansas Judge Carlos Murguia. He was also a summer associate at Stinson Leonard Street LLP, now known as Stinson LLP.

After law school, Ben served as a law clerk to District Judge Stephen R. Bough of the United States District Court for the Western District of Missouri. During this time, he gained intimate exposure to an array of civil litigation matters and the inner workings of courts. Following his clerkship, he returned to Stinson as an associate in the Litigation Associates group. His time at the AmLaw 200 firm provided valuable, first-hand perspective to how defense lawyers assess cases and develop strategies.

Now at Stueve Siegel Hanson, Ben applies valuable insights gained throughout his legal and teaching careers to effectively identify and communicate the most compelling aspects of clients' cases.

Ben is actively involved in legal community and youth organizations, including serving as the chairperson for the law student mentorship program of the Federal Bar Association Chapter for the Districts of Kansas and Western Missouri, and volunteering at Operation Breakthrough as a member of Lawyers Encouraging Academic Performance (LEAP).



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