

# HINKLE

LAW FIRM LLC



## W. THOMAS GILMAN

OF COUNSEL

*Mr. Gilman has represented clients on all sides of bankruptcy proceedings, including debtors, creditors and trustees. He has litigated civil cases throughout Kansas and in appellate courts to the highest levels., including the United States Supreme Court.*

### OVERVIEW

#### W. THOMAS GILMAN

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In his more than thirty years in practice, Mr. Gilman has represented clients on all sides of bankruptcy proceedings, including debtors, creditors and trustees. He has litigated civil cases throughout Kansas and in appellate courts to the highest levels, including the United States Supreme Court. He continues to litigate in complex commercial, contract and bankruptcy cases and enjoys working with debtors and creditors to obtain appropriate relief.

Mr. Gilman was admitted to practice law in 1984. He is a former member of the Board of Governors of the Kansas Trial Lawyers Association, a former member of the Board of Governors of the Wichita Bar Association.

### AFFILIATIONS

- Kansas Bar Association
- Wichita Bar Association
- American Bankruptcy Institute
- Super Lawyers
  - 2007 - Present (Bankruptcy)
- Best Lawyers
  - 2010 - Present (Bankruptcy and Creditor Debtor Rights)
  - 2020 - Present (Insolvency and Reorganization Law)

### PRACTICE AREAS

- > Bankruptcy & Creditor's Rights
- > Civil Litigation
- > Collections

### EDUCATION

- > Washburn University School of Law, J.D., 1983 with honors
- > Washburn University, B.B.A. - Economics, 1981

### BAR ADMISSIONS

- > Kansas Supreme Court
- > United States Supreme Court
- > United States District Court, District of Kansas
- > United States District Court, 10th Circuit

- Best Lawyers ‘Lawyer of the Year’  
— 2022 (Bankruptcy and Creditor Debtor Rights, Insolvency and Reorganization Law)
- Martindale Hubbell AV Preeminent Rating, 2018

**Super Lawyers**

## SIGNIFICANT CASES

### United States Supreme Court

- Johnson v. Home State Bank, 501 U.S. 78, 111 S.Ct. 2150, 115 L. Ed. 2d 66 (1991). The bankruptcy code does not prohibit serial filings of Chapter 7 and then Chapter 13 bankruptcies.

### Kansas Supreme Court

- Hays v. Ruther, 298 Kan. 402, 313 P.3d 782 (2013). On certified question from the United States District Court for the District of Kansas, co-counsel on issues relating to the interpretation of the Kansas Credit Services Organization Act.
- McCain Foods USA, Inc. v. Central Processors, Inc., 275 Kan. 1, 61 P.3rd 68 (2002). Court addresses numerous issues of first impression arising under the Kansas Uniform Fraudulent Transfer Act.
- Smith v. Welch, M.D., 265 Kan. 868, 967 P.2d 727 (1998). A doctor conducting an independent medical exam owes a duty to not injure the examinee. Believed to be the first case in Kansas history where a doctor was found to have committed the tort of outrage against a patient.
- Home State Bank v. Johnson, 240 Kan. 417, 729 P.2d 1225 (1986). Addresses homestead exemption rights in farm foreclosure.

### United States Tenth Circuit Court of Appeals

- In re Borman, 886 F.2d 273 (10th Cir. 1989). Prohibiting ex-spouse from avoiding lien granted in homestead property as part of property settlement in divorce proceeding.

### United States Bankruptcy Appellate Panel

- In re Milk Palace Dairy, LLC, 327 B.R. 462 (10th Cir. BAP 2005) Dismissing appeal on basis of equitable mootness.
- In re Shore, 317 B.R. 536 (10th Cir. BAP 2004). Debt arising from fraudulent conveyance under Kansas Uniform Fraudulent Transfer Act is nondischargeable in Chapter 7 bankruptcy.

### Kansas Court of Appeals

- Kenby Oil Co. v. Lange, 30 Kan. App. 2nd 439, 42 P.3rd 201 (2002). Guaranty claim based on incomplete written guaranty agreement is unenforceable under the Kansas Statute of Frauds.



- *St. Joseph Development Corp. v. Sequenzia*, 25 Kan. App. 2d 514, 968 P.2d 682 (1998). In computing the dormancy period of a judgment lien on real estate, the time during which the judgment debtor is in bankruptcy and the judgment creditor is prohibited by the bankruptcy stay from executing on the judgment is added to the dormancy period.
- *Jack v. City of Wichita*, 23 Kan. App.2d 606, 933 P.2d 787 (1997). Lender has no duty of care to borrower to obtain flood insurance or to notify borrower that flood insurance is necessary.

**United States District Court**

- *Clark v. Associates Commercial Corp.* 877 F. Supp. 1439 (D.Kan. 1994). Creditor's duty to peacefully repossess collateral (in this case repo agent broke debtor's leg to obtain control of the tractor-trailer unit he was repossessing) is nondelegable. Punitive damages available to debtor against creditor where creditor's independent contractor breached the peace during the course of repossessing tractor-trailer unit.
- *Sack v. Banker's Life & Cas. Co.*, 1991 WL 31994 (D.Kan. Feb. 27, 1991). Denying cross motions for summary judgment on claim against insurance company on nursing home policy.
- *Federal Gasohol Corp. v. Total Phone Management, Inc.*, 24 F.Supp.2d 1149 (1998). Allowed removal of contract litigation from state court to federal court where forum selection clause in contract preferring state court was permissive rather than mandatory.
- *Rufenacht, Bromagen, and Hertz, Inc. v. Russell*, 69 B.R. 394 (D.Kan. 1987). Creditor in bankruptcy adversary proceeding could not amend objection to discharge to state claim objecting to dischargeability after the deadline for bringing a dischargeability complaint had expired.

**United States Bankruptcy Court**

- *In re Team Financial, Inc.*, 2013 WL 492854 (Bankr. D. Kan. 2013). Successfully excluding FDIC's proffered expert testimony.
- *In re Team Financial, Inc.*, 2010 WL 1730681 (Bankr. D.Kan. 2010). Successfully defending FDIC's motion for summary judgment and claim to significant tax refund owed to bank holding company under Tax Allocation Agreement.
- *In re Veazey*, 272 B.R. 486 (Bankr. D. Kan. 2002). A Chapter 7 trustee could avoid a lien arising from personal injury protection payments made by an auto insurance carrier.
- *In re Seymour*, 144 B.R. 524 (Bankr.D.Kan. 1992). Allowing debtors to assume pre-bankruptcy executory contract for sale of land.
- *In re C.O. Rathole Drilling, Inc.*, 1991 WL 261721 (D.Kan. 1991). Denying a motion for new trial pertaining to valuation of property and confirmation of Chapter 11 plan of reorganization.

**PUBLICATIONS & PRESENTATIONS**

- Wichita Bar Association, Bankruptcy Appeals, Co-presenter, February 10, 2017.
- Kansas Bankruptcy Handbook, 3rd ed., Chapter Co-Author, Representing the Debtor In Chapter 11: An Overview, Kansas Bar Association (2009).