

NO. \_\_\_\_\_

IN THE SUPREME COURT OF THE UNITED STATES

Consuelo E. Kelly-Leppert

Appellant

v.

United States of America

Respondent

Mr. Scott S. Harris

Clerk of the Court

United States Supreme Court

1 First St., NE

Washington, DC 20543

For submission to: the Honorable Neil M Gorsuch, Associate Justice of the Supreme Court and  
Circuit Justice for the Eighth Circuit and to the

Honorable Associate Justice Sonia Sotomayor of the Supreme Court of the United States and  
Circuit Justice of the Tenth Circuit.

Pro-se Plaintiff, Consuelo E Kelly-Leppert, hereby submits Application to Stay or Recall the  
Mandate of the U.S. Court of Appeals for the Eighth Circuit Court of Appeals.

Respectfully submitted,

  
Consuelo E. Kelly

10257 Switzer

Overland Park, Ks. 66212

NO. \_\_\_\_\_

IN THE SUPREME COURT OF THE UNITED STATES

CONSUELO E. KELLY-LEPPERT

APPELLANT

V

UNITED STATES OF AMERICA

RESPONDENT

ON APPLICATION TO STAY OR RECALL THE MANDATE OF THE U.S. COURT OF  
APPEALS FOR THE EIGHTH CIRCUIT COURT OF APPEALS

QUESTIONS:

- 1) What is the threshold for knowledge, diligence, extraordinary circumstance or general federal standard for equitable tolling?
- 2) 28USC2401 (a) and (b) have two separate statutes of limitations, 6 years and 2 years respectively. Is tort case not a civil case?
- 3) Are there two statutes of limitations in Section 28USC2401(b)?

No. \_\_\_\_\_

**IN THE SUPREME COURT OF THE UNITED STATES**

Consuelo E. Kelly-Leppert

Appellant

V

UNITED STATES OF AMERICA

Respondent

---

*On Application to Stay or Recall the Mandate of the U.S. Court of Appeals for the Eighth Circuit Court of Appeals*

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**APPLICATION TO RECALL AND STAY THE MANDATE PENDING THE FILING  
AND DISPOSITION OF A PETITION FOR WRIT OF CERTIORARI**

Introduction This is a diversity FTCA tort case (Missouri/Kansas) addressed to the Honorable Neil M. Gorsuch, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Eighth Circuit and to the Honorable Associate Justice Sonia Sotomayor of the Supreme Court of the United States and Circuit Justice of the Tenth Circuit.

**OPINIONS BELOW**

The Opinions and Order of the 8th Circuit Court of Appeals is included as Appendix A.

**JURISDICTION**

The 8<sup>th</sup> circuit issued its opinion on December 10, 2019 affirming the district court's summary judgement order that the "administrative claim was not filed within two years of her cause of action accruing and that the records does not support equitable tolling the statute of limitations permitting her administrative claim to be deemed timely filed...that plaintiff must act diligently to file her claim" ..... "Reasonable diligence was a strong factor underlying the treatment of equitable tolling in *Rotella v. Wood*, 528 U.S. 549 (2000) In that case, the plaintiff had failed to exercise reasonable diligence to uncover a pattern of wrongdoing in a Racketeer Influenced and

Corrupt Organizations Act claim. Thus the lower courts held that the plaintiff's RICO lawsuit was untimely. Writing for a unanimous court, Justice David Souter stated that "federal statutes of limitations are generally subject to equitable principles of tolling and where a pattern remains obscure in the fact of a plaintiff's diligence in seeking to identify it, equitable tolling may be one answer to the plaintiff's difficulty. *Id* at 560-61 (citation omitted). Although the plaintiff had not been sufficiently diligent in Rotella, Justice Souter ended the opinion by remarking that: "The virtue of relying on equitable tolling lies in the very nature of such tolling as the exception, not the rule." *Id.* At 561. In this case, in spite of the fact that appellant practiced diligence, the lower courts ignored the evidence which was included in the supplementation of records.

Petitioner filed with the 8<sup>th</sup> Circuit a petition for rehearing en banc and rehearing en banc by the panel which were also **denied** on April 9, 2020. Appellant's Motion to stay was **denied** on April 21, 2020 by the 8<sup>th</sup> Circuit Court of Appeals. Appellant's Motion to Recall Mandate was **denied** April 23, 2020. Appellant's Motion to Admit Expert testimony which was obtained by the plaintiff after filing claim with the district court was denied March 19, 2020 and could have served as evidence that medical records were concealed also denied. *"Quality of care issues have plagued the Department of Veterans Affairs healthcare system for years, most notably the 2014 cover up of long wait times veterans endured to get appointments". By Jill Castellano Inewsourc 8/6/2014.*" Fraudulent concealment can equitably toll a statute of limitations. "This Court has gradually clarified that equitable tolling may, in suitable cases, apply to public entities. In *Bailey v. Glover* 88 U.S.342 (1874). This Court held that the statute of limitations did not begin to run until the plaintiff discovered the fraud: (1) where the fraud forming the lawsuit's basis was either concealed or was of such a character as to conceal itself, and (2) where the plaintiff was neither negligent nor guilty of laches in failing to d of the fraud. Bailey rested on the equitable

principle that statutes of limitations are designed to prevent fraud not help fraud succeed.”

Source: David L. Abney Counsel of Amicus Curiae Nov. 10, 2014

## STATEMENT OF THE CASE

Pro Se applicant is widow of deceased Vietnam Veteran Michael J. Kelly. Michael was a telecommunications and maintenance operator (mainly cockpit) in C-130, C-118 and C-123 transport planes. He was assigned to asbestos laden Treasure Island. “There is increasing evidence that emphysema may also cause scarring and repair processes that could lead to lung cancer” ...Asbestos Exposure to Treasure Island Naval Station 8/7/2020.

His crew was assigned to transport materials which included Agent Orange, bodies of deceased young combat veterans and other materials needed by the troops. Their route was Hawaii, Guam, Philippines, Japan, Da Nang in Vietnam. In 2006, as a result of being forgetful and not feeling well, Michael presented himself at the VA in Kansas City for a complete Agent Orange examination. He was cleared of any ailments in 2006 but in a follow-up in May of 2007, he was diagnosed with a Stage IV large fungating tumor. Only in September of 2007 was the tumor removed. Although appellant obtained his medical records in 2012, and having no medical background, there was nothing in the records that would indicate that a malpractice occurred. A widow's benefit was filed in 2012 with the VA. The death certificate was revised from colorectal cancer to lung carcinoma as cause of death because a VA oncologist indicated only in 2014 that “there was no biopsy done on lungs” therefore he could not determine the primary site of the cancer. Lung cancer is listed as one of the service connected diseases caused

by exposure to agent orange. No lung cancer treatment was provided to the veteran and no medical records to indicate that any treatment was provided. The colorectal cancer was contained (VA cancer free letter in 2008) but the lung cancer was undiscovered and/or missed. Hence, if the lung cancer was untreated, then, even a non-medical person would conclude that the cancer cells were allowed to multiply and spread throughout the body. Conclusion: lung cancer was not contained. Michael passed away in October 26, 2011. Under 28USC2401 (b) and 1346 (b) claimant filed a diversity claim for misdiagnosis and negligence. The appeals court erred by denying the medical expert opinion that "the 2006 Medical Records of Michael could not be found"...as a result, appeals court did not find any concealment of records. Although 28USC2401(B) can be equitably tolled, (provided there's diligence and an extraordinary circumstance which prevented the appellant to file her claim,) the court did not consider tolling because of incapacity (extraordinary circumstance). Appellant suffered from diverticulitis and just recently learned that she has been suffering from heart disease both diseases are under "legal disability". She was operated on her diverticulitis in 2013 just a year from obtaining her husband's medical records. From 2012 to 2013, diverticulitis attacks would occupy most of her time. Also, by ignoring her health, from 2013 to June 2020, she also suffered from stress related heart disease and at times would be out of breath. Just recently however, had open heart surgery. Heart disease, high blood pressure and diverticulitis are listed as legal disability. 28 United States Code § 2401 (a) Except as provided by chapter 71 of title 41, every civil action commenced against the United States shall be barred unless the complaint is filed within **six years** after the right of action first accrues. The action of any person under **legal disability** or beyond the seas at the time the claim accrues may be commenced within three years after the **disability** ceases. A legal requirement to be under legal disability is that a person can no longer perform tasks that he/she used to do. Appellant and her deceased husband had a freight business and used to pick up heavy boxes to transport.

by exposure to agent orange. No lung cancer treatment was provided to the veteran and no medical records to indicate that any treatment was provided. The colorectal cancer was contained (VA cancer free letter in 2008) but the lung cancer was undiscovered and/or missed. Hence, if the lung cancer was untreated, then, even a non-medical person would conclude that the cancer cells were allowed to multiply and spread throughout the body. Conclusion: lung cancer was not contained. Michael passed away in October 26, 2011. Under 28USC2401 (b) and 1346 (b) claimant filed a diversity claim for misdiagnosis and negligence. The appeals court erred by denying the medical expert opinion that “the 2006 Medical Records of Michael could not be found”...as a result, appeals court did not find any concealment of records. Although 28USC2401(B) can be equitably tolled, (provided there’s diligence and an extraordinary circumstance which prevented the appellant to file her claim,) the court did not consider tolling because of incapacity (extraordinary circumstance). Appellant suffered from diverticulitis and just recently learned that she has been suffering from heart disease both diseases are under “legal disability”. She was operated on her diverticulitis in 2013 just a year from obtaining her husband’s medical records. From 2012 to 2013, diverticulitis attacks would occupy most of her time. Also, by ignoring her health, from 2013 to June 2020, she also suffered from stress related heart disease and at times would be out of breath. Just recently however, had open heart surgery. Heart disease, high blood pressure and diverticulitis are listed as legal disability. 28 United States Code § 2401 (a) Except as provided by chapter 71 of title 41, every civil action commenced against the United States shall be barred unless the complaint is filed within **six years** after the right of action first accrues. The action of any person under **legal disability** or beyond the seas at the time the claim accrues may be commenced within three years after the **disability** ceases. A legal requirement to be under legal disability is that a person can no longer perform tasks that he/she used to do. Appellant and her deceased husband had a freight business and used to pick up heavy boxes to transport.

The lower courts also erred in not hearing appellant's claim regarding statute of repose. The FTCA does not have a statute of repose but many states do, e.g. Missouri and Kansas. "In *Walker v. Armco Steel Corp.* the Supreme Court held that, in diversity actions, state law defines commencement for the purpose of tolling the statute of limitations. Statutes of repose most often apply to specific kinds of injury-related cases. For example, statutes of repose are common in: **medical malpractice lawsuits**, where a patient might not always know right away that he or she suffered harm because of a medical error, and/or that a health care provider might be responsible for that harm. (In medical malpractice lawsuits, a statute of repose usually acts in conjunction with the "discovery" rule mentioned above, and sets a broader, more strictly-enforced filing deadline that even encompasses situations where the patient could not have reasonably discovered that he or she was harmed and/or had a right to file a lawsuit.)source: lawyers.com "There is also an overall deadline (called a "**statute of repose**") which says no **medical malpractice case** can be filed in **Missouri** if more than 10 years have passed since the **alleged treatment mistake** was made (no matter what type of mistake it was, or when it was discovered)."

Granted that this case will be based under statute of repose, claimant is well within the time required in filing her claim.

**Questions:** 1) What is the threshold for knowledge, diligence, extraordinary circumstance or "general" federal standard for equitable tolling?

2) **IS TORT NOT A CIVIL CLAIM?**

3) **are there two statutes of limitations** in Section 2401(b) of the **FTCA** ? (2401 (b) of the FTCA requires **tort** claims against the United States (a)) be presented to the appropriate federal agency within two years of the claim's accrual, (b)**or** within six months after the notice of denial.

**There is a strong likelihood that the Court will overturn the Eighth Circuit's decision the reason being that this case meet this court's test for recalling the mandate**

In recalling mandates, this Court has considered four factors (1) whether this Court's decision is inconsistent with the later Supreme Court decision (2) whether the movant's papers made the



argument that prevailed in the Supreme Court (3) whether there was a substantial lapse of time before moving to recall the mandate (4) whether the equities strongly favor relief.

In *Rotella v. Wood* 528 U.S.549 (2000) the lower courts held that RICO lawsuit was untimely and even though the plaintiff had failed to exercise reasonable diligence, Justice David Souter stated that “generally, statutes of limitations are subject to equitable tolling..” But in *Kubrick v. United States* (444 U.S. 111) even though reasonable diligence was exercised, statute of limitations was not tolled. 28CFR2401(a) and (b) states that statute of limitations can be equitably tolled if there’s diligence and extraordinary circumstance prevented timely filing. Tolling is also available if a person is under “legal disability”. This case met all the requirement of tolling in that under

- a) diligence, doors were closed when claimant diligently sought the help of several lawyers and doctors
- b) extraordinary circumstance (legal disability: diverticulitis and recently discovered she has had heart disease) prevented her from filing on time. Social Security disability benefits are granted if the claimant can no longer perform the previous jobs/tasks.

The appeals court erred and denied supplementation of records under FRAP 10e(2)(c) which included 1) evidence (2) concealment of medical records (medical records could not be located by the expert medical witness) and (3) expert witness testimony. This Court should now recall its mandate. The court of appeals “have an inherent power to recall their mandates” This Court should recall the mandate for reasons that under 28USC2401(A) :The action of any person under

legal disability or beyond the seas at the time the claim accrues may be commenced within three years after the disability ceases .....my husband and I had an international freight forwarding business which at times required for the appellant to pick up heavy . She could no longer perform such duties when she came down with diverticulitis and a recently discovered heart disease that's been ongoing and could have started when taking care of her deceased husband.

*Mancuso v. Herbert*, 166 F3d 97, 100 (2d Cir. 1999). Quoting *Sargent v. Columbia Forest Prods. Inc.* 75 F 3d 86, 90 (2d Cir. 1996)"one circumstance that may justify recall of a mandate is (a) supervening change in governing law that calls into serious question the correctness of the court's judgement. "Consistent with that principle, this Court has granted motions to recall the mandate where its decision conflicts with a subsequent decision from a state high court (in diversity cases) or the Supreme Court of the United States. *Sanchez v. United States*, 839 F 2d 40, 42 (2d Cir. 1988).

"Claims arising under the FTCA amount to roughly 15,000–30,000 each year"....Christa Maiorano, Matthew Valenti LII Supreme Court Bulletin.

and yet, different courts arrive at different conclusions and/or decisions with regards to FTCA cases. And although in 2015 in *June v. United States* 13-075 and *Wong v. United States* 13-074, the Court reached a decision that statute of limitations can be equitably tolled provided plaintiff showed diligence and there was extraordinary circumstance that prevented plaintiff to file on time, the lower courts' decisions are varied on other factors such as accrual dates, discovery, diligence, etc. Wong and June only fulfilled one both requirements (June was due to incarceration while Wong was due to some extraordinary circumstance(s). The Court's decision may define the availability of relief for many of those claimants and will clarify the role of courts in confronting a claim that falls outside the FTCA's two-year limitations period. The Court will answer the question of whether this two-year time bar acts as a jurisdictional requirement, therefore preventing the use of equitable tolling, or whether the traditional presumption in favor of equitable tolling applies to the FTCA as well. And the Court did answer, stating that,

“Congress thus must do something special to tag a statute of limitations as jurisdictional and so prohibit a court from tolling it.” Justia

**Fraud or Concealment:**

Porter v. Spader, 225 Ariz. 424, 239 P.3d 743 (Ariz. App., 2010)

“In instances involving equitable tolling, courts have recognized that, as a matter of equity, a defendant whose affirmative acts of fraud or concealment have misled a person from either recognizing a legal wrong or seeking timely legal redress may not be entitled to assert the protection of a statute of limitations. (Internal Citations Omitted) (stating that a defendant insurer will be estopped from asserting the defense of the statute of limitations if by its conduct the insurer induces its insured (the plaintiff) to forego litigation by leading the insured to believe a settlement will be effected without the necessity of commencing litigation).” *Porter v. Spader*, 225 Ariz. 424, 239 P.3d 743, 747 (Ariz. App., 2010).

In this case, her expert witness could not locate the critical medical records.

**TRICKERY AND DUE DILIGENCE:**

“We have allowed equitable tolling in situations where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period, or where the complainant has been induced or tricked by his adversary’s misconduct into allowing the filing deadline to pass. We have generally been much less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights.” *Baldwin County Welcome Center v. Brown*, 466 U.S. 147, 151, 104 S.Ct. 1723, 1725, 80 L.Ed.2d 196 (1984).... *Porter v. Spader*, 225 Ariz. 424, 239 P.3d 743, 748 (Ariz. App., 2010). The 2014 medical report in this case caused the appellant’s claim, amongst others, to be delayed.

**THIS CASE MEET THIS COURT’S TEST FOR RECALLING THE MANDATE**

In recalling mandates, this Court has considered four factors(1) whether this Court’s decision is inconsistent with the later Supreme Court decision (2) whether the movant’s papers made the argument that prevailed in the Supreme Court (3)whether there was “a substantial lapse of time”before moving to recall the mandate and (4) whether the equities “strongly favor” relief

A later decision (2015)by the Supreme Court in *June v. United States 13-075* is inconsistent with earlier decisions as to whether the statute of limitations is “jurisdictional”. Because Congress did not address statute of limitations is not jurisdictional, equitable tolling is possible. Congress

must do something special to tag a statute of limitations as jurisdictional and prohibit a court from tolling it. Kagan, J., delivered the opinion of the Court, in which Kennedy, Ginsburg, Breyer, and Sotomayor, JJ., joined. Alito, J., filed a dissenting opinion, in which Roberts, C. J., and Scalia and Thomas, JJ., joined.

“Separation of a filing deadline from a jurisdictional grant often indicates that the deadline is not jurisdictional; the FTCA’s jurisdictional grant appears in another section and is not expressly linked to the limitations periods. The phrase “shall be forever barred” was commonplace in statutes of limitations enacted around the time of the FTCA, and does not carry jurisdictional significance.”

*Irwin v. Department of Veterans Affairs*, 498 U. S. 89 , provides the framework for deciding the applicability of equitable tolling to statutes of limitations on suits against the Government. There, the Court adopted a “rebuttable presumption” that such time bars may be equitably tolled. *Id.*, at 95.

Federal cases provide additional examples of situations in which a party might qualify for equitable tolling. See *Seitzinger*, 165 F.3d at 240 (“[E]quitable tolling may be appropriate when a claimant received inadequate notice of her right to file suit, where a motion for appointment of counsel is pending, or where the court has misled the plaintiff into believing that she had done everything required of her.”). Courts have applied equitable tolling when “extraordinary circumstances beyond plaintiffs’ control made it impossible to file the claims on time.” *Alvarez-Machain v. United States*, 107 F.3d 696, 701 (9th Cir.1996); see also *Harris v. Hutchinson*, 209 F.3d 325, 330 (4th Cir.2000) (same). For example, courts have found extraordinary circumstances when there is a lack of clarity in the law, *Capital Tracing, Inc. v. United States*, 63 F.3d 859, 862-63 (9th Cir. 1995), or when an attorney affirmatively lied to a diligent client, *Seitzinger*, 165 F.3d at 241-42. “To establish extraordinary circumstances, a petitioner must support his allegations with evidence; he cannot rely solely on personal conclusions or assessments.” *Collins v. Artus*, 496 F.Supp.2d 305, 313 (S.D.N.Y.2007). *Mccloud v. State, Dept. of Public Safety*, 170 P.3d 691, 696, 217 Ariz. 82 (Ariz. App., 2007). Source: Cornell Law School Legal Information

## CONCLUSION

Pro Se applicant Consuelo E. Kelly-Leppert respectfully requests that this Court grant a stay/recall of its mandate and have the lower courts reverse their decision. She believes that her 14<sup>th</sup> amendment rights have been jeopardized in that due process of law was not exercised . The 14<sup>th</sup> Amendment clearly states that :

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive ay person of life, liberty or property with due process of law nor deny to any person within its jurisdiction the equal protection of the laws.”

Respectfully submitted,  
  
Consuelo E. Kelly Leppert, Pro Se appellant

10257 Switzer Overland Park, Ks. 66212 tel.913-5419156

## APPENDICES

District Court Opinion (November 9, 2018)	A-1
Eighth Circuit Court Judgement (December 10, 2019)	B-1
Motion to admit expert testimony denied (March 19, 2020)	C-1
Eighth Circuit Order Denying En Banc Rehearing and Rehearing by the panel denied (April 9, 2020)	D-1
Eighth Circuit Court Denying Recall of Mandate (April 23, 2020)	E-1
Exhibit B Letter from Dr. Kelly Pendergrass MD (with doctor's Personal data attached)in search of Veteran's medical records but <b>VA could not find Michael Kelly's 2006 records</b>	F-1
MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS WITH AFFIDAVIT IN SUPPORT	G-1
MOTION REQUESTING APPOINTMENT OF COUNSEL	H-1
A one page medical opinion from an "independent VA oncologist" no Biopsy done on veteran's lungs	I-1
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**Cardiothoracic Surgery**

7/10/2020

Patient: Consuelo Evangelista Kelly-Leppert  
Med Rec #: 0114110  
DOB: 9/10/1948  
Visit date: 7/10/2020

This is to certify that the above stated patient underwent Open Heart Surgery on June 25, 2020 ;  
performed by Dr. Emmanuel Daon, MD.

She has a follow up visit July 17, 2020.

She may return to work on September 25, 2020 with no restrictions.

Please feel free to contact the office if you have any additional questions/concerns or need any  
additional documentation. Thank you for your assistance in this matter.

Sincerely,

Amanda E. Fletcher, R.N.  
Clinical Nurse Coordinator for Cardiothoracic Surgery

Dr. Emmanuel Daon, MD



4000 Cambridge St.  
Ground Floor, Suite G600  
Mailstop 4035  
Kansas City, KS 66160  
Phone (913) 588-7743  
Fax (913) 588-9786

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

CONSUELO E. KELLY-LEPPERT, )

Plaintiff, )

v. )

Case No. 18-0089-CV-W-BP

UNITED STATES OF AMERICA, )

Defendant. )

**ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

Plaintiff initiated this suit pro se, alleging that her husband died after doctors at the VA Hospital failed to properly diagnose and treat his cancer. The suit is brought under the Federal Tort Claims Act, ("the FTCA"). Pending is Defendant's Motion for Summary Judgment, which contends that Defendant is entitled to judgment because Plaintiff did not file an administrative claim within two years of the cause of action accruing. Plaintiff contends that her deadline for filing an administrative claim should be tolled. For the reasons set forth below, Defendant's motion, (Doc. 34), is **GRANTED**.<sup>1</sup>

**I. BACKGROUND**

The following facts are not only uncontradicted but are conceded by Plaintiff. In 2006, Plaintiff's late-husband, Michael Kelly, ("Kelly"), was diagnosed with colon cancer and underwent surgery and chemotherapy at the VA Hospital. Notwithstanding this treatment, the cancer

<sup>1</sup> Defendant alternatively argues that the case should be dismissed pursuant to section 538.225 of the Revised Missouri Statutes because Plaintiff did not provide an affidavit from a health care provider "stat[ing] that the defendant health care provider failed to use such care as a reasonably prudent and careful health care provider would have under similar circumstances and that such failure to use such reasonable care directly caused or directly contributed to cause the damages claimed in the petition." The failure to file the affidavit would result in a dismissal without prejudice. Mo. Rev. Stat. § 538.225.6. The Court opts to address the statute of limitations because it resolves the case on the merits.



**UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

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No: 18-3525

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Consuelo E. Kelly-Leppert

Plaintiff - Appellant

v.

United States of America

Defendant - Appellee

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Appeal from U.S. District Court for the Western District of Missouri - Kansas City  
(4:18-cv-00089-BP)

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**JUDGMENT**

Before COLLOTON, BENTON, and GRASZ, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court and briefs of the parties.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

December 10, 2019

Order Entered in Accordance with Opinion:  
Clerk, U.S. Court of Appeals, Eighth Circuit.

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/s/ Michael E. Gans

**UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

No: 18-3525

Consuelo E. Kelly-Leppert

Appellant

v.

United States of America

Appellee

---

Appeal from U.S. District Court for the Western District of Missouri - Kansas City  
(4:18-cv-00089-BP)

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**ORDER**

The appellant's motion to admit expert testimony is denied.

March 19, 2020

Order Entered at the Direction of the Court:  
Clerk, U.S. Court of Appeals, Eighth Circuit.

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/s/ Michael E. Gans

**UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

No: 18-3525

Consuelo E. Kelly-Leppert

Appellant

v.

United States of America

Appellee

---

Appeal from U.S. District Court for the Western District of Missouri - Kansas City  
(4:18-cv-00089-BP)

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**ORDER**

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

April 09, 2020

Order Entered at the Direction of the Court:  
Clerk, U.S. Court of Appeals, Eighth Circuit.

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/s/ Michael E. Gans

# Exhibit B

I am a NCI Comprehensive Cancer Center trained/Board Certified Medical Oncologist who has reviewed all available KC-VAMC medical records/communications regarding the care of deceased Veteran Michael J Kelly on behalf of his surviving widow-Ms. Consuelo E Kelly-Leppert.

I currently practice/am an Assistant Professor of Medicine with the Kansas University Cancer Center where I routinely see/treat patients who are diagnosed with colon cancer. My CV is enclosed.

Mr. Kelly was concerned about his previous Agent Orange exposure & incumbent potential health risks and was seen on 9/29/06 for a screening examination at which time he reputedly underwent a digital rectal exam which was said to be negative. Those records cannot be located by the VA to confirm who performed or the adequacy/quality of that examination or whether stool occult blood testing was also performed at that visit.

In spite of the fact that he had never undergone a colonoscopy/was greater than 50 years of age and had a positive family history for cancer no referral for GI endoscopy was made at that 2006 encounter.

On 3/27/07 he was seen by J McKee NP as a new patient. She did not perform a rectal exam because of the earlier 2006 visit; a subsequent fecal occult blood test was positive on 4/11/07. In May he underwent colonoscopy which revealed an ulcerated moderately differentiated adenocarcinoma of the rectum at 7cm from the anus (T3, N0 by EUS).

Because of the size /location of this malignancy in June 2007 he began neoadjuvant combined modality treatment with Xeloda (Dr Barranda) and external beam radiotherapy (Dr Paradelo). He subsequently underwent definitive surgery on 9/11/07 by Dr Stark at which time there was evidence of tumor microsatellites and involvement of the

deep muscularis microscopically. Unfortunately, inspite of further therapy this cancer recurred/metastasized and ultimately led to Mr. Kelly's death.

In my expert opinion, this cancer was present at the time of his initial exam in September 2006, but was not recognized and went untreated for an additional nine plus months. I suspect the initial digital exam was directed more at evaluating his prostate, and the examiner incompletely/inadequately evaluated his rectum. I believe he should have been scheduled for an initial screening colonoscopy at that visit based on his age/family history; occult blood testing should have been performed. Any of these measures would have led to an earlier diagnosis.

This diagnostic delay could have easily led to at least one tumor doubling, and no doubt the primary tumor would have been a smaller/less extensive neoplasm if had been recognized sooner. An earlier diagnosis may have also spared him of some of the treatment he received. This treatment delay may have increased the development of metastatic disease which ultimately led to his demise.

I think the VA could have/should have served Mr. Kelly better at his initial encounter, and had an earlier diagnosis been made just as likely as not would have led to an improved outcome.



Kelly Pendergrass MD

# UNIVERSITY OF KANSAS SCHOOL OF MEDICINE

## Academic Curriculum Vitae

Date March 13, 2019

### I. PERSONAL DATA:

#### 1. Personal and Contact Information:

**Full Name** Kelly B. Pendergrass **Degree(s)** BA,MD

**Current Academic Rank** Assistant Professor

**Current Academic Track** Clinical Scholar Track

**Primary Department** Medicine Clinical Oncology

**Secondary Department** \_\_\_\_\_

**Office Address** \_\_\_\_\_ **Mailstop** \_\_\_\_\_

**Office Phone** (913) 574-2350 **Email** kpendergass@kumc.edu

#### 2. Professional Development:

##### A. Undergraduate and Graduate Education:

Years (inclusive)	Degree (course of study/major)	Institution
1971	BA	Univ. of Kansas
1971 - 1975	MD (Medicine)	Univ. of Kansas-Medical Ctr.

##### B. Postgraduate Education:

Years (inclusive)	Degree (/)	Institution
1975 - 1978	Internal Medicine Residency	Baptist Memorial Hospital, University of Tennessee, Memphis
1978 - 1979	Hematology/Oncology Fellowship	Roger Williams General Hospital, Brown University, Providence
1979 - 1980	Medical Oncology Fellowship	The Johns Hopkins Hospital, Baltimore

##### C. Continuing Education

Year(s)	Course Title	Description

##### D. Academic and Professional Appointments and Activities:

Month and Year	Position	Institution
1978 - 1979	Assistant in Internal Medicine	Brown University
1979 - 1980	Assistant in Oncology, Fellow	Johns Hopkins Hospital, University School of Medicine
1980 - 2000	Medical Oncologist	Kansas City Internal Medicine
1980 - 2001	Oncology Unit Director	Research Medical Center
1981 - 2001	Chair	Research Medical Center
1986 - Present	Clinical Professor	University of Missouri Kansas City School of Medicine
2000 - 2011	Medical Oncologist	Kansas City Cancer Center
2000 - Present	Clinical Adjunct Professor	Kansas City University of Medicine and Bio Sciences/College of Osteopathic Medicine
June 20, 2011 - Present	Assistant Professor	Medicine Clinical Oncology, The University of Kansas Medical Center

##### E. Professional Registration/Licensure:

Year(s)	Number	State/Country	Active or Expired
Obtained: 1978	N/A	Rhode Island	Expired
Obtained: 1979	D23146	Maryland	Expired
Obtained: 1980	R6A95	Missouri	Active
Obtained: 1994	0425043	Kansas	Active

##### F. Professional Certification(s):

Year(s)	Board	Active or Expired
Obtained: 1980	American Board of Internal Medicine	Active

Obtained: 1981	American Board of Internal Medicine-Medical Oncology	Active
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**G. Professional Societies and Affiliations:**

Year(s)	Organization
1984	American Cancer Society-Kansas City Executive Committee.
1982 - 1985	Leukemia Society of America-Kansas City-Executive Board.
1985	Bixby Cancer Symposium Member.
1982 - 1988	Research Medical Center-Investigation Review Board.
1989	Bixby Cancer Symposium Member.
1985 - 1990	AMA-Hospital Medical Staff Section Representative.
1985 - 1990	Hospital Medical Staff Section of the AMA-Representative.
1996 - 1998	Missouri Society of Clinical Oncology-Vice President.
1996 - 1998	Research Medical Center-Cancer Commission Chair-American College of Surgeons.
1981 - 2001	Research Medical Center-Executive Committee.
1981 - 2001	Research Medical Center-Executive Committee.
1981 - 2001	Research Medical Center-Multidisciplinary Oncology Conference Chair.
1985 - 2005	Heart of America Bone Marrow Registry Medical Advisory Board.
1988 - 2005	Heart of America Bone Marrow Registry-Medical Director.
2000 - 2005	Peripheral Blood Autologous Stem Cell Program-Research Medical Center Kansas City, MO-Director.
2005	Donor and Collections Centers-Medical Director (NMDP).
2002 - 2006	Leukemia Society of America-Kansas City-Executive Board.
2004 - 2014	Kansas City Round Table of Oncology-President and Executive Board.
2013 - 2014	Global Multiple Myeloma Registry Steering Committee American Society of Hematology.

**H. Honors and Awards:**

Year(s)	Award
2014	Best Doctors Inc., Boston, MA-@014 Best Doctors in America
2014	Ingram's Kansas City's Business Magazine-2014 Top Doctors 2014
2014	Kansas City Magazines MSP Communications, Inc., Kansas City Super Doctors 2014

**I. Acronyms:**

Acronym	Full Name
ASH	American Society of Hematology
NMDP	Donor and Collections Centers-Medical Director

**II. TEACHING ACTIVITIES:**

**1. Teaching Activities Opening Statement:**



**2. Instruction:**

**A. Didactic**

Academic Year	Title and Course Number	Lecture or Presentation Title	Instruction		Learner	
			Type	Hours/ Yr (actual instruction)	Number of Learners / Yr	Type of Learner(s) (i.e. medical & grad students, residents)

**B. Non-didactic**

Academic Year	Title and Course Number	Lecture or Presentation Title	Instruction		Learner	
			Type	Hours/ Yr (actual instruction)	Number of Learners / Yr	Type of Learner(s) (i.e. medical & grad students, residents)

**C. Clinical**

Academic Year	Instruction		Learner		Length of Service (i.e. 8 weeks x 6 clerkships/yr; 40 hrs/wk x 6 wks)
	Type	Hours	Number of Learners	Type of Learner (i.e. medical students, residents, fellows)	



**D. Master's Theses and PhD Dissertations Directed**

Year	Student Name	Thesis Title	Degree <i>(completed/in progress)</i>

**E. Supervision of Students, Residents and/or Postdoctoral Fellows**

Year	Resident/Fellow Name	Area of Study

**F. Advising**

Date	Student or Group Name	Type of Student/Group

**G. Other Teaching Activities**

Date	Title	Location	Teaching Function	Type of Learner

**3. Development of Educational Materials:**

Year(s)	Title/Description	Intended Audience

**4. Educational Leadership:**

Year(s)	Name/Course/Activity	Description/Role <i>(course info, mentoring, other leadership)</i>
2000 - Present	Kansas City University of Medicine and Biosciences-College of Osteopathic Medicine	Faculty Member. Preceptor-Hematology/Oncology

**III. SERVICE ACTIVITIES:**

**1. Clinical Service (Patient Care)**

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**A. International and National Service**

Year(s)	Committee/Task Force/Community Service/Society/Other	Role and Description <i>(e.g. member/chair, planned the annual meeting, etc.)</i>
2013 - 2014	American Society of Hematology	Member Member of Registry Steering Committee

**B. Regional, State, and Local Service**

Year(s)	Committee/Task Force/Community Service/Society/Other	Role and Description <i>(e.g. member/chair, planned the annual meeting, etc.)</i>

**C. KUMC, School of Medicine, and Departmental Service**

Year(s)	Committee/Task Force/Community Service/Society/Other	Role and Description <i>(e.g. member/chair, planned the annual meeting, etc.)</i>

**IV. RESEARCH AND SCHOLARLY ACTIVITIES:**

**1. Research and Scholarly Activities Opening Statement:**

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Grants, Contracts and Clinical Trials:

A. Previous Grants, Contracts, and Clinical Trials

Principal Investigator	Investigators	Title of Grant/Contract/Trial	Funding Source	Direct Costs/ Funding	Inclusive Years of Award	Status
Kelly Pendergrass		A Randomized, Multicenter Study Comparing Pixantrone + Rituximab with Gemcitabine + Rituximab in Patients with Aggressive B-cell Non-Hodgkin Lymphoma Who Have Relapsed after Therapy with CHOP-R	Cell Therapeutics	\$16,085	2011 - 2013	Closed
Kelly Pendergrass		A Multi-center, Open-Label, Adaptive, Randomized Study of Palifosfamide-tris, a Novel DNA Crosslinker, in Combination with Carboplatin and Etoposide (PaCE) Chemotherapy versus Carboplatin and Etoposide (CE)	ZioPharm Oncology, Inc.	\$1,264	2012 - 2017	Closed
Kelly Pendergrass		THE BEACON STUDY (BREAST CANCER OUTCOMES WITH NKTR-102): A PHASE 3 OPEN-LABEL, RANDOMIZED, MULTICENTER STUDY OF NKTR-102 VERSUS TREATMENT OF PHYSICIAN'S CHOICE (TPC) IN PATIENTS WITH LOCALLY RECURRENT OR METASTATIC BREAST CANCER	Nektar Therapeutics	\$1,662	2013 - 2017	Closed
Kelly Pendergrass		Phase 3, Randomized, Double-Blind, Multicenter Study Comparing Oral MLN9708 Plus Lenalidomide and Dexamethasone Versus Placebo Plus Lenalidomide and Dexamethasone in Adult Patients With Newly Diagnosed Multiple Myeloma	Millennium Pharmaceuticals Inc	\$3,430	2014 - 2017	Closed

B. Current Grants, Contracts, and Clinical Trials

Principal Investigator	Investigators	Title of Grant/Contract/Trial	Funding Source	Direct Costs/ Funding	Inclusive Years of Award	Status
Kelly Pendergrass		Phase 2 Placebo-controlled Double-blind Trial of Dasatinib Added to Gemcitabine for Subjects with Locally-advanced Pancreatic Cancer	Otsuka Pharmaceutical Co	\$14,943	2011 - 2020	Active
Kelly Pendergrass		A Randomized, Open-Label, Phase 3 Study of Carfilzomib Plus Dexamethasone vs. Bortezomib Plus Dexamethasone in Patients	Onyx Pharmaceuticals, Inc.	\$33,655	2012 - 2020	Active

		with Relapsed Multiple Myeloma				
Kelly Pendergrass		A Multi-Center, Randomized, Double-Blind, Placebo Controlled Clinical Trial of Deferasirox in Patients with Myelodysplastic Syndromes (Low/Int-1 Risk) and Transfusional Iron Overload (TELESTO)	Novartis Pharmaceuticals Corp	\$1,102	2013 - 2015	Active
Kelly Pendergrass		A Phase 3, Open-Label, Randomized, Parallel, 2-Arm, Multi-Center Study of BMN 673 Versus Physician's Choice in Germline BRCA Mutation Subjects with Locally Advanced and/or Metastatic Breast Cancer,	BioMarin Pharmaceutical Inc.	\$8,283	2014 - 2020	Active

**C. Submitted Grants, Contracts, and Clinical Trials**

Principal Investigator	Investigators	Title of Grant/Contract/Trial	Funding Source	Direct Costs/ Funding	Inclusive Years of Award	Status

**D. Un-sponsored Research**

Principal Investigator	Investigators	Title of Grant/Contract/Trial	Years

**3. Scholarly Publications:**

**A. Articles (Peer-Review Published):**

1. Markman, M., Pendergrass, KB., Abeloff, MD. (1982). Intensive Timed Sequential Combination Chemotherapy in Extensive-Stage Small Cell Carcinoma of the Lung. *Cancer Treatment Report*, 66(10), 1880.
2. Dahlberg, S., Eyre, HJ., Files, JC., Fisher, RI., Miller, TP., Pendergrass, KB., Weick, JK. (1990). Unfavorable Histologies of Non-Hodgkin's Lymphoma Treated with ProMACE-CytaBOM: A Group -wide Southwest Oncology Group Study. *Journal of Clinical Oncology*, 8, 1950-1951.
3. Hainsworth, J., Kasmimis, B., Khojasteh, A., Monaghan, G., Obion, D., Pendergrass, K., Siddiqui, T., York, M. (1991). A Single-Blind Comparison of Intravenous Ondansetron, a Selective Serotonin Antagonist, with Intravenous Metoclopramide in the Prevention of Nausea and Vomiting Associated with High -Dose Cisplatin Chemotherapy. *Journal of Clinical Oncology*, 721-728.
4. Beck, T., Bricker, L., Bryson, J., Calvin, D., Gandara, D., Hainsworth, J., Hesketh, P., House, K., Keller, A., Kish, J., Lester, E., Madajewicz, S., Mortimer, J., Murphy, W., Navari, R., Pendergrass, K. (1992). Stratified, Randomized, Double-Blind Comparison of Intravenous Ondansetron Administered as a Multiple-Dose Regimen Versus Two Single-Dose Regimens in the Prevention of Cisplatin-Induced Nausea and Vomiting. *Journal of Clinical Oncology*, 12.
5. Burton, G., Ciociola, A., Cubeddu, LX., Galvin, D., Meshad, M., Pendergrass, K., Ryan, T., York, M., Ondansetron Study Group. (1994). Efficacy of Oral Ondansetron, A Selective Antagonist of 5-HT<sub>3</sub> Receptors in the Treatment of Nausea and Vomiting Associated with Cyclophosphamide-Based Chemotherapies. *American Journal of Medical Oncology*(2), 137-146.
6. Cubeddu, LX., Pendergrass, K., Ryan, T., York, M., Burton, G., Meshad, M., Galvin, D., Ciociola, A. (1994). "Efficacy of Oral Ondansetron, A Selective Antagonist of 5-HT<sub>3</sub> Receptors, in the Treatment of Nausea and Vomiting Associated with Cyclophosphamide-Based Chemotherapies." Ondansetron Study Group. *American Journal of Clinical Oncology* 11v., 17(2), 137-46.
7. Abbruzzese, JL., Brown, BW., Gross, HM., Levin, B., Levy, LB., Pendergrass, KB., Pugh, RP., Wade III, JL., Winn, RJ. (1995). Randomized, Phase III Study of 5-Fluorouracil Plus High-Dose Folinic Acid vs 5-Fluorouracil Plus Folinic Acid Plus Methyl- CCNU for Patients with Advanced Colorectal Cancer.
8. Blayney, D., Heffernan, M., Hortobagyi, GN., Knight, RD., Lipton, A., Pendergrass, K., Porter, L., Reitsma, DJ., Seaman, J., Simeone, JF., Sinoff, C., Theriault, RL., Wheeler, H. (1996). Efficacy of Pamidronate in Reducing Skeletal Complications in Patients with Breast Cancer and Lytic Bone Metastases. *The New England Journal of Medicine*(335), 1785-1791.
9. Chernoff, SB., Grote, TH., Hahne, WH., Kris, MG., Navari, RM., Pendergrass, KB. (1996). Oral Dolasetron (DOL) Plus Dexamethasone (DEX) Delays Time to Emesis More Effectively than IV Ondansetron (ONDAN) or IV

breast cancer. <i>Breast Cancer Research Treatment</i> , 164(3), 649-658.
29. DiLeo, A., Jerusalem, G., Torres, R., Verhoeven, D., Pendergrass, K., Malomi, L., Lichfield, J., Martin, M. (2018). First-line vs second-line Fulvestrant for hormone receptor-positive advanced breast cancer: A post-hoc analysis of the CONFIRM study. <i>Breast</i> , 8(38), 144-149.
<b>B. Manuscripts in Press:</b>
<b>C. Manuscripts Submitted - not yet accepted for publication:</b>
<b>D. Invited or Non-Peer Reviewed Articles or Reviews:</b>
<b>E. Books and Book Chapters:</b>
<b>F. Published Abstracts:</b>
1. (1990). <i>Ifosfamide in Clinical Practice</i> .
2. Abramson, N., Banks, P., Feldman, J.E., Gams, R.A., Gandara, D.R., Gerber, M., Hyes, O.M., Hess, D., Horvath, W.L., Jones, D., Jones, G., Jones, S.E., Khojasteh, A., Kline, A., Lyman, G.H., Mailliard, J.A., Pendergrass, K.B., Reynolds, R.D., Rivera, R.R., Scott, D., Shaikh, B.S., Spaulding, M.B., Squillace, K., Swearingin, B., Trantum, B., Wajima, T., Weisberg, S.R., Winston, J., York, R.M. (1992). <i>Advanced Small Cell Lung Cancer Treated with CAV (Cyclophosphamide Adriamycin Vincristine) Chemotherapy and the Cardioprotective Agent Dexrazoxane (ADR-529, ICR F-187 Zinecard)</i> .
3. Abramson, N., Banks, P., Desai, A.M., Feldman, J.E., Gams, R.A., Jones, S.E., Joseph, R.R., Khojasteh, A., Lusch, C.J., Lyman, G.H., Mailliard, J., Mittleman, A., Moore, J.O., Pendergrass, K.B., Reynolds, R.D., Rosenfeld, C.S., Spicer, D.V., Swain, S.M., Trantum, B.L., Valez-Garcia, E., Vogel, C.L., Wadler, S., Weisberg, S.R., York, R.M. (1992). <i>Radionuclide Resting Left Ventricular Ejection Fraction (LVEF/MUGA) Measurements in Breast Cancer Patients Receiving Adriamycin Based Chemotherapy for Advanced Disease</i> .
4. B. Adamkiewicz, M., Blumreich, M., Cummings, F., Hohneker, H., O'Rourke, M., Pendergrass, K., Robert, N., Rosenbluth, R., Shuchter, L., Vogel, C., Winer, E. (1993). <i>A US Multicenter Phase II Trial of Oral Navelbine in Elderly Women with Advanced Breast Cancer</i> .
5. O'Rourke, W., Pendergrass, K., Rhinehart, S., Schwartzberg, J., Tauer, K., Weaver, C.H. (1995). <i>A Randomized Phase IIB Trial Comparing High-dose Busulfan, Melphalan and Thiotepa (BuMeT) with Carmustine, Etoposide, Cytosine Arabinoside and Cyclophosphamide (BEAC) Followed By Peripheral Blood Progenitor Cell (PBPC) Infusion in Patients with Relapsed Lymphoid Malignancies</i> .
6. Ackley, L., Doukas, M., Harris, J., Levine, J., Pendergrass, K., Sherman, M., Smith, M., Tubridy, K., Wuschner, M.W. (1995). <i>Phase II, Open-label Evaluation of Recombinant Human Macrophage Colony Stimulating Factor in Patients with Non-Hodgkin's Lymphoma or Chronic Lymphocytic Leukemia</i> .
7. Grote, T.H., Navari, R.M., Pendergrass, K.B., et al. (1996). <i>All Oral Regimens of Dolasetron and Dexamethasone to Prevent Emesis Caused by High-Dose Cisplatin</i> .
8. Audbury, B., Hesketh, P., Pendergrass, K., et al. (1996). <i>Analysis of Optimal Dose From Eight Pooled Clinical Trials Assessing the Acute Antiemetic Efficacy of IV Dolasetron</i> .
9. Audbury, B., Hesketh, P., Pendergrass, K., et al. (1996). <i>Analysis of Optimal Dose From Eight Pooled Clinical Trials Assessing the Acute Antiemetic Efficacy of IV Dolasetron</i> .
10. Cramer, M., Dubois, D., Hahne, W., Harman, G., Martin, L., Modiano, M., Pendergrass, K., Than, M. (1996). <i>Double-Blind, Randomized Study of the Dose-Response Relationship Across Five Single Doses of IV Dolasetron Mesylate (OM) for Prevention of Acute Nausea and Vomiting (ANC) after Cisplatin Chemotherapy</i> .
11. Chernoff, S.B., Grote, T.H., Hahne, W.F., Kris, M.G., Navari, R.M., Pendergrass, K.B. (1996). <i>Oral Dolasetron Plus Dexamethasone Delays Time to Emesis More Effectively Than IV Ondansetron or IV Dolasetron Alone</i> (vol. 7, pp. 136).
12. Cramer, M., Dubois, D., Hahne, W., Harman, G., Martin, L., Modiano, M., Pendergrass, K., Thant, M. (1996). <i>Double-blind, Randomized Study of the Dose-Response Relationship Across Five Single Doses of IV Dolasetron Mesylate for Prevention of Acute Nausea and Vomiting after Cisplatin Chemotherapy</i> .
13. Grote, T.H., Navari, R.M., Pendergrass, K.B., et al. (1996). <i>All Oral Regimens of Dolasetron and Dexamethasone to Prevent Emesis Caused by High-Dose Cisplatin</i> .
14. Gross, M., Pendergrass, K., Leitner, S., Leichman, G., Pugliese, L., Silberman, S., Tapestry Pharmaceuticals. (2008). <i>TPI 287: A Third-Generation Taxane is Active and Well Tolerated as Second-Line Therapy After Failure of docetaxel in Hormone Refractory Prostate Cancer (HRPC)</i> .
15. Moreau, P., Palumbo, A.P., Stewart, A.K., Rajkumar, V., Jakubowiak, A.J., Helka, K., Goranov, S., Bumbaca, H., Pendergrass, K., Lupu, A., Dimopoulos, A., Rocafiguera, A.O., Gandhi, J.G., Mihaylov, G., Masszi, T., Matous, J., Foseca, G., Brice, R., Siegel, S.D. (2011). <i>A Randomized, Multicenter, Phase 3 Study Comparing Carfilzomib, Lenalidomide and Dexamethasone to Lenalidomide and Dexamethasone in Patients with Relapsed Multiple Myeloma</i> .

16. Leonard, JP., Reeves, J., Ferhanoglu, B., Doner, KT., Eom, HS., Flinn, IW., Raposo, J., Chowhan, NM., Suh, C., Noga, S., Tumyan, G., Aung, S., Haidenberg, J., Ulrich, BK., Pendergrass, KB., Mulligan, G., Rizo, A., Kussick, S., Offner, F. (2011). *PYRAMID and LYM 2034: Target Randomized Phase 2 studies of Bortezomib ± Immunochemotherapy in Newly Diagnosed Non- Germinal Center B-Cell-like Diffuse Large B-Cell Lymphoma Including Rapid Prospective Non-GCB Subtype Identification.*
17. Yardley, D., Pendergrass, K., et al. (2011). *A Phase 2, Randomized, Double Blind, Multicenter Study of Exemestane With and Without SNDX-275 in Postmenopausal Women with Locally Recurrent or Metastatic Estrogen Receptor- Positive Breast Cancer, Progressing on Treatment with a Non- Steroidal Aromatase Inhibitor.*

**G. Other Scholarly Publications:**

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**4. Presentations and Posters:**

**A. Oral Paper Presentation:**

**National and international paper presentations:**

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**Local and regional paper presentations:**

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**B. Poster Presentations:**

**National and international poster presentations:**

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**Local and regional poster presentations:**

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**C. Invited Seminars at Other Universities and Institutions:**

**National and international seminars:**

1. Pendergrass, K. B., ASCO Annual Meeting, "Intensive Timed Sequential Combination Chemotherapy and Adjunctive Radiotherapy in Extensive Stage Cell Carcinoma of the Lung," ASCO, San Diego, CA, United States. (May 1980).
2. Pendergrass, K. B., ASCO Annual Meeting, "Ondansetron: More Effective Than Metoclopramide in the Prevention of Cisplatin Induced Nausea and Vomiting," ASCO, Washington, DC, United States. (May 1990).
3. Pendergrass, K. B., Bristol Symposium, "Cisplatin/Carboplatin," ASCO, Orlando, FL, United States. (September 1990).
4. Abramson, N., Banks, P., Bianchini, J., Curtis, N., Desai, A., Feldman, J., Gams, R., Hess, D., Jones, D., Jones, S., Joseph, R., Khojasteh, A., Kline, A., Lusch, C., Lyman, G., Mittleman, A., Moore, J., Narang, P., Pendergrass, K., Reynolds, R., Rosenfeld, C., Scott, D., Spicer, D., Squillante, K., Swain, S., Trantum, B., Velez-Garcia, E., Vogel, C., Wadler, S., Weisberg, S., Winston, J., York, R., ASCO Annual Meeting, "Prevention of Adriamycin Cardiomyopathy with Dexrazoxane (ADR-529, ICRF-187)," ASCO, San Diego, CA, United States. (1992).
5. Beck, T., Bryson, J., House, K., Lester, E., Madajewicz, S., Navari, R., Pendergrass, K., ASCO Annual Meeting, "A Double-Blind, Stratified, Randomized Comparison of Intravenous (IV) Ondansetron Administered as a Multiple Dose Regimen Versus Two Single Dose Regimens in the Prevention of Cisplatin-Induced Nausea and Vomiting," ASCO, San Diego, CA, United States. (May 1992).
6. Abramson, N., Banks, P., Bianchini, J., Curtis, N., Desai, A., Feldman, J., Filippi, J., Gams, R., Hennebert, B., Hess, D., Immondi, A., Jones, D., Jones, S., Joseph, R., Khojasteh, A., Kline, A., Lusch, C., Lyman, G., Mittleman, A., Moore, J., Narang, P., Palepu, N., Pendergrass, K., Reynolds, R., Rosenfeld, C., Scott, D., Spicer, D., Squillante, K., Swain, S., Trantum, B., Velez-Garcia, E., Verhoef, V., Vogel, C., Wadler, S., Weisberg, S., Winston, J., York, R., ASCO Annual Meeting, "Dexrazoxane, (ADR-529, ICRF-187, Zinecard) Protects Against Doxorubicin Induced Chronic Cardiotoxicity," ASCO, San Diego, CA, United States. (May 1992).
7. Jones Jr., D., Winn, R., Levin, B., Pugh, R., Wade III, J., Liendo-Lee, M., Pendergrass, K., Abbruzzese, J., ASCO Meeting, "A Randomized, Phase III Study of 5-Fluorouracil (5-FU) and High-Dose Folinic Acid (FA) Versus 5-FU Plus FA with ME-CCNU (ME-CCNU) for Patients with Advanced Colorectal Cancer (CRC)," Orlando, FL, United States. (May 1993).
8. Schwartzberg, L., West, W., Birch, R., Heffernan, M., Tauer, K., Kalman, L., Mittleman, E., Pendergrass, K., Leff, R., ASCO Meeting, "Randomized Prospective Trial Pre-Treatment with GM-CSF Prior to High-Dose Cyclophosphamide, Etoposide, and Cisplatin C-CSF," ASCO, Orlando, FL, United States. (May 1993).
9. Pendergrass, K., Thant, M., et al., 6th International Congress on Anti-Cancer Treatment, "Double-blind, Randomized, Dose-response Study of the Antiemetic Effect of Five Single Doses of Intravenous (IV) Dolasetron," Paris, France. (1996).
10. Pendergrass, K., Thant, M., et al., 6th, "Double-Blind, Randomized, Study of the Dose-Response Relationship Across Five Single Doses of IV Dolasetron Mesylate (OM) for Prevention of Acute Nausea and Vomiting (ANC) after Cisplatin Chemotherapy (CCT)," Paris, France. (1996).
11. Pendergrass, K., Thant, M., et al., 6th International Congress on Anti-Cancer Treatment, "Pooled Dose Response Analysis Across Eight Clinical Trials assessing the Acute Antiemetic Efficacy of IV Dolasetron Mesylate (OM) after Emetogenic Chemotherapy (CT)," Paris, France. (1996).
12. Gertz, B., Gralla, R., Grote, T., Hesketh, P., Khojasteh, A., Kindler, H., Kris, M., Navari, R., Pendergrass, K., Reinhardt, R., ASCO Meeting, "A Selective Neurokinin-1 Antagonist, Reduces Cisplatin-Induced Acute and Delayed Emesis: A Double Blind, Randomized Trial," ASCO, Chicago, IL, United States. (1998).
13. Pendergrass, K., Otsuka, A., Rizvi, N., Chernoff, S., 23rd ESMO Congress, "Dolasetron Tablets Are Highly Effective in

16. Leonard, JP., Reeves, J., Ferhanoglu, B., Doner, KT., Eom, HS., Flinn, IW., Raposo, J., Chowhan, NM., Suh, C., Noga, S., Tumyan, G., Aung, S., Haidenberg, J., Ulrich, BK., Pendergrass, KB., Mulligan, G., Rizo, A., Kussick, S., Offner, F. (2011). *PYRAMID and LYM 2034: Target Randomized Phase 2 studies of Bortezomib ± Immunotherapy in Newly Diagnosed Non-Germinoma I Center B-Cell-like Diffuse Large B-Cell Lymphoma Including Rapid Prospective Non-GCB Subtype Identification.*
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**G. Other Scholarly Publications:**

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**B. Poster Presentations:**

National and international poster presentations:

Local and regional poster presentations:

**C. Invited Seminars at Other Universities and Institutions:**

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2. Pendergrass, K. B., ASCO Annual Meeting, "Ondansetron: More Effective Than Metoclopramide in the Prevention of Cisplatin Induced Nausea and Vomiting," ASCO, Washington, DC, United States. (May 1990).
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5. Beck, T., Bryson, J., House, K., Lester, E., Madajewicz, S., Navari, R., Pendergrass, K., ASCO Annual Meeting, "A Double-Blind, Stratified, Randomized Comparison of Intravenous (IV) Ondansetron Administered as a Multiple Dose Regimen Versus Two Single Dose Regimens in the Prevention of Cisplatin-Induced Nausea and Vomiting," ASCO, San Diego, CA, United States. (May 1992).
6. Abramson, N., Banks, P., Bianchini, J., Curtis, N., Desai, A., Feldman, J., Filippi, J., Gams, R., Hennebert, B., Hess, D., Immondi, A., Jones, D., Jones, S., Joseph, R., Khojasteh, A., Kline, A., Lusch, C., Lyman, G., Mittleman, A., Moore, J., Narang, P., Palepu, N., Pendergrass, K., Reynolds, R., Rosenfeld, C., Scott, D., Spicer, D., Squillante, K., Swain, S., Trantum, B., Velez-Garcia, E., Verhoef, V., Vogel, C., Wadler, S., Weisberg, S., Winston, J., York, R., ASCO Annual Meeting, "Dexrazoxane, (ADR-529, ICRF-187, Zinecard) Protects Against Doxorubicin Induced Chronic Cardiotoxicity," ASCO, San Diego, CA, United States. (May 1992).
7. Jones Jr., D., Winn, R., Levin, B., Pugh, R., Wade III, J., Liendo-Lee, M., Pendergrass, K., Abbruzzese, J., ASCO Meeting, "A Randomized, Phase III Study of 5-Fluorouracil (5-FU) and High-Dose Folinic Acid (FA) Versus 5-FU Plus FA with Methyl-CCNU (ME-CCNU) for Patients with Advanced Colorectal Cancer (CRC)," Orlando, FL, United States. (May 1993).
8. Schwartzberg, L., West, W., Birch, R., Heffernan, M., Tauer, K., Kaiman, L., Mittleman, E., Pendergrass, K., Leff, R., ASCO Meeting, "Randomized Prospective Trial Pre-Treatment with GM-CSF Prior to High-Dose Cyclophosphamide, Etoposide, and Cisplatin C-CSF," ASCO, Orlando, FL, United States. (May 1993).
9. Pendergrass, K., Thant, M., et al., 6th International Congress on Anti-Cancer Treatment, "Double-blind, Randomized, Dose-response Study of the Antiemetic Effect of Five Single Doses of Intravenous (IV) Dolasetron," Paris, France. (1996).
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**G. Other Scholarly Publications:**

**4. Presentations and Posters:**

**A. Oral Paper Presentation:**

**National and international paper presentations:**

**Local and regional paper presentations:**

**B. Poster Presentations:**

**National and international poster presentations:**

**Local and regional poster presentations:**

**C. Invited Seminars at Other Universities and Institutions:**

**National and international seminars:**

1. Pendergrass, K. B., ASCO Annual Meeting, "Intensive Timed Sequential Combination Chemotherapy and Adjunctive Radiotherapy in Extensive Stage Cell Carcinoma of the Lung," ASCO, San Diego, CA, United States. (May 1990)
2. Pendergrass, K. B., ASCO Annual Meeting, "Ondansetron: More Effective Than Metoclopramide in the Prevention of Cisplatin Induced Nausea and Vomiting," ASCO, Washington, DC, United States. (May 1990).
3. Pendergrass, K. B., Bristol Symposium, "Cisplatin/Carboplatin," ASCO, Orlando, FL, United States. (September 1990).
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7. Jones Jr., D., Winn, R., Levin, B., Pugh, R., Wade III, J., Liendo-Lee, M., Pendergrass, K., Abbruzzese, J., ASCO Meeting, "A Randomized, Phase III Study of 5-Fluorouracil (5-FU) and High-Dose Folinic Acid (FA) Versus 5-FU Plus FA with Methyln-CCNU (ME-CCNU) for Patients with Advanced Colorectal Cancer (CRC)," Orlando, FL, United States. (May 1993).
8. Schwartzberg, L., West, W., Birch, R., Heffernan, M., Tauer, K., Kalman, L., Middleman, E., Pendergrass, K., Leff, R., ASCO Meeting, "Randomized Prospective Trial Pre-Treatment with GM-CSF Prior to High-Dose Cyclophosphamide, Etoposide, and Cisplatin C- CSF," ASCO, Orlando, FL, United States. (May 1993).
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14. Grote, T., Pendergrass, K., et al, MASCC International Symposium, "Efficacy and Safety of 100 mg Oral Ondansetron Mesylate Plus 20 mg Oral Dexamethasone in Level 5 Chemotherapy," MASCC, Nice, France. (1999).
15. Pendergrass, K., ECCO X, "Single Oral Dose of Dolasetron Mesylate Plus Dexamethasone for Prevention of Acute Nausea and Vomiting in Patients," Vienna, Austria. (September 1999).
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17. Pendergrass, K. B., MASCC, Perugia International Cancer Conference VII - Consensus Conference on Antiemetic Therapy, "NK-1 Antagonism, Substance P and Delayed Emesis," MASCC, Perugia, Italy. (March 2004).
18. Pendergrass, K. B., de Souza, P., Radulovic, S., Siddique, N., Dutcher, J., Berkenblit, A., Thiele, A., Krygowski, M., Hudes, G., American Society of Clinical Oncology Annual Meeting, "Characterization of Hyperglycemia, Hypercholesterolemia, and Hyperlipidemia in Patients with Advanced Renal Cell Carcinoma Treated with Temsirolimus or Interferon-ex," ASCO, Chicago, IL, United States. (2008).
19. Pendergrass, K. B., Pan-Asian Oncology Conference, "Antiemesis Update," Busan, South Korea. (April 2008).
Local and regional seminars:

**D. Media Presentations or Interviews**

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**5. Other Evidence of Scholarship:**

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