



## ADAM S. DAVIS

Partner

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### In Brief

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- **Partner of Wagstaff + Cartmell LLP**
- **Held a judicial clerkship for the Honorable Deanell Reece Tacha on the U.S. Court of Appeals for the Tenth Circuit.**
- **Chosen as "Super Lawyer" in Kansas and Missouri for 2020 in Appellate Practice; previously a "Rising Star" for several years.**
- **Current Member and Past Three-Year Chair, KCMBA Appellate Practice Committee.**

Adam Davis's practice focuses on appellate work, as well as research, analysis, and brief writing on complex legal issues in a variety of practice areas.

Adam joined Wagstaff & Cartmell in 2009, following a judicial clerkship with the Honorable Deanell Reece Tacha on the U.S. Court of Appeals for the Tenth Circuit. At Wagstaff & Cartmell, Adam has briefed and argued cases to numerous state and federal appellate courts, including the U.S. Courts of Appeals for the Fourth, Eighth, and Tenth Circuits, and state appellate courts in Missouri and Kansas. Adam has been named as a "Super Lawyer" in appellate practice for Kansas and Missouri, after previously being named as a "Rising Star" in appellate practice for several years.

Adam also has handled numerous complex issues in trial courts (primarily federal), as part of the Firm's class action and mass torts practices. Adam has developed particular expertise in Daubert briefing and summary judgment briefing. For several years, Adam was co-lead of the Plaintiffs' Legal Briefing Committee for the massive Multi-District Litigation involving Johnson & Johnson's pelvic mesh products (Southern District of West Virginia). Previously, Adam handled a similar role for the Plaintiffs in the MDL regarding the diabetes drug Avandia (Eastern District of Pennsylvania). Adam also assisted with briefing on behalf of Kansas and other states involved in a nationwide arbitration against the tobacco industry. While his MDL and class action work has been on behalf of Plaintiffs, Adam also has represented Defendants locally, including achieving two major victories in the Supreme Court of Missouri for Saint Luke's Health System.

Adam has some role in almost all of Wagstaff & Cartmell's major cases. But Adam is also available for hire by litigants seeking a change of counsel for appeal, or by attorneys who need expert help on projects such as appeals, summary judgment motions, and briefing to protect or attack expert witnesses (Daubert motions). Adam has also handled several probate appeals on behalf of clients who changed counsel for appeal, with positive results for his clients. Melissa Rohach, one of Adam's clients on a probate appeal, stated:

I always felt I truly had someone on my side. Someone who believed in me and someone who I trusted. Adam Davis listened to everything I said, and he made sure he truly understood my case. He was knowledgeable, confident, kind, punctual, and loyal.

Before entering the legal world, Adam earned a journalism degree from the University of North Carolina at Chapel Hill and worked for several years as a newspaper sports writer and copy editor. Adam then returned to his hometown of Lawrence, Kansas, and earned a J.D. from the University of Kansas.

At KU, Adam was chosen as best oralist in the school's moot court competition, and he earned the Samuel Mellinger Award as the school's top graduate in the combined areas of scholarship, leadership, and service. Adam's law review comment addressing the tension between the Freedom of Information Act and national security considerations was published by the William Mitchell School of Law's Journal of the National Security Forum.



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### Notable Litigation

Appellate Litigation:

**Affirmed:** *Custom Hair Designs by Sandy v. Central Payment Co.*, 984 F.3d 595 (8th Cir. 2020) (part of briefing team). Court of Appeals unanimously affirmed the District Court's Order certifying a class of business owners against payment processing company that allegedly instituted illegal fees and improperly raised other fees. Adam also played a lead role in the briefing obtained class certification from the District Court.

**Reversed:** *Wing v. U-Haul Int'l, Inc.*, 2020 WL 773474 (Ariz. Ct. App. Feb. 18, 2020) (handled briefing). Court of Appeals granted new trial after defense verdict, based on an error in jury instructions that allowed the defendant to ask the jury to excuse its negligence *per se*. Adam also prevailed in briefing in opposition to a petition for review by the Arizona Supreme Court.

**Affirmed:** *Kaiser v. Johnson & Johnson*, 947 F.3d 996 (7th Cir. 2020) (assisted with briefing, helped to prepare lead counsel for argument). Jury affirmed all aspects of a \$20 million verdict in favor of our client, based on injuries suffered from her vaginal mesh implant.

**Reversed Court of Appeals, affirmed trial court:** *Boland v. Saint Luke's Health System*, 588 S.W.3d 879 (Mo. banc 2019) (briefed and argued, with attorney for co-defendant). Unanimous Supreme Court held that statute of limitations barred wrongful death claims re-filed as fraud claims—finding for all Defendants on the specific issue that Adam briefed and argued.

**Reversed:** *Nestel v. Rohach*, 529 S.W.3d 841 (Mo. Ct. App. W.D. 2017) (briefed and argued). Client was a beneficiary of several non-probate transfers from her deceased mother. The jury undid most of those transfers, based on undue influence allegations. The Court of Appeals restored all of the transfers to Adam's client, Ms. Rohach, holding that there was no evidence of undue influence.

**Reversed:** *Andes v. Dickey*, 527 S.W.3d 144 (Mo. Ct. App. 2017) (briefed and argued). Client was removed from the home that she co-owned after her mother sued her over an alleged breach of contract. The trial court granted full title to the mother. The Court of Appeals reversed, holding that Adam's client never lost her ownership share of the house.

**Reversed Court of Appeals, affirmed trial court:** *Boland v. Saint Luke's Health System*, 471 S.W.3d 703 (Mo. banc 2015) (shared briefing with co-defendant, but argued solo). Won 4-3 decision on statute-of-limitations issue, in the first of two appeals to reach the Supreme Court from five consolidated wrongful death cases. The majority held that the wrongful death statute of limitations is three years and cannot be extended due to allegations that the defendant hid its conduct.

**Reversed:** *Winston v. Winston* (Mo. Ct. App. W.D. 2014) (briefed and argued). Client had a falling out with his children and did not exercise the discretion granted to him, as trustee, to make certain distributions to his children. The trial court ordered those distributions to be made. The Court of Appeals reversed, holding that the trustor had intended to provide Adam's client, Dr. Winston, with full discretion.



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**Affirmed:** *Midwest Trust Co. v. Brinton*, 331 P.3d 834 (Table), 2014 WL 4082219 (Kan. Ct. App. Aug. 15, 2014) (briefed and argued). Wagstaff & Cartmell was hired to undo the improper distribution of funds from a trust. Adam briefed the issue in the district court and prevailed on summary judgment. Adam also handled the appeal and prevailed there as well, giving our client, Mr. Brinton, the distribution to which he was entitled. The Kansas Supreme Court denied a Petition for Review.

**Affirmed:** *Talavera ex rel. Gonzalez v. Wiley*, 725 F.3d 1262 (10th Cir. 2013) (briefed with co-defendants and handled majority of argument). Plaintiff sued several medical providers over their alleged failure to diagnose her stroke. The district court granted summary judgment due to lack of evidence that the misdiagnoses harmed her. The Tenth Circuit agreed as to all defendants.

### TRIAL LITIGATION/ARBITRATION:

**Pelvic mesh litigation:** Adam was co-leader of the Legal Briefing Committee for the massive pelvic mesh MDL against Johnson & Johnson. In this role Adam dealt with issues that bore on all cases in the MDL, such as attacking and defending expert witnesses, and briefing common issues such as preemption. He also took a lead role in briefing legal issues for several “bellwether” trials. Meanwhile, Adam spent countless hours leading Wagstaff & Cartmell’s efforts in briefing the Firm’s numerous mesh cases against multiple manufacturers, on issues including summary judgment motions and case-specific Daubert motions. Adam continues to handle numerous briefs and oral arguments in mesh cases that have been remanded from the MDL. The MDL has largely been a success for the Plaintiffs.

**JUUL litigation:** Adam is part of the Plaintiffs’ legal briefing team for the litigation regarding JUUL vaping products, pending in the Northern District of California. Adam played a large role in responding to the Defendants’ motions to dismiss the complaints filed by Government Entity Plaintiffs, and Adam also argued some of those issues to the Court. The Plaintiffs’ claims largely survived the motions to dismiss, and Adam was successful on all of the issues that he handled.

**3M ear plug litigation:** Adam is a key member of the briefing team for nationwide litigation, pending in the Northern District of Florida, on behalf of soldiers who have suffered hearing loss and/or tinnitus due to allegedly faulty ear plugs worn during military service. Adam’s work includes filing and contesting Daubert motions, filing and contesting motions in limine, and assisting with jury instructions for the first bellwether trial.

**Arbitration on behalf of major insurance broker:** Along with Jon Kieffer, Adam represented a major insurance broker in an arbitration dispute against one of its former clients. Mr. Kieffer handled the presentation, while Adam handled the pre- and post-hearing briefing. Wagstaff & Cartmell achieved an extremely good result for its client.

**Allen v. Baxter Healthcare Corp.:** Wagstaff & Cartmell represented the widow of a physician who, according to plaintiffs’ allegations, died after being administered adulterated heparin. Mr. Kieffer and Jack Hyde were the main attorneys on the case, but due to an abundance of legal issues, Adam also played a major role. In particular, Adam’s briefing work avoided summary judgment, obtained transfer from the MDL court to the plaintiff’s home state of Arizona, and kept all of the Plaintiffs’ key expert witnesses in the case. The parties reached a confidential settlement before trial.



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**Private Equity litigation:** Adam assisted Tyler Hudson and attorneys from several other firms nationwide in briefing summary judgment and other issues on behalf of the plaintiffs in a major class action against the nation's leading private equity firms, in the District of Massachusetts. Our efforts helped the plaintiffs, former shareholders of the companies affected by the firms' alleged collusion, achieve \$590.5 million in settlements.

**Cameron (Mo.) area environmental litigation:** Adam responded to summary judgment motions in state and federal court in environmental litigation regarding the alleged application of toxic chemicals on farmland in northwest Missouri. After summary judgment was denied, Wagstaff & Cartmell achieved a \$10 million settlement on behalf of its clients.

**Avandia MDL:** Adam led the briefing team that responded to numerous Daubert motions and to summary judgment motions in bellwether cases, among other legal issues, in the multi-district litigation over the drug Avandia that was held in the Eastern District of Pennsylvania. That litigation resulted in a confidential settlement for Wagstaff & Cartmell's clients and many other plaintiffs in the consolidated litigation.

**Tobacco Arbitration:** Wagstaff & Cartmell represented the State of Kansas in arbitration over the settlement between the major American tobacco manufacturers and most of the 50 states, including Kansas. Adam assisted Eric Barton and Mr. Hudson in briefing issues common to the 50 states and issues specific to Kansas, in addition to preparing them to present at the Kansas-specific arbitration. Wagstaff & Cartmell achieved a favorable settlement for the state that allows Kansas to continue receiving substantial tobacco funds.

### **\$10 MILLION SETTLEMENT – ENVIRONMENTAL PROPERTY DAMAGE**

Wagstaff & Cartmell reached a \$10 million class action settlement with an engineering firm on behalf of a class of Northwest Missouri landowners. The case involved allegations that a tannery distributed tannery sludge containing hexavalent chromium to landowners to use as fertilizer in four Missouri counties from 1983 to 2009. The defendant, an engineering firm, provided consulting services to the tannery during some of that time period.

### **3M Combat Arms Earplug Products Liability, MDL No. 2885**

Attorneys at Wagstaff & Cartmell are involved in this product liability litigation. Tom Cartmell has been appointed to the Executive Committee of the 3M Combat Arms Earplug Products Liability Litigation MDL in the Northern District of Florida in front of the Honorable M. Casey Rodgers.

### **JUUL Labs, Inc., MDL No. 2913**

Wagstaff & Cartmell is involved in this MDL against JUUL Labs, Inc. Tom Cartmell has been appointed the Plaintiff's Government Entity Liaison Counsel of the JUUL Labs Inc. MDL in the Northern District of California in front of the Honorable William H. Orrick.

### **Pelvic Mesh Repair System Products Liability Litigation (S.D.W.V.)**

In 2012, thousands of lawsuits filed nationwide against several manufacturers of transvaginal mesh products. These cases were consolidated by the Judicial Panel on Multidistrict Litigation (JPML) into several MDLs before the Honorable Joseph R. Goodwin in the Southern District of West Virginia. Among the dozens of lawyers who



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applied for leadership positions, Judge Goodwin selected Tom Cartmell as one of a handful of attorneys to lead this mass litigation. Over the ensuing eight years, Tom and the Wagstaff & Cartmell team committed more than 50,000 hours prosecuting more than 100,000 cases – one of the largest mass consolidations ever. Media outlets have reported that settlements have totaled more than \$8 billion for women injured by these defective products. In addition to co-leading this mass action in federal court, Tom Cartmell and Jeff Kuntz played leading roles in several bellwether jury trials in federal and state courts.

### **In Re: Avandia Marketing Sales Practices and Product Liability Litigation, MDL No. 1871 (E.D. Pa.)**

In 2007, the Judicial Panel on Multidistrict Litigation (JPML) created an MDL consolidating a number of cases before the Honorable Cynthia M. Rufe in the Eastern District of Pennsylvania. After being interviewed in open court, Judge Rufe appointed Tom Cartmell to the Plaintiffs’ Steering Committee leading this case. Tom was later selected to be co-lead trial counsel in the lead trial, which settled shortly before the start of trial. All cases in the MDL eventually settled for a confidential amount. Media outlets have reported that the settlements totaled roughly \$2 billion.

### **Big Tobacco v. State of Kansas – Contract Arbitration**

Tom Cartmell and his partners represented the State of Kansas in arbitration proceedings against tobacco companies arising out of the tobacco companies seeking payment adjustments of more than \$50 million based on the interpretation of the 1998 Master Settlement Agreement between tobacco companies and the State of Kansas.

### **Practice Areas**

Adam handles cases in appellate practice, class actions & commercial litigation, professional liability – non-medical and mass actions & personal injury. Adam knows, the key to any boutique trial law firm is its appellate practice, and he is uniquely positioned to offer appellate expertise to clients. Adam has represented developers, franchisees, investors, large companies, small businesses and entrepreneurs in a wide range of litigation. Adam has proudly represented members of the professional community across a variety of occupations. Adam has built a national reputation handling some of the nation’s largest and most challenging mass actions and achieving highly regarded results along the way.

His primary areas of practice has

Recovered more than \$800 million in class action litigation

Obtained dismissals in eight and nine figure disputes

Appointed to leadership positions in major class action suits

We proudly represent Kansas City institutions

Midwest leader in professional liability cases

Recovered billions of dollars on behalf of clients

Achieved historic results in catastrophic injury and wrongful death suits

Regularly appointed to leadership positions in MDLs nationwide



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### Prior Work Experience

U.S. Court of Appeals for the Tenth Circuit, Clerk for the Honorable Deanell Reece Tacha  
The Greenville (S.C.) News; The (Danville, Ill.) Commercial-News, Sportswriter and Copy Editor

### Education

- J.D., University of Kansas School of Law, 2008
  - Samuel Mellinger Award, No. 1 in class
- B.A., University of North Carolina, Journalism

### Professional Organizations

[FORMER three-year chair, KCMBBA Appellate Practice Committee; currently active member and regular CLE presenter](#)

[MEMBER, Kansas Bar Association, and co-author of torts chapter each year for KBA annual survey of the law](#)

### Admissions

[State of Missouri](#)

[State of Kansas](#)

[Western District of Missouri Federal Court](#)

[District of Kansas Federal Court](#)

[U.S. Court of Appeals, Third Circuit](#)

[U.S. Court of Appeals, Fourth Circuit](#)

[U.S. Court of Appeals, Seventh Circuit](#)

[U.S. Court of Appeals, Eighth Circuit](#)

[U.S. Court of Appeals, Ninth Circuit](#)

[U.S. Court of Appeals, Tenth Circuit](#)

### Honors and Awards

- Super Lawyer for Kansas and Missouri in Appellate Practice, 2020
- Rising Star, 2013-18