EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

In re EPIPEN (EPINEPHRINE INJECTION, USP) MARKETING, SALES PRACTICES AND ANTITRUST ACTION This Document Relates To: CONSUMER CLASS CASES.	Civil Action No. 2:17-md-02785-DDC-TJJ (MDL No: 2785)

DECLARATION OF STEVEN S. GENSLER IN SUPPORT OF THE SETTLEMENT AGREEMENT, AWARD OF ATTORNEY'S FEES, AND CLASS REPRESENTATIVE INCENTIVE AWARD

I, Steven S. Gensler, declare as follows:

1. I am the Gene and Elaine Edwards Family Chair at the University of Oklahoma College of Law, where I teach Civil Procedure and related classes. I also currently serve as the Associate Dean for Academic Affairs.

2. I have been teaching and studying federal civil practice and procedure for over 20 years. For the last 15 years, I have been the principal author of a treatise on the Federal Rules of Civil Procedure, which my co-author and I revise and update annually. From 2005 to 2011, I served as a member of the Advisory Committee on Civil Rules.[1] My curriculum vitae is attached as **Exhibit 1**.

3. I have been retained by Plaintiff's Counsel to provide an opinion as to: (1) the fairness, reasonableness, and adequacy of the Settlement Agreement; (2) the reasonableness of Co-

[1] I currently serve as the lead consultant to the U.S. Judicial Conference's Committee on Federal-State Jurisdiction. I list these appointments only to establish my credentials and submit this declaration solely in my personal capacity.

Lead Counsel's attorney's fee request; and (3) the reasonableness of the Class Representatives' request for incentive awards.

4. In forming these opinions, I have reviewed, among other things: (1) pleadings, filings, and orders in this case; (2) the Settlement Agreement; (3) the Joint Declaration of Co-Lead Counsel in Support of Class Plaintiffs' Motion for Final Approval of Settlement, Approval of Plan Allocation, and Award of Attorneys' Fees, Expenses, and Service Awards; (4) the Declaration of Eric Schachter of A.B. Data, Ltd. in Support of Class Plaintiffs' Motion for Final Approval of Mylan Settlement and Plan of Allocation; and (5) the Declarations of all 35 Class Representatives for whom the Plaintiffs are seeking service awards for their contributions while serving as representative plaintiffs.

5. The analysis set forth in this Declaration is substantially the same as the analysis set forth in my Declaration in support of the Pfizer settlement. That is because the same analysis that supported approval of the Pfizer settlement also supports approval of this settlement involving the Mylan Defendants.[2] And the same analysis that supported a percentage-based fee of 1/3 of the gross settlement in Pfizer also supports a percentage-based fee of 1/3 of the gross settlement here. My analysis of those topics has not changed, so I have not attempted to rewrite that analysis in an effort to make it seem "new."

6. Though I have reached the same result, I have independently applied the underlying principles to the circumstances of this settlement. In order to maintain continuity, I have modified the analysis only where there is a need to address a difference in the circumstances (even though the outcome is the same).

[2] "Mylan" refers collectively to Mylan N.V., Mylan Specialty L.P., Mylan Pharmaceuticals Inc., and Heather Bresch. "Mylan Defendants" refers collectively to Mylan and Viatris Inc.

7. I have revised the portion of this Declaration addressing the class representative incentive awards, incorporating the Court's conclusions from the Pfizer settlement order.

Summary of Opinions

8. This Declaration sets forth the following opinions:

(a) the Settlement Agreement submitted for approval is fair, reasonable, and adequate;

(b) Co-Lead Counsel's fee request is appropriate under federal law and would be fair and reasonable under the circumstances; and

(c) the proposed service awards for the Class Representatives are appropriate under federal law and would be fair and reasonable under the circumstances.

The Litigation and Settlement

9. In 2016, numerous putative class action lawsuits were filed against Mylan and the Pfizer Defendants "involv[ing] allegations of anticompetitive conduct or unfair methods of competition" with respect to the EpiPen Auto-Injector, a spring-loaded injector that delivers a pre-measured and pre-loaded amount of epinephrine for the emergency treatment of anaphylaxis.

10. That was followed in 2017 by the Coordinated Class Action Complaint ("Class Complaint"). The Class Complaint seeks relief on behalf of individuals and entities that paid for EpiPens at allegedly inflated prices. The Class Complaint asserts claims under the federal antitrust and RICO statutes and state antitrust laws. It seeks compensatory damages, treble damages, punitive damages, and injunctive relief, plus applicable fees, interest, and costs.

11. Class Counsel have vigorously litigated this case for over five years. During that time, Class Counsel have: (1) resisted Defendants' effort to have the case dismissed; (2) engaged in wide-ranging discovery involving over 150 depositions and the production of over 1.75 million documents totaling over 11 million pages; (3) obtained class certification for RICO and state

antitrust claims; (4) carried out the notice program for the certified litigation class; (5) engaged in extensive expert activity; (6) resisted Defendants' efforts to terminate this action via summary judgment; (6) secured and received approval of a $345 million settlement with the Pfizer Defendants[3]; (7) resisted the Mylan Defendants' efforts to decertify the class claims that survived summary judgment; and (8) continued preparations for an expected five to seven-week jury trial originally set for September 7, 2021, postponed while the Pfizer settlement was approved, and re-set to commence on February 22, 2022.

12. As the rescheduled trial date approached, Plaintiffs and the Mylan Defendants began discussing settlement. Plaintiffs and the Mylan Defendants subsequently agreed to settle the Class Claims for $264 million. *See* Joint Declaration of Co-Lead Counsel, ¶¶ 26-27. The final Settlement Agreement was signed on February 27, 2022.

13. On February 28, 2022, the Plaintiffs moved for preliminary approval of the settlement with the Mylan Defendants.

14. On March 11, 2022, the Court entered an Order granting preliminary approval, appointing A.B. Data, Ltd. as Settlement Administrator, and approving the form and manner of notice to the class members. The Order also scheduled a Fairness Hearing for July 6, 2022, to address final approval of the settlement and to determine the amount of attorneys' fees and expenses to award to Class Counsel and any service award to the Class Representatives.

The Settlement is Fair, Reasonable, and Adequate

15. Under Federal Rule of Civil Procedure 23(e), the court must approve any settlement of a class action. Approval requires the court to find that the settlement is "fair, reasonable, and

[3] Pfizer, Inc., Meridian Medical Technologies, Inc, and King Pharmaceuticals, Inc. (n/k/a King Pharmaceuticals LLC).

adequate." FED. R. CIV. P. 23(e)(2). Because the trial court judge overseeing the case has the best vantage point to consider all of the myriad considerations, the determination of whether a proposed settlement is fair, reasonable, and adequate is committed to the discretion of the district court judge. *See Fager v. CenturyLink Communs., LLC*, 854 F.3d 1167, 1174-75 (10th Cir. 2016); *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1186-87 (10th Cir. 2002).

16. Historically, the Tenth Circuit has identified four factors that must be considered in approving a class action settlement:

(1) whether the proposed settlement was fairly and honestly negotiated;

(2) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt;

(3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and

(4) the judgment of the parties that the settlement is fair and reasonable.

Rutter & Wilbanks Corp. v. Shell Oil Co., 314 F.3d 1180, 1188 (10th Cir. 2002).

17. In 2018, Rule 23(e) was amended to provide guidance on the factors courts should look to when determining whether a settlement is fair, reasonable, and adequate. Thus, Rule 23(e) currently provides that, when making that determination, courts must consider whether:

(A) the class representatives and class counsel have adequately represented the class;

(B) the proposal was negotiated at arm's length;

(C) the relief provided for the class is adequate, taking into account:

(i) the costs, risks, and delay of trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

(iii) the terms of any proposed award of attorney's fees, including timing of payment; and

(iv) any agreement required to be identified under Rule 23(e)(3), and

(D) the proposal treats class members equitably relative to each other.

18. The Tenth Circuit has yet to address what effect, if any, the 2018 amendments have on the application of the *Rutter* factors.[4] I don't think it matters which test is applied as they both focus on the same core concerns,[5] and it is my opinion that the Settlement is fair, reasonable, and adequate under either approach. Following the guidance of the Committee Note accompanying the 2018 amendments, this declaration will track the current structure of Rule 23(e).[6]

19. *The Class Representatives and Class Counsel Have Adequately Represented the Class*. First, it is my opinion that the Class Representatives have adequately represented the class. FED. R. CIV. P. 23(e)(2)(A). Each of the plaintiffs currently serving (or who previously served) as Class Representatives has been subjected to discovery. *See* Joint Declaration of Co-Lead Counsel, ¶ 70; *see also* Declarations of Class Representatives. They have provided documents, answered interrogatories, and sat through depositions. They kept informed of developments in the case

[4] In an unpublished opinion, the Tenth Circuit applied the *Rutter* factors without mentioning the 2018 amendments to Rule 23(e). *See Elna Sefcovic, LLC v. TEP Rocky Mountain, LLC*, 807 Fed. Appx. 752, 757 (10th Cir. 2020). The Tenth Circuit's most recent Rule 23(e) decision cites to both tests. *See In re Samsung Top-Load Washing Machine Marketing, Sales Practices and Products Liability Litig.*, 997 F.3d 1077, 1087 (10th Cir. 2021).

[5] *See* FED. R. CIV. P. 23(e)(2) advisory committee's note (2018) ("The goal of this amendment [to Rule 23(e)(2)] is not to displace any [circuit case-law] factor, but rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal.").

[6] *See* FED. R. CIV. P. 23(e)(2) advisory committee's note (2018) ("This amendment therefore directs the parties to present the settlement to the court in terms of a shorter list of core concerns, by focusing on the primary procedural considerations and substantive qualities that should always matter to the decision whether to approve the proposal.").

through regular communication with Class Counsel. Through these activities, the class representatives adequately discharged their responsibilities and provided the structural benefits and safeguards required for representative litigation. Further, I am aware of nothing that would suggest any disqualifying conflicts with the absent class members.

20. Class Counsel have also adequately represented the Class. FED. R. CIV. P. 23(e)(2)(A). The lawyers and law firms working for the Class are all experienced and highly regarded class action lawyers. They worked diligently on the case for over five years, resisting Defendants' multiple efforts to end the case via dispositive motions. They conducted timely and appropriate discovery. They sought and obtained certification of a litigation class. They retained appropriate experts to aid them in developing the case and putting it in a position of strength for settlement discussions. They resisted Mylan's efforts to decertify the class action. Their experience and skill in pursuing high-stakes aggregate litigation undoubtedly contributed to their ability to reach the settlement they achieved.

21. *The Settlement Was Negotiated at Arm's Length.* Second, it is my opinion that the Settlement was negotiated at arm's-length. FED. R. CIV. P. 23(e)(2)(B). The Parties litigated for over five years. The Plaintiffs sought class certification for a litigation class over three years ago. After certification was granted in February 2020, this case proceeded as a litigation class for a year before the Plaintiffs reached a settlement with the Pfizer Defendants. While seeking and obtaining approval of that settlement, the Plaintiffs continued to aggressively litigate the claims against the Mylan Defendants, resisting Mylan's efforts to obtain summary judgment and later to decertify the surviving claims. The Plaintiffs twice began preparing for trial of the surviving claims, once for the original September 7, 2021 trial date and then again for the rescheduled February 22, 2022 trial date.

22. There is nothing about this case to suggest that it was anything other than an adversarial matter. Indeed, it is hard to think of what more the Plaintiffs and Class Counsel could have done to demonstrate their commitment to seeing the case through trial if needed in order to position themselves to secure the best possible outcome for the Class.

23. *The Relief Provided to the Class Is Adequate.* Third, it is my opinion that the relief provided for the Class is adequate. FED. R. CIV. P. 23(e)(2)(C).

24. The first factor listed in Rule 23(e)(2)(C) is whether the relief is adequate "taking into account (i) the costs, risks, and delay of trial and appeal." FED. R. CIV. P. 23(e)(2)(C)(i). This factor captures the fundamental dynamics of settlement. No settlement gives one side total victory. Plaintiffs take less than they would hope for; defendants pay more than they would like to. But in the process, they both avoid the risk of a bad loss later. As the Tenth Circuit itself put it in the class-action approval setting, "[t]hat is the nature of a settlement." *Tennille v. Western Union Co.*, 785 F.3d 422, 435 (10th Cir. 2015).

25. The settlement provides the Class with a cash recovery of $264 million. While it does not represent a full recovery of the Class's full claimed damages, it is a very significant recovery that is comparable in its terms and structure to the Pfizer settlement previously approved by this Court. By accepting the settlement in exchange for releasing their RICO and state antitrust and unfair competition claims against the Mylan Defendants,[7] the Class is guaranteed substantial compensation and avoids the risk of recovering much less, and potentially nothing.

26. It was reasonable to accept the immediate and certain benefit of partial payment rather than face the risks that come with continued litigation.

[7] The release does not extend to any personal injury or products liability claims. *See* Settlement Agreement, ¶ 1.28.

27. Settling avoided the risk of a less favorable result at trial. The Mylan Defendants have, at all times, vigorously denied all allegations of wrongdoing or liability. *See* Settlement Agreement, p. 3-4. It seems clear that the Mylan Defendants would have vigorously defended themselves at trial.

28. Settling avoided the cost, risk, and delay of an appeal following the trial and entry of a judgment awarding relief to the class.

29. Finally, no money will revert to the Mylan Defendants. *See* Settlement Agreement ¶ 5.9. If there is any money remaining after the initial round of payments, further rounds of payments will be made until it is no longer feasible to do so, at which point any remaining funds are to be given to selected charities.

30. The second "adequacy" factor listed in Rule 23(e)(2)(C) is "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims." FED. R. CIV. P. 23(e)(2)(C)(i). This factor also supports approval of the settlement.

31. This is a cash settlement. It does not involve coupons or other discounts. Class Members are able to participate in the settlement without doing any further business with the Mylan Defendants.

32. The claims process established in the Settlement Agreement is fair, reasonable, and appropriate to the circumstances. The Court has already appointed the firm of A.B. Data, Ltd., an experienced claims administration firm, to administer the claims process.

33. The claims process is fair, reasonable, and appropriate for the class members who are individual consumers. Individuals who submitted a claim as part of the Pfizer settlement are

automatically included in the claimant pool. *See* Plan of Allocation, ¶ 8. Other class members who are individuals will submit a claim form using the same process used in the Pfizer settlement.

34. Specifically, individuals submit a claim by filing a Consumer Proof of Claim form, which can either be mailed or submitted online. Claimants do not need to provide receipts or other documentation up front. Rather, claimants are asked to state how many EpiPens they bought during the claim period and how much they spent on them. It is reasonable to ask individual claimants for purchase data in this setting. EpiPens are a major—and likely a memorable—purchase of a life-saving device. (It's not like asking consumers to identify how many times they went to McDonald's in the last ten years.) If documentation is required, claimants can choose from a wide range of records likely to be available to them. Indeed, even at the initial claim stage, claimants who want help to recreate their purchase history can refer to the documentation list as a useful guide to the records that might be available to assist them. Claimants may also call a toll-free number for additional guidance.

35. The claims process is fair, reasonable, and appropriate for the class members who are third-party payors. For claims not exceeding $300,000, the process mirrors that for individual consumers. Claims exceeding $300,000 require particularized claims data and information. It is reasonable and appropriate to ask third-party payors—sophisticated entities with sophisticated records-management systems—to be prepared to provide supporting documentation when needed and to itemize claims that exceed $300,000.

36. So far, this claims process has shown that it is reliable and is functioning as intended. *See* Schachter Declaration, ¶ 13 ("To date, the Pfizer Settlement and Mylan Settlement claims processes have operated well and without issue.").

37. The third "adequacy" factor listed in Rule 23(e)(2)(C) is "the terms of any proposed award of attorney's fees, including timing of payment." *See* FED. R. CIV. P. 23(e)(2)(C)(iii). Class Counsel is seeking attorney's fees in the amount of one-third of the gross settlement fund. As discussed below, Class Counsel's fee request is appropriate under the circumstances and is consistent with fee awards approved in similar cases.

38. The fourth "adequacy" factor listed in Rule 23(e)(2)(C) directs the court to consider "any agreement required to be identified under Rule 23(e)(3)." *See* FED. R. CIV. P. 23(e)(2)(C)(iv). To the best of my knowledge, upon inquiry, there are no agreements required to be identified under Rule 23(e)(3) that have not been disclosed.

39. *The Proposal Treats Class Members Equitably Relative to Each Other*. Finally, the Settlement treats the Class Members equitably relative to each other. FED. R. CIV. P. 23(e)(2)(D). The Class Members will be paid according to a plan of allocation being submitted for court approval. The distribution scheme creates two pools, one for Individuals and one for Third-Party Payors. The pools are funded based on estimated damages as calculated by Professor Rosenthal. Within each pool, the funds are distributed on a pro rata basis. Unclaimed funds from one pool pour over to the other pool.

40. This distribution scheme provides for equitable treatment at two levels. First, it treats the two pools equitably by allocating the settlement money according to estimated damages. That ensures that the total sum of money available to the individuals is aligned with their aggregate damages (and doesn't get gobbled up by more aggressive claiming from TPPs, or vice versa.) Second, the distribution scheme treats the members within those pools equitably by distributing damages on a pro rata basis. The end result is that all of the individual claimants get an equal shot

at the individual-claimant portion of the damages, and all of the TPPs get an equal shot at the TPP-portion of the damages.

41. In summary, it is my opinion that all of the Rule 23(e)(2) factors clearly point to the Settlement being fair, reasonable, and adequate.

The Fee Request

42. In this common-fund class action, the Court is authorized to make a fee award to Plaintiff's Counsel to recognize the work done on behalf of, and the benefit conferred upon, all Class Members. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also* GENSLER & MULLIGAN, FEDERAL RULES OF CIVIL PROCEDURE: RULES AND COMMENTARY 702 (2022 ed.).

43. Both case law and Fed. R. Civ. P. 23(h) establish that the standard for setting the fee award is reasonableness. *See Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 453 (10th Cir. 1988); Fed. R. Civ. P. 23(h) advisory committee's note (2003) (stating that "reasonableness" is the customary measurement for common fund fees). That is to say, the amount the Court awards as a fee must be reasonable. The fee decision "is a matter uniquely within the discretion of the trial judge." *Brown*, 838 F.2d at 453.

44. These federal common law standards apply in this case because federal RICO claims were asserted and carry with them federal question jurisdiction.[8] The Tenth Circuit's opinion in the *Chieftain v. Enervest* case, holding that federal courts must look to state fee law in *diversity* class actions, does not apply.

[8] Federal question jurisdiction vested upon the Plaintiffs' assertion of nonfrivolous federal-law claims. *See Bell v. Hood*, 327 U.S. 678, 682-83 (1946) (holding that entry of a merits ruling does not negate the jurisdiction upon which the ruling is founded). More importantly, it was the settlement (not the summary-judgment ruling) that finally resolved those federal-law claims, for which no final judgment had been entered and which remained subject to appeal.

45. Since 1988, the Tenth Circuit has instructed district courts to analyze the reasonableness of fee awards under the factors developed in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). *See Brown*, 838 F.2d at 454-55. The *Johnson* factors are:

(1) the time and labor required;

(2) the novelty and difficulty of the questions presented by the case;

(3) the skill requisite to perform the legal services properly;

(4) the preclusion of other employment by the attorneys due to acceptance of the case;

(5) the customary fee;

(6) whether the fee is fixed or contingent;

(7) any time limitations imposed by the client or the circumstances;

(8) the amount involved and the results obtained;

(9) the experience, reputation and ability of the attorneys;

(10) the undesirability of the case;

(11) the nature and length of the professional relationship with the client; and

(12) awards in similar cases. *Id.*

46. The Tenth Circuit has also made clear that the preferred method for determining the reasonableness of a fee award in a common fund case is the percentage of recovery method. *See Gottlieb v. Barry*, 43 F.3d 474, 483 (10th Cir. 1994); *Rosenbaum v. MacAllister*, 64 F.3d 1439, 1445 (10th Cir. 1995); *see also* AMERICAN LAW INSTITUTE, PRINCIPLES OF THE LAW OF AGGREGATE LITIGATION § 3.13(b) (2010) (endorsing the percentage of recovery method for common fund cases).

47. Thus, when awarding fees in a common fund case, the general practice is for the district court to award a percentage-based fee using the *Johnson* factors as a guide to what percentage to award.

48. Because the *Johnson* factors were developed in the context of statutory fee-shifting, the Tenth Circuit held that the scheme should be modified when applied in a common fund case. *See Brown*, 838 F.2d at 453. Not all of the factors will apply in every case. *Id.* at 456; *Gudenkauf v. Stauffer Commc'ns, Inc.*, 158 F.3d 1074, 1083 (10th Cir. 1998) (trial courts need not specifically address each factor in every case). And the weight to be given each factor varies when the court is awarding fees from a common fund. *Brown*, 838 F.2d at 456.

49. *The Result Achieved*. In a common fund case, the result obtained is the most important factor and deserves the greatest weight. *Brown*, 838 F.2d at 456. As the Advisory Committee later put it when adopting the 2003 amendments to Rule 23, "[f]or a percentage fee approach to fee measurement, results achieved is the basic starting point." FED. R. CIV. P. 23(h) advisory committee's note (2003).

50. In my opinion, the result achieved supports Class Counsel's request for a fee award of $88 million, an amount that represents one-third of the cash settlement.

51. First, the settlement represents a substantial, guaranteed recovery for the class. Could the Class Plaintiffs have received more if they continued litigating? It's possible. But they also might have received less, or maybe nothing at all.

52. Even when a party has strong claims, it is reasonable to accept the immediate and certain benefit of partial payment rather than face the risks already known—or expose itself to future unexpected setbacks—that come with future litigation. As the Tenth Circuit appreciates, "[t]hat is the nature of a settlement." *Tennille v. Western Union Co.*, 785 F.3d 422, 435 (10th Cir.

2015). Given the risks posed by continued litigation, the recovery of $264 million in cash is a strong result.

53. Second, the $264 million settlement is all cash with no reversion. We know exactly how much the Mylan Defendants will be paying: $264 million. The amount is not inflated by the value of coupons that will never be redeemed. Nor is there any risk that the Mylan Defendants will end up paying less because some of it gets returned on the back end as unclaimed funds.

54. *Time and Labor*. The "time and labor" factor of the *Johnson* test supports approval of Plaintiff's Counsel's fee request. Co-Lead Counsel invested an enormous amount of their time and money litigating this case for four years with no guarantee of reimbursement or recovery. The pretrial process included motions to dismiss, extensive discovery, extensive expert work (including motions to exclude experts), motions for summary judgment, resisting decertification, and twice preparing for a five-to-seven-week class trial.

55. A lodestar analysis is not needed when assessing the "time and labor" factor in a common fund case. The Tenth Circuit made clear in *Brown* that a lodestar analysis is not required in a common fund case. Rather, the court may make a general finding, based on the record, that class counsel instrumentally contributed to the result achieved for the Class Members. *Brown*, 838 F.2d at 456.

56. The Tenth Circuit's use of a "crosscheck" in the *Samsung* decision earlier this year is not to the contrary. In *Samsung*, the Tenth Circuit wrote that "[a] district court, after carefully reviewing billing records and performing the traditional lodestar analysis, should crosscheck the fees and costs against both the value of the settlement and the estimated actual cost to the defendant." *In re Samsung Top-Load Washing Machine Marketing, Sales Practices and Products Liability Litig.*, 997 F.3d 1077, 1091 (10th Cir. 2021). That case, however, did not involve a

common fund fee. Rather, Samsung was paying class counsel's fees pursuant to their settlement.[9] And as is customary in the fee-shifting setting, the district court used the lodestar method to determine the fee that Samsung would have to pay. Because the settlement agreement had a "kicker" *and* a "clear sailing" clause, the Tenth Circuit held that the putative fee had to be "crosschecked" against the actual value of the settlement to make sure that class counsel hadn't used those devices to purchase the defendant's acquiescence about where the settlement money would go. The Tenth Circuit did not, however, order a *lodestar crosscheck* in the traditional sense of comparing a percentage-fee award to what class counsel's lodestar would have been.

57. It is my opinion that *Brown* controls in this case. *Brown* is the earlier precedent, and nothing in *Samsung* purports to displace it. Like *Brown*, this case involves a common fund fee award, whereas *Samsung* involved a contractual fee-shifting provision. And the settlement in this case does not include either a "kicker" or a "clear sailing" agreement.

58. Under the *Brown* test, it is clear that "the recovery [in this case] was highly contingent and that the efforts of counsel were instrumental in realizing recovery on behalf of the class." *Brown*, 838 F.2d at 456.

59. But even if a lodestar crosscheck is used, it confirms that Co-Lead Counsel's fee request is reasonable. A one-third percentage fee in this case is $88 million. If granted, Co-Lead Counsel's total fee for both settlements would be $203 million. Co-Lead Counsel's lodestar for their five years of litigation—a soup-to-nuts pretrial process replete with the full range of motions and discovery, twice heading to trial preparation—is over $103 million. *See* Joint Declaration of Co-Lead Counsel, ¶¶ 61-62. That yields a multiplier of about 1.97, which is well within the range

[9] *See In re Samsung Top-Load Washing Machine Marketing, Sales Practices and Products Liability Litig.*, No. 17-MDL-2792, June 1, 2018 (Dkt. # 92) (Settlement Agreement, p. 45).

of multipliers approved by district courts in the Tenth Circuit. *See, e.g., In re Urethane Antitrust Litig.*, No. 04-1616-JWL, 2016 WL 4060156, at *7 (D. Kan. July 29, 2016) (resulting in a 3.2 multiplier based on the combined settlements and fee awards).

60. *Awards in Similar Cases*. The one-third fee request is also well within the range of awards in similar cases. In the *Samsung* decision from last summer, the Tenth Circuit wrote that a fee-and-costs award of one-third of the maximum value of the settlement was "well within the range of reasonable and permissible fees and costs awards in class action litigation." *In re Samsung Top-Load Washing Machine Marketing, Sales Practices and Products Liability Litig*., 997 F.3d 1077, 1095 (10th Cir. 2021).

61. The most obvious comparator is this Court's approval of a one-third percentage-fee award in the Pfizer settlement. *See In re EpiPen Mktg, Sales Prac., and Antitrust Litig.*, No. 17-md-DDC-TJJ (D. Kan. Nov. 17, 2021) (Dkt. No. 2506).

62. A one-third fee award is also consistent with fee awards granted in other cases in the District of Kansas. *See, e.g.*, *In re Syngenta AG MIR 162 Corn Litig.*, 357 F. Supp. 3d. 1094, 1113-14 (D. Kan. 2018) (awarding one-third fee of $1.51 billion settlement fund); *In re: Urethane Antitrust Litig.*, 2016 WL 4060156, at *8 (awarding one-third fee from $835 million settlement fund); *Hershey v. ExxonMobil Oil Corp.*, No. 07-1300-JTM, 2012 WL 5306260, *1, 7-8 (D. Kan. Oct. 26, 2012) (awarding one-third fee from $54 million settlement); *Eatinger v. BP America Prod. Co.*, No. 07-1266-EFM (D. Kan. Sept. 17, 2012) (Dkt. No. 375) (awarding one-third fee from $19 million settlement); *In re Universal Serv. Fund Tel. Billing Pracs. Litig.*, No. 02-MD-1468-JWL, 2011 WL 1808038, at *2 (D. Kan. May 12, 2011) (awarding one-third fee from $16.9 million judgment); *In re Urethane Antitrust Litig.,* No. 04-MD-1616-JWL (D. Kan. Dec. 13, 2011) (Dkt. Nos. 995 and 2210) (awarding one-third fee of $142.9 million combined settlement funds);

Williams v. Sprint/United Mgmt. Co., No. 03-2200-JWL, 2007 WL 2694029, at *6 (D. Kan. Sept. 11, 2007) (awarding 35% of $57 million settlement fund); *In re United Telecommc'ns Sec. Litig.*, No. 90-2251-0, 1994 WL 326007, at *3-4 (D. Kan. June 1, 1994) (awarding one-third from $28 million settlement fund); *see also In re Hill's Pet Nutrition, Inc. Dog Food Products Liab. Litig.*, 19-MDL-2887 (D. Kan. July 30, 2021) (Dkt. No. 132) (awarding 32% fee of $12.5 million settlement fund); *Koehler v. Freightquote.com, Inc.*, No. 12-2505-DDC-GLR, 2016 WL 3743098, at *7 (D. Kan. July 13, 2016) (one-third award is within "the customary percentage of the fund approved by this Court") (quoting *Barbosa v. Nat'l Beef Packing Co., LLC*, No. CIV.A. 12-2311-KHV, 2015 WL 4920292, at *11 (D. Kan. Aug. 18, 2015)).

63. *The Other* Johnson *Factors*. The following other *Johnson* factors further support Co-Lead Counsel's request for a one-third fee award:

a. This case involved substantive and procedural issues that were complex and difficult (*Johnson* factor #2);

b. Co-Lead counsel are skilled, experienced, and highly regarded class action litigators who possess the rare combination of resources and experience to take on a case of this scale and pursue it to a successful end (*Johnson* factors #3, #9, and #10);

c. Dedicating the resources needed to litigate this case through the full pretrial gauntlet, and trial if needed, necessarily precluded Co-Lead counsel from pursuing other employment (*Johnson* factor #4);

d. The one-third fee sought by Co-Lead counsel is well within the range of fee awards sought in similar class actions and is equal to or less than any fee

provisions agreed to in advance by Class Representatives (*Johnson* factor #5); and

e. Co-Lead counsel worked on a contingency fee basis with no guarantee of any payment for years of work (*Johnson* factor #6).

Service Awards to the Class Representatives

64. Class Counsel are seeking service awards under the formula adopted by this Court in the Pfizer settlement. It is my opinion that service awards are warranted in this case and that the amount requested is reasonable and appropriate.

65. As the Tenth Circuit has recognized, it is customary for class representatives to be granted a service award (or incentive award) out of the common fund recovery. *See Chieftain Royalty Co. v. EnerVest Energy Institutional Fund XIII-A, L.P.*, 888 F.3d 455, 467 (10th Cir. 2017). *See generally* William B. Rubenstein, *Newberg on Class Actions* §17:1 (5th ed.) ("Empirical evidence shows that incentive awards are now paid in most class suits and average between $10-15,000 per class representative.")

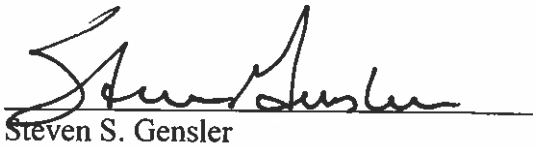
66. Service awards serve two primary purposes. They compensate class representatives for the service they provide to the class and provide an incentive for class representatives to undertake the burdens and risks associated with serving as a class representative. *See* Newberg, §17:3; s*ee also Chieftain*, 888 F.3d at 467-68 (discussing rationale for service awards). Reasonable service awards do not run afoul of Rule 23(e)'s norm that similarly-situated class members be treated equally because class representatives undertake burdens that distinguish them from absent class members. *See* Newberg, §17:3 (explaining that "the justifications for the awards illuminate the fact that the class representatives are not similarly situated to other class members").

67. In *Chieftain*, the Tenth Circuit assessed the incentive award in that case solely on what would be appropriate to compensate the named plaintiffs for the work they performed. *Chieftain*, 888 F.3d at 468. That was because it was limiting itself to the grounds cited by the district court. The Tenth Circuit made clear, however, that the plaintiffs could attempt to incorporate the factors of risk, burden, and the need for an incentive for recruiting purposes in their presentation to the district court on remand. *Id.* at 467-68.

68. Thirteen (13) Class Representatives are seeking service awards of $5,000 based on having spent 60 or more hours on the case while acting in a class-representative capacity. It is my opinion that these service awards are warranted under Tenth Circuit law and are appropriate to fairly compensate the class representative for their level of service.

69. Twenty-two (22) Class Representatives are seeking service awards in an amount calculated by their hours spent while acting in a class-representative capacity times a compensation rate of $79 per hour. It is my opinion that these service awards are warranted under Tenth Circuit law and are appropriate to fairly compensate the class representative for their level of service.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.



Steven S. Gensler
May 19, 2022

EXHIBIT 1

STEVEN S. GENSLER
Gene and Elaine Edwards Family Chair in Law
University of Oklahoma College of Law
300 Timberdell Road, Norman, OK 73019
(405) 325-7889 sgensler@ou.edu

ACADEMIC APPOINTMENTS

UNIVERSITY OF OKLAHOMA COLLEGE OF LAW
Gene and Elaine Edwards Family Chair in Law (2018-current)
Welcome D. & W. DeVier Pierson Professor (2009-2017)
President's Associates Presidential Professor (2006-current)
Professor (2005–current)
Associate Professor (2000-2005) (on leave 2003-2004)

Associate Dean for Academic Affairs (2020-current)
Associate Dean for Research and Scholarship (2012-2015)

UNIVERSITY OF ILLINOIS COLLEGE OF LAW
Visiting Assistant Professor (1998-2000)

UNIVERSITY OF NEVADA LAS VEGAS, WILLIAM S. BOYD COLLEGE OF LAW
Visiting Professor (Fall 2017)

JUDICIAL FELLOWSHIPS

UNITED STATES SUPREME COURT
Supreme Court Fellow, Administrative Office of the U.S. Courts (2003-2004)

JUDICIAL CLERKSHIPS

THE HONORABLE DEANELL REECE TACHA
U.S. Court of Appeals, Tenth Circuit (Lawrence, KS)
Law Clerk (1992-1993)

THE HONORABLE KATHRYN H. VRATIL
U.S. District Court, District of Kansas (Kansas City, KS)
Law Clerk (1993-1994)

LAW PRACTICE

MICHAEL, BEST & FRIEDRICH, LLP (Milwaukee, WI)
Associate (1996-1998)

REINHART, BOERNER, VAN DUREN, NORRIS & RIESELBACH S.C. (Milwaukee, WI)
Associate (1994-1996)

EDUCATION

UNIVERSITY OF ILLINOIS COLLEGE OF LAW, J.D. *summa cum laude*, May 1992
Valedictorian (Class Rank: 1/189)
Editor-in-Chief, University of Illinois Law Review

UNIVERSITY OF ILLINOIS (URBANA-CHAMPAIGN), B.S. (Biology), June 1988

PUBLICATIONS

Books:

FEDERAL RULES OF CIVIL PROCEDURE: RULES AND COMMENTARY (Thomson Reuters/West)
- Comprehensive two-volume practice treatise on the Federal Rules of Civil Procedure
- Revised and updated edition published annually
- Annual editions to date: 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022

MOORE'S FEDERAL PRACTICE, Volume 11 (3d. ed. 2012) (with Jeffrey W. Stempel)
- Covering Summary Judgment under Rule 56
- Updated quarterly

FEDERAL COURTS: CASES, COMMENTS AND QUESTIONS (9th ed. 2022) (with Martin H. Redish, Suzanna Sherry, James E. Pfander, and Adam Steinman)

GILBERT'S LAW SUMMARY ON CIVIL PROCEDURE (West Academic Publishing) (19th ed. forthcoming Summer 2022) (with Rick Marcus and Tom Rowe)

THE 2015 AMENDMENTS TO THE FEDERAL RULES OF CIVIL PROCEDURE (Lexis/Nexis 2015) (monograph prepared and distributed as part of MOORE'S FEDERAL PRACTICE)

Journal Articles:

Aggregation Made Simple, in progress (article providing simplified framework for valuing the amount in controversy in multi-party cases)

Did the Original Rulemakers Already Define the Scope of "Read and Sign"?, in progress (essay exploring drafting history of "read and sign" rule for depositions)

Reimagining Diversity Jurisdiction's Amount in Controversy Requirement, in progress (with Roger Michalski)

The Million Dollar Diversity Docket, forthcoming 47 BYU L. REV. 1653 (2022) (with Roger Michalski)

The Privacy-Protection Hook in the Federal Rules, 105 JUDICATURE 77 (Summer 2021) (with the Honorable Lee H. Rosenthal)

Expedited Trial Programs in Federal Court: Why Won't Attorneys Get on the Fast Track?, 55 WAKE FOREST L. REV. 525 (Fall 2020) (with Jason A. Cantone)

Better by the Dozen: Bringing Back the Twelve-Person Civil Jury, 104 JUDICATURE 46 (Summer 2020) (with the Honorable Patrick E. Higginbotham and the Honorable Lee H. Rosenthal)

Form Fights: Battles Over Content and Proportionality, 26 PRETRIAL PRACTICE & DISCOVERY 15 (Spring 2018) (with the Honorable Xavier Rodriguez)

Breaking the Boilerplate Habit in Civil Discovery, 51 AKRON L. REV. 683 (2017) (with the Honorable Lee H. Rosenthal) (Symposium on the impact of the 2015 Civil Rules Amendments)

Discovery: What the Form Are We Fighting For?, 80 TEX. B.J. 774 (Dec. 2017) (with the Honorable Xavier Rodriguez)

A Report from the Proportionality Roadshow, 100 JUDICATURE 14 (Winter 2016) (with the Honorable Lee H. Rosenthal)

From Rule Text to Reality: Achieving Proportionality in Practice, 99 JUDICATURE 43 (Winter 2015) (with the Honorable Lee H. Rosenthal)

Four Years After Duke: Where Do We Stand on Calibrating the Pretrial Process?, 18 LEWIS & CLARK LAW REVIEW 643 (2014) (with the Honorable Lee H. Rosenthal) (Symposium honoring Judge Mark Kravitz)

Measuring the Quality of Judging: It All Adds Up to One, 48 NEW ENGLAND LAW REVIEW 475 (2014) (with the Honorable Lee H. Rosenthal) (Symposium on "Benchmarks: Measurements for Evaluating Judicial Productivity")

The Reappearing Judge, 61 KANSAS LAW REVIEW 849 (2013) (with the Honorable Lee H. Rosenthal) (Symposium on "Advocacy under the Federal Rules of Civil Procedure")

Ed Cooper, Rule 56, and Charles E. Clark's Fountain of Youth, 46 UNIVERSITY OF MICHIGAN JOURNAL OF LAW REFORM 593 (2013)

Managing Summary Judgment, 43 LOYOLA UNIVERSITY CHICAGO LAW JOURNAL 517 (2012) (with the Honorable Lee H. Rosenthal) (Symposium on the 25th Anniversary of the Supreme Court's 1986 Summary Judgment trilogy)

- *Reprinted in* 62 DEF. L.J. 1 (2013)

Special Rules for Social Media Discovery? 65 ARKANSAS LAW REVIEW 7 (2012) (Symposium on "Facebook and the Law")

Judicial Case Management: Caught in the Crossfire, 60 DUKE LAW JOURNAL 669 (2010) (Symposium publishing papers selected from the 2010 Duke Conference on Civil Litigation)

Oklahoma's New E-Discovery Rules, 81 OKLAHOMA BAR JOURNAL 2427 (Nov. 2010)

Must, Should, Shall, 43 AKRON LAW REVIEW 1141 (2010) (Symposium issue publishing papers selected for presentation at the 2010 AALS Section on Litigation program on "The Future of Summary Judgment")

The Other Side of the CAFA Effect: An Empirical Analysis of Class Action Activity in the Oklahoma State Courts, 58 KANSAS LAW REVIEW 809 (2010) (Symposium on Class Actions)

A Bull's-Eye View of Cooperation in Discovery, 10 SEDONA CONFERENCE JOURNAL 363 (Fall 2009 Supp.) (invited contribution to Special Edition on The Sedona Conference Cooperation Proclamation)

Some Thoughts on the Lawyer's E-volving Duties in Discovery, 36 NORTHERN KENTUCKY UNIVERSITY LAW REVIEW 521 (2009) (invited contribution to Symposium on E-Discovery)

- *Reprinted in* 60 DEF. L.J. 1 (2011)

Justness! Speed! Inexpense! An Introduction to The Revolution of 1938 Revisited: The Role and Future of the Federal Rules, 61 OKLAHOMA LAW REVIEW 257 (2008) (Introduction to AALS Civil Procedure Section 2008 Annual Meeting Symposium)

Driving Misjoinder: The Improper Party Problem in Removal Jurisdiction, 57 ALABAMA LAW REVIEW 779 (2006) (with Laura J. Hines)

Diversity Class Actions, Common Relief, and the Rule of Individual Valuation, 82 OREGON LAW REVIEW 295 (2003)

Class Certification and the Predominance Requirement under Oklahoma Section 2023(B)(3), 56 OKLAHOMA LAW REVIEW 289 (2003)

Bifurcation Unbound, 75 WASHINGTON LAW REVIEW 705 (2000)

Prejudice, Confusion, and the Bifurcated Civil Jury Trial: Lessons from Tennessee, 67 TENNESSEE LAW REVIEW 653 (2000) (invited contribution to Symposium: Communicating with Juries)

Wrongful Discharge for In-House Attorneys: Holding the Line Against Lawyers' Self-Interest, 1991 UNIVERSITY OF ILLINOIS LAW REVIEW 515 (Student Note)

Other Publications:

Better by the Dozen: Bringing Back the Twelve-Person Jury, Volume 4, Issue 7, NYU Civil Jury Project Newsletter (July 2020)

Survey Results: Why Won't Lawyers Get on the Fast Track?, Volume 4, Issue 8, NYU Civil Jury Project Newsletter (August 2019)

Second Circuit Distinguishes Abandonment from Default in Summary Judgment, 99 JUDICATURE 45 (2015) (brief case note)

A Tribute to Robert Spector: "It Started With Jurisdiction", 63 OKLAHOMA LAW REVIEW i (2011)

FEDERAL RULES OF CIVIL PROCEDURE: 2007 STYLE PROJECT COMPARISON CHARTS (West)
- Companion publication to the 2008 edition of treatise listed above

SEALED SETTLEMENT AGREEMENTS IN FEDERAL DISTRICT COURT, Federal Judicial Center (2004) (with Robert Timothy Reagan, Shannon R. Wheatman, Marie Leary, Natacha Blain, George Cort, and Dean Miletich)

Developments in the Federal Rules of Civil Procedure, Association of American Law Schools Civil Procedure Newsletter (2003, 2005, 2006, 2007, 2008)

PROFESSIONAL AND PUBLIC SERVICE

AMERICAN LAW INSTITUTE
- Council (2015 – present)
- Member (2006 – present)
- Adviser for Restatement (Third) of Conflict of Laws
- Members Consultative Group for the Principles of Aggregate Litigation Project
- Members Consultative Group for Restatement (Third) U.S. Law of International Arbitration

UNITED STATES JUDICIAL CONFERENCE ADVISORY COMMITTEE ON CIVIL RULES
- Member (2005 – 2011)
- Appointed June 2005 by Chief Justice William H. Rehnquist
- Reappointed August 2008 by Chief Justice John G. Roberts, Jr.

UNITED STATES JUDICIAL CONFERENCE FEDERAL-STATE JURISDICTION COMMITTEE
- Lead Academic Consultant (2017 – present)

NATIONAL CONFERENCE OF BAR EXAMINERS, MBE CIVIL PROCEDURE DRAFTING COMMITTEE
- Invited participant (Summer 2017, Winter 2017)
- Member (Spring 2018 – present)

LOCAL RULES COMMITTEE, UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA
- Member (2008 – present)

OKLAHOMA STATE BAR ASSOCIATION COMMITTEE ON CIVIL PROCEDURE
- Member (2005 - present)
- Vice-Chair (2009 - 2017)
- Chair, E-Discovery Subcommittee (2009)

OKLAHOMA UNIFORM JURY INSTRUCTION COMMITTEE (CIVIL)
- Appointed March 21, 2016 by Oklahoma Supreme Court Chief Justice John F. Reif

THE SEDONA CONFERENCE
- Member (2008 – present)
- Advisory Board (April 2012 – present)
- Working Group 1: Electronic Discovery

▪ Working Group 6: International Electronic Information Management, Discovery and Disclosure
▪ *Founding Member*: ROI Project for Information Asset Management (exploratory group to identify principles and best practices for maximizing "information assets")

CIVIL JURY PROJECT (NYU LAW SCHOOL)
▪ Academic Advisor (2016-present)

AMERICAN BAR FOUNDATION
• Fellow (2016-present)

JAMES F. HUMPHREYS COMPLEX LITIGATION CENTER
• Steering Committee Member and Board of Editors for Project on "Assessing Proportionate Relevancy and Cost ESI Model

GUIDELINES AND PRACTICES FOR IMPLEMENTING THE 2015 DISCOVERY AMENDMENTS TO ACHIEVE PROPORTIONALITY
▪ Co-Reporter (with the Honorable Lee H. Rosenthal) (2014-2017)
▪ Project Sponsored by the Duke Center for Judicial Studies

2010 CONFERENCE ON CIVIL LITIGATION ("DUKE CONFERENCE")
▪ Member, Planning Committee (2009-2010)

ASSOCIATION OF AMERICAN LAW SCHOOLS SECTION ON CIVIL PROCEDURE
▪ Executive Committee Chair (2007)
▪ Executive Committee Member (2005 - 2009)

PRESENTATIONS

Current Issues in Federal Procedure and Jurisdiction
▪ Judicial Retreat, U.S. District Court, W.D. Okla.
▪ November 8, 2021, Sulphur, OK

The Million Dollar Diversity Docket
• Conference on Federal Diversity Jurisdiction
• Center on Federalism and Intersystemic Governance, Emory University School of Law
• March 19, 2021 (online)

Current Issues in Federal Procedure and Jurisdiction
▪ Judicial Retreat, U.S. District Court, W.D. Okla.
▪ October 21, 2019, Watonga, OK

Why Won't Lawyers Get on the Fast Track? The Persistent Failure of Expedited Trial Programs in Federal Court
▪ OU College of Law Work-in-Progress Series
▪ October 14, 2019, Norman, OK

Report From the Washington, D.C. Bench-Bar Group Meeting
- ▪ Bolch Judicial Institute (Duke Law) Program on "Evaluating the 2015 Rule 26 Discovery-Proportionality Amendments and Bolch-Duke Guidelines and Best Practices"
- ▪ June 20, 2019, Arlington, VA

Why Won't Lawyers Get on the Fast Track? The Persistent Failure of Expedited Trial Programs in Federal Court
- ▪ NYU Civil Jury Project Colloquium
- ▪ April 24, 2019, New York, NY

So You Want to Be a Class Action Lawyer? (Recent Changes to Fed. R. Civ. P. 23)
- • Presenter and Program Moderator
- • Federal Bar Association, OKC Chapter, Class Action Seminar
- • December 12, 2018, Oklahoma City, OK

Electronic Discovery: Tips from a Professor
- • OELA Annual Seminar
- • December 7, 2018, Oklahoma City, OK

Special Focus Meeting: Bench-Bar Experiences with the 2015 Discovery Proportionality Amendments
- • Program Facilitator
- • Bolch Judicial Institute, Duke Law School
- • July 13, 2018, Washington, D.C.

Breaking the Boilerplate Habit in Civil Discovery
- • Akron Law Review Symposium on Civil Discovery
- • April 6, 2018, Akron, OH

Sedona Conference eDiscovery Negotiation: Practical Cooperative Strategies
- ▪ Faculty Member
- ▪ February 22-23, 2018, New York, NY

Technology Assisted Review (TAR) Best Practices
- ▪ Program Moderator
- ▪ Duke Law Center for Judicial Studies, Bench-Bar-Academy Distinguished Lawyers' Series
- ▪ September 8-9, 2017, Arlington, VA

Federal Rules Update
- ▪ 2017 Judicial Conference of the Fifth Circuit
- ▪ May 9, 2017, Grapevine, TX

The Virtual Reality: Litigating in the 21st Century
- ▪ Kansas Legal Revitalization Conference
- ▪ February 2, 2017, Kansas City, MO

Big Deal or Big Distraction? Which Recent FRCP Developments Really Matter and Why
- ▪ Kansas Legal Revitalization Conference
- ▪ February 2, 2017, Kansas City, MO

The New Rules for E-Discovery: What Do They Impact?
- Kansas Legal Revitalization Conference
- February 1, 2017, Kansas City, MO

How E-*Discovery Brought* All *Discovery Back to Its Senses*
- University of Florida College of Law, E-Discovery Distinguished Speaker Series
- October 10, 2016, Gainesville, FL

The 2015 Amendments to the Federal Rules of Civil Procedure
- Westfield Insurance Annual Counsel Meeting
- August 9, 2016, Westfield Center, OH

The 2015 Amendments to the Federal Rules of Civil Procedure
- Eighth Circuit Judicial Conference
- May 4, 2016, Rogers, AR

Federal Rules Amendment Process: How Does It Work? Trends and Predictions.
- Wichita Bar Association Civil Practice CLE
- April 21, 2016, Wichita, KS

Sedona Conference eDiscovery Negotiation: Practical Cooperative Strategies
- Faculty Member
- March 1-2, 2016, Washington, D.C.

IAALS Fourth Civil Justice Reform Summit
- Panelist and Planning Committee Member
- February 24-25, 2016, Denver, CO

ABA "Roadshow" on Proportionality and the New 2015 Rules
- Fall 2015 through Spring 2016
- Presentations at U.S. Courthouses in 17 cities (New York, Philadelphia, Newark, St. Louis, Atlanta, Chicago, Washington D.C., Los Angeles, San Francisco, Denver, Phoenix, Dallas, Miami, San Diego, Seattle, Boston, Detroit)

What Do the 2015 Amendments to the Federal Rules of Civil Procedure Really Mean for Judges and Lawyers
- 2016 Southern District of Georgia Attorney Advisory Committee Meeting
- January 29, 2016, Amelia Island, FL

The 2015 Amendments to the Federal Rules of Civil Procedure
- Federal Bar Association, Federal Practice Series
- November 24, 2015, Oklahoma City, OK

Proportionality and the New 2015 Rules
- Judicial Training Symposium co-sponsored by Federal Judicial Center and the Electronic Discovery Institute
- October 14, 2015, New Orleans, LA

Proportionality and the New 2015 Rules
- ABA Section on Litigation Fall Leadership Meeting
- October 9, 2015, Memphis, TN

The 2015 Amendments to the Federal Rules of Civil Procedure
- Kansas City Metropolitan Bar Association Bench, Bar, & Boardroom Conference
- May 15, 2015, Branson, MO

Proportionality and the New 2015 Rules
- National Conference for U.S. Magistrate Judges
- April 21, 2015, Seattle, WA
- July 9, 2015, Boston, MA

Proportionality is Officially Part of Discovery: Now What?
- Washington & Lee University School of Law Faculty Speaker Series
- April 6, 2015, Lexington, VA

Sedona Conference eDiscovery Negotiation: Practical Cooperative Strategies
- Faculty Member
- March 4-5, 2015, Atlanta, GA

Duke Center for Judicial Studies Conference on Implementing Discovery Proportionality Standard
- Faculty Member and Panelist
- November 13-14, 2014, Arlington, VA

Four Years After Duke: Where Do We Stand on Calibrating the Pretrial Process?
- Civil Rules Advisory Committee Meeting; Program Honoring Judge Mark Kravitz
- April 10, 2014, Portland, OR

Hot Topics in Discovery Sanctions: Spoliation and Rule 26(g)
- Judges Retreat, U.S. District Court for the Western District of Missouri
- March 7, 2014, Kansas City, MO

Sedona Conference Cooperation Training Program
- Faculty Member and Panelist
- February 12-13, 2014, Chicago, IL

Amendments to Rule 45
- Presentation to District Judges of the Western District of Oklahoma
- December 2, 2013, Oklahoma City, OK

Cooperation in Practice
- Georgetown Law Advanced eDiscovery Institute
- November 21, 2013, Washington, D.C.

Pretrial Bench Presence
- New England Law School Symposium: "Benchmarks: Evaluating Measurements of Judicial Productivity"
- November 8, 2013, Boston, MA

Unlocking E-Discovery: Educational Summit for State Court Judges
- Faculty member for e-discovery program for state-court judges from around the country.
- Co-hosted by the National Judicial College and the Institute for the Advancement of the American Legal System ("IAALS")
- September 19-20, 2013, Denver, CO

Cooperation and Professional Responsibility
- The Sedona Conference Cooperation Training Program
- February 21, 2013, Phoenix, AZ

Search Wars: Predictive Coding and the Battle for Control of the Search Process
- University of Kansas School of Law Symposium: "Advocacy Under the Federal Rules of Civil Procedure After 75 Years"
- November 9, 2012, Lawrence, KS

New Approaches to Civil Case Management from Around the Country
- Workshop for Judges of the Fifth Circuit
- May 10, 2012, Santa Fe, NM

Ed Cooper, Sherpa Guides, and Procedural Discretion
- Civil Rules Advisory Committee Meeting, Program Recognizing Reporter Ed Cooper
- March 22, 2012, Ann Arbor, MI

Effective Case Management
- Judges Retreat, U.S. District Court for the District of Kansas
- February 17, 2012, Topeka, KS

Closing the Guidance Gaps Under the Federal Rules
- Presented at the William S. Boyd School of Law, University of Nevada Las Vegas
- January 26, 2012, Las Vegas, NV

Electronic Discovery and the Sensible Harvest
- Boston E-Discovery Summit 2011
- December 8, 2011, Boston, MA

Social Media and the Continuing Evolution of the Discovery Rules
- University of Arkansas School of Law Symposium: "Facebook and the Law"
- November 4, 2011, Fayetteville, AR

Discovery After Iqbal: Where Do We Go From Here?
- Multidistrict Litigation Panel Transferee Judge's Conference
- November 1-2, 2011, West Palm Beach, FL

Summary Judgment and Case Management: Each in Service of the Other
- Seattle University School of Law Colloquium: "25th Anniversary of the Summary Judgment Trilogy: Reflections on Summary Judgment"
- September 16, 2011, Seattle, WA

Civil Rules and Appellate Rules: What's New and What's on the Horizon
- Judicial Conference of the Fifth Circuit
- May 3-4, 2011, San Antonio, TX

The Rulemaking Response to Twombly *and* Iqbal
- University of Baltimore School of Law Colloquium Presentation
- April 15, 2011, Baltimore, MD

Knowledge in the Public Interest: Consideration of Incidents Where Scientific and Technical Knowledge Is Kept From the Public Because of Sealed Settlements and Other Restrictive Arrangements
- Panelist, National Academy of Science, Committee on Science, Technology, and Law
- April 11, 2011, Washington, DC

Complex Litigation XIII: The Future of Civil Litigation 2
- Panelist, 13th Annual Sedona Conference on Complex Litigation
- April 7-8, 2011, Del Mar, CA

The 2010 Amendments to Rule 26 and Rule 56
- Kansas Association of Defense Counsel Annual Meeting
- December 3, 2010, Kansas City, MO

The 2010 Amendments to Rule 56
- LEXIS/NEXIS Webinar
- November 23, 2010

Incorporating E-Discovery Rules Into State Practice
- Panelist, Tulsa County Bar Association CLE Program on Electronic Discovery
- November 12, 2010, Tulsa, OK

Federal Judicial Roundtable on Electronic Discovery
- Moderator, Oklahoma Bar Association Symposium on Electronic Discovery
- November 5, 2010, Oklahoma City, OK

Incorporating E-Discovery Rules Into State Practice
- Panelist, Oklahoma Bar Association Symposium on Electronic Discovery
- November 5, 2010, Oklahoma City, OK

Report from the 2010 Conference on Civil Litigation: Where We Are and Where We Are Going
- Panelist, Sedona Conference Webinar Series Presentation
- June 22, 2010

Cooperation in Discovery: A 90-Year View
- Northern Illinois University Law Review Symposium: "What It Means to Be a Lawyer in the Digital Age"
- April 16, 2010, DeKalb, IL

The Future of Civil Litigation: Legislative and Behavioral Changes
- Panelist, 12th Annual Sedona Conference on Complex Litigation
- April 8-9, 2010, Phoenix, AZ

Federal Rules of Civil Procedure: What's Coming in December 2010
- Co-presenter (with The Honorable Lee H. Rosenthal)
- DRI Product Liability Conference
- April 7, 2010, Las Vegas, NV

Codifying Mediation 2.0
- Panelist, The Ohio State Journal of Dispute Resolution Symposium 2010
- February 5, 2010, Columbus, OH

Must, Should, Shall
- AALS Section on Litigation Program
- January 10, 2010, New Orleans, LA

Procedure a la Carte
- AALS Section on Civil Procedure
- January 9, 2010, New Orleans, LA

E-Discovery: Searching the Virtual File Cabinets
- Presenter, NBI Seminar
- Forthcoming November 13, 2009, Oklahoma City, OK

Federal Rules of Civil Procedure: Changes Effective December 1, 2009
- OBA/CLE Webcast Seminar
- November 10, 2009

The First Year of the Cooperation Proclamation
- Panelist, The Sedona Conference Webinar
- November 4, 2009

The Other Side of the CAFA Effect: An Empirical Analysis of Class Action Activity in the Oklahoma State Courts
- Kansas Law Review 2009 Symposium: "Aggregate Justice: Perspectives 10 Years After *Amchem* and *Ortiz*"
- October 30, 2009, Lawrence, KS

Judicial Management Strategies to Encourage Cooperative, Non-Adversarial Discovery
- Workshop for U.S. Magistrate Judges II
- July 15 and 16, 2009, Milwaukee, WI

Some Thoughts on the Lawyer's E-volving Duties in Discovery
- Northern Kentucky Law Review Symposium on E-Discovery
- February 28, 2009, Cincinnati, OH

Privilege Waiver Under New Federal Rule of Evidence 502
- Presenter, NBI Seminar: *Keeping Up with E-Discovery*
- November 13, 2008, Oklahoma City, OK

E-discovery in Oklahoma
- Presented to the Kingfisher County Bar Association
- August 28, 2008, Kingfisher, OK

The Revolution of 1938 Revisited: The Role and Future of the Federal Rules
- Moderator, AALS Civil Procedure Section Program
- January 4, 2008, New York, NY

E-discovery: New Adventures in Client Babysitting?
- Presented at the Kansas University School of Law
- October 19, 2007, Lawrence, KS

Bell Atlantic v. Twombly: Pleading Standards and Court Access
- "Brown bag" presentation at the University of Oklahoma College of Law
- June 20, 2007, Norman, OK

What's Coming Next? A Look Into the Rules Amendment Pipeline
- Presented at *Winning the Federal Case Before Trial*
- December 15, 2006, Oklahoma City, OK

Recent Developments in Federal Subject Matter Jurisdiction
- Presented at *Winning the Federal Case Before Trial*
- December 9, 2005, Oklahoma City, OK

Driving Misjoinder: The Improper Party Problem in Removal Jurisdiction
- "Brown bag" presentation at the University of Oklahoma College of Law
- May 25, 2005, Norman, OK

The Relatively Underguided Erie Analysis
- University of Oklahoma College of Law
- February 9, 2005, Norman, OK

Federal Civil Rules Amendments: A Look Into the Pipeline
- Presented at *Winning the Federal Case Before Trial*
- January 14, 2005, Dallas, TX

Discretionary Dismissal Based on Post-Jurisdictional Events
- Presented to United States Judicial Conference Committee on Federal-State Jurisdiction
- June 10, 2004, New York City, NY

Oil and Gas Class Actions: Issues and Outcomes in Oklahoma
- Presented at the *Eugene Kunz Conference on Natural Resources Law and Policy*
- November 2002, Oklahoma City, OK

UNIVERSITY OF OKLAHOMA SERVICE

Member, Faculty Appeals Board (2012-2016)
Research Liaison, Office of the Vice President for Research (2012-2015)
Member, Small Executive Committee, Faculty Senate (2002-2003)
Member, Faculty Senate (2001-2002)
Chair, Campus Disciplinary Council I (2007-2009)
Chair, Campus Disciplinary Council II (2001-2002)

UNIVERSITY OF OKLAHOMA COLLEGE OF LAW SERVICE

Chair, Committee A (2019-2020)
Member, Committee A (2018-2019)
Member, Committee on Endowed Positions (2017)
Chair, Scholarship and Creative Activity Strategic Planning Committee (2012-2015)
Member, New Programs Committee (2012-2015)
Chair, Foreign Studies Program Committee (2011-2015)
Director, Oxford Summer Program (2011-2015)
Chair, Curriculum Committee (2016-2017)
Member, Curriculum Committee (2013-2014)
Member, Curriculum Committee (2011-2012)
Member, Committee on Research and Scholarship (2011-2016)
Chair, Committee A (2009-2010)
Member, Dean Search Committee (2009-2010)
Member, Committee A (2008-2009)
Faculty Advisor, Oklahoma Law Review (2002-2003, 2004-2007, 2011-2018)
Chair, Mentoring Study Committee (2005-2006)
Chair, Code of Academic Responsibility Appeals Board (2004-2005; 2015-2017)
Chair, Academic Appeals Board (2015-2017)
Member, Externship Subcommittee (2004-2005)
Chair, Personnel Committee (2006-2007)
Member, Personnel Committee (2002-2003)
Member, Personnel Committee (2000-2001)
Member, Competitions Committee (2001-2003)
Member, Legal Writing Committee (2001-2002)
Member, Judicial Clerkships Program (2000-2010)
Faculty Advisor, Phi Alpha Delta (2001-2003)

BAR MEMBERSHIPS

United States Supreme Court (2003)
State of Wisconsin (1992)
Eastern District of Wisconsin (1992)
Western District of Wisconsin (1993)

District of Colorado (1995)