



Respectfully submitted,

THOMPSON, COE, COUSINS & IRONS, L.L.P.

By: 

Zandra E. Foley

State Bar No. 24032085

Cory S. Reed

State Bar No. 24076640

One Riverway, Suite 1600

Houston, Texas 77056

Telephone: (713) 403-8200

Telecopy: (713) 403-8299

Email: [zfoley@thompsoncoe.com](mailto:zfoley@thompsoncoe.com)

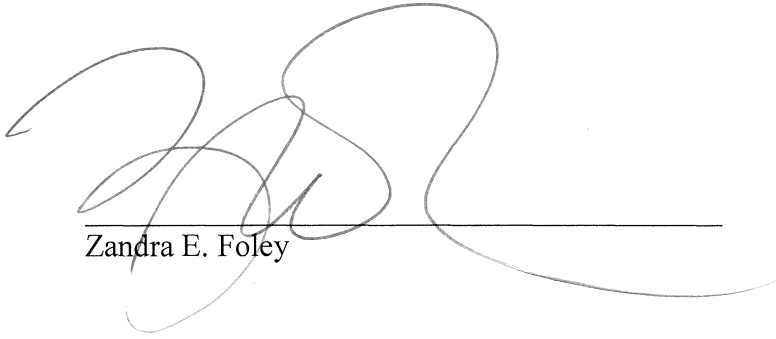
Email: [creed@thompsoncoe.com](mailto:creed@thompsoncoe.com)

**ATTORNEYS FOR DEFENDANTS  
CANDACE L. KUNZ-FREED AND VACEK &  
FREED, PLLC F/K/A THE VACEK LAW  
FIRM, PLLC**

**CERTIFICATE OF SERVICE**

I hereby certify that pursuant to the Texas Rules of Civil Procedure, on this the 21st day of November, 2014, a true and correct copy of this document has been forwarded by certified mail, facsimile and/or e-filing to counsel:

Bobbie G. Bayless  
Bayless & Stokes  
2931 Ferndale  
Houston, Texas 77098

  
Zandra E. Foley

## RESPONSES TO REQUEST FOR DISCLOSURE

**REQUEST 194.2(a):** the correct names of the parties to the lawsuit;

**RESPONSE:** Defendants believe all parties are correctly named in this lawsuit.

**REQUEST 194.2(b):** the name, address and telephone numbers of any potential parties;

**RESPONSE:** Amy Ruth Brunsting  
2582 Country Ledge  
New Braunfels, Texas 78132

Anita Kay Brunsting  
C/o Stephen A. Mendel  
Bradley E. Featherston  
The Mendel Law Firm, L.P.  
1155 Dairy Ashford, Suite 104  
Houston, Texas 77079

**REQUEST 194.2(c):** the legal theories and, in general, the factual bases of the responding party's claims or defenses (the responding party need not marshal all evidence that may be offered at trial);

**RESPONSE:** Defendants deny every allegation contained in Plaintiff's Petition. Defendants further deny that Defendant Candace L. Kunz-Freed can be sued in her individual capacity because at all times relevant to Plaintiff's claims, Defendant Candace L. Kunz-Freed was acting as an employee of Vacek & Freed, PLLC. Defendants will further show that Plaintiff's alleged damages were not proximately caused by any act or omission of Defendants. Defendants will further show that Plaintiff's damages, if any, are unrelated to any act, error or omission of Defendants and Defendants' actions are not the proximate and/or producing cause of any alleged damages. Defendants will further show that Defendants are not responsible for any expenses or damages allegedly incurred by Plaintiff due to Plaintiff's own acts, conduct, negligence and/or failure to exercise reasonable care in mitigating his damages. Defendants will further show that they are not responsible for any loss caused by Plaintiff's own negligence, intentional misconduct, or other act or omission. Defendants will further show that Plaintiff's injuries and damages, if any, were proximately caused, in whole or in part, by a third-party over whom Defendants had no control and for whom Defendants had no responsibility. Defendants will further show that Plaintiff's claims may be barred by a failure to comply with conditions precedent to the right to recover. Defendants will further show that Plaintiff's claims are barred in whole or in part by the statute of limitations. Defendants will further show that Plaintiff's claims for violations of the Texas Deceptive Trade Practices are barred in whole or in part by Texas Business and Commerce Code section 17.49(c).

**REQUEST 194.2(d):** the amount and any method of calculating economic damages;

**RESPONSE:** Plaintiff is not entitled to recover damages from Defendants. Defendants dispute that Plaintiff is entitled to damages and disputes the amount of damages and method of

calculation of damages claimed by Plaintiff. Defendants intend to challenge and fully cross-examine any witness offered by Plaintiff to testify as to the calculation of damages or the amount of damages allegedly incurred by Plaintiff. Defendants will further show that in the unlikely event Plaintiff is adjudged to be entitled to any damages in this matter, which is denied, Plaintiff is not entitled to recover prejudgment interest on any future damages. Defendants would show that, as a matter of law, interest on damages yet to accrue is not compensatory and is, consequently, a penalty which would not be imposed even absent a finding of gross negligence, or rather, for a lesser level or degree of culpability for which a penalty is not authorized by law. Without waiving any defenses listed above, Defendants would further show that they are entitled to all caps and limitations on damages pursuant to the TEXAS CIVIL PRACTICES & REMEDIES CODE. With regard to Plaintiffs' claim for exemplary damages, Defendants assert that an award of such damages in this case would be inconsistent with, and would violate its rights under the United States and the Texas Constitutions as follows:

- A. An award of exemplary damages would violate Defendants right to due process and equal protection as guaranteed by the 14th Amendment to the United States Constitution and Article 1, § 19 of the Texas Constitution in that:
1. No provision of Texas law provides any adequate or meaningful standard or guide for fixing, determining, or viewing the amount of an award of exemplary damages. Defendants have no notice of nor means of ascertaining the amount of the penalty that it would or might be subject to for the conduct upon which the award is ostensibly to be based;
  2. Under the laws of the State of Texas, the determination of whether to award exemplary damages is left to the arbitrary discretion of the trier of fact. There is no adequate or meaningful standard or guide for exercising said discretion;
  3. No provision of Texas law provides any adequate or meaningful standard or guide for determining the nature of the conduct upon which an award of exemplary damages may be based. Defendants have no notice of nor means of ascertaining the nature of the conduct for which it might be held subject to an exemplary damages award;
  4. No provision of Texas law provides adequate procedural safeguards for the imposition of an award of exemplary damages;
  5. Due process requires, at a minimum, that exemplary damages be awarded only upon clear and convincing evidence, and the laws of the State of Texas applicable in this instance provide no such standards; and
  6. The very concept of exemplary damages, whereby an award is made to a private plaintiff not by way of compensation, but by way of a windfall incident to punishing a defendant, represents the taking of property without due process.
- B. An exemplary damages award would violate the prohibition against excessive fines contained in the 8th Amendment to the United States Constitution, as embodied in the due process clause of the 14th Amendment to said Constitution, and in Article 1, § 19 of the Texas Constitution.

**REQUEST 194.2(e):** the name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case;

**RESPONSE:**

Carl Henry Brunsting  
C/o Bobbie G. Bayless  
Bayless & Stokes  
2931 Ferndale  
Houston, Texas 77098

Plaintiff.

Candace L. Kunz-Freed  
C/o Zandra E. Foley  
Cory S. Reed  
Thompson, Coe, Cousins & Irons, L.L.P.  
One Riverway, Suite 1600  
Houston, Texas 77056

Defendant.

Vacek & Freed, PLLC  
C/o Zandra E. Foley  
Cory S. Reed  
Thompson, Coe, Cousins & Irons, L.L.P.  
One Riverway, Suite 1600  
Houston, Texas 77056

Defendant.

Amy Ruth Brunsting  
2582 Country Ledge  
New Braunfels, Texas 78132

Daughter of Elmer and Nelva Brunsting who may have relevant knowledge of the facts surrounding Plaintiff's allegations.

Anita Kay Brunsting  
C/o Stephen A. Mendel  
Bradley E. Featherston  
The Mendel Law Firm, L.P.  
1155 Dairy Ashford, Suite 104  
Houston, Texas 77079

Daughter of Elmer and Nelva Brunsting who may have relevant knowledge of the facts surrounding Plaintiff's allegations.

Carole Ann Brunsting  
C/o Darlene Payne Smith  
1401 McKinney, 17th Floor  
Houston, Texas 77010

Daughter of Elmer and Nelva Brunsting who may have relevant knowledge of the facts surrounding Plaintiff's allegations.

Candace Louis Curtis  
C/o Jason B. Ostrom  
Ostrom Sain, LLP  
5020 Montrose Blvd, Suite 310  
Houston, Texas 77006

Daughter of Elmer and Nelva Brunsting who may have relevant knowledge of the facts surrounding Plaintiff's allegations.

Dr. Robert White  
His Employees, Agents and Custodian of Records  
4843 McDermed Drive  
Houston, Texas 77025

Elmer and Nelva Brunsting medical provider who may have relevant knowledge of the facts surrounding Plaintiff's allegations.

Rosewood Family Physicians I, PLLC  
Its Employees, Agents and Custodian of Records  
3318 Mercer Road  
Houston, Texas 77069

Elmer and Nelva Brunsting medical provider who may have relevant knowledge of the facts surrounding Plaintiff's allegations.

Dr. Ajay Jain  
Medical Chest Associates, PA  
Its Employees, Agents and Custodian of Records  
902 Frostwood Drive, Suite 188  
Houston, Texas 77024

Elmer and Nelva Brunsting medical provider who may have relevant knowledge of the facts surrounding Plaintiff's allegations.

Tino Vasquez  
Will supplement

Former care giver for Nelva Brunsting who may have relevant knowledge of the facts surrounding Plaintiff's allegations.

Robert Cantu  
Will supplement

Former care giver for Nelva Brunsting who may have relevant knowledge of the facts surrounding Plaintiff's allegations.

The Northern Trust Company  
Its Employees, Agents and Custodian of Records  
Will supplement

May have relevant knowledge of the facts surrounding Plaintiff's allegations.

The Frost National Bank, NA  
Its Employees, Agents and Custodian of Records  
100 West Houston Street  
San Antonio, Texas 78205

May have relevant knowledge of the facts surrounding Plaintiff's allegations.

Bank of America, NA  
Its Employees, Agents and Custodian of Records  
Will supplement

May have relevant knowledge of the facts surrounding Plaintiff's allegations.

Defendants incorporate by reference all discovery responses or disclosures filed or served by Plaintiff and other Defendants identifying persons with knowledge of relevant facts.

Discovery and investigation has not been completed. Defendants reserve the right to supplement or amend its responses at a later date.

**REQUEST 194.2(f):** for any testifying expert:

- 1) the expert's name, address and telephone number;
- 2) the subject matter on which the expert will testify;
- 3) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information;
- 4) if the expert is retained by, employed by, or otherwise subject to the control of the responding party:
  - (A) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and
  - (B) the expert's current resume and bibliography.

**RESPONSE:**

**I.**  
**RETAINED EXPERTS**

**Mickey R. Davis**  
**Davis & Willms, PLLC**  
**3555 Timmons Lane, Suite 1250**  
**Houston, Texas 77027**

Mr. Davis will provide expert testimony regarding her education, background, qualifications, skills, and relevant experience as set forth more fully in the attached curriculum vitae. Mr. Davis has been licensed to practice law in the State of Texas since 1982. Mr. Davis may testify concerning the standard of care required of attorneys under the circumstances at issue in this case. Mr. Davis may also testify in rebuttal to damage testimony offered by Plaintiff's experts within the area of his expertise.

Mr. Davis may rely on depositions and discovery materials produced in this matter. Mr. Davis may also rely upon published literature and information known and accessible to him through the course of his professional work and training. Mr. Davis is currently in the process of performing his analysis and opinions in this matter. Defendants therefore reserve the right to supplement and/or amend this disclosure when Mr. Davis' opinions have been finalized, and/or in the event that additional information becomes available through investigation or discovery.

**Kevin Risley**  
**Thompson, Coe, Cousins & Irons, L.L.P.**  
**One Riverway, Suite 1400**  
**Houston, Texas 77056**

It is Defendants' position that attorney's fees are not recoverable against it in this case. However, to the extent Plaintiff's designated experts are allowed to present testimony of



attorney's fees against Defendants, Defendants designate Mr. Risley to rebut this testimony. Mr. Risley will provide expert testimony regarding his education, background, qualifications, skills, and relevant experience as set forth more fully in his curriculum vitae. Mr. Risley has been licensed to practice law in the State of Texas since October 30, 1981, and has maintained a practice in Houston since November 1, 1982. Over the last twenty-eight years, he has focused his practice primarily in civil and appellate litigation in both state and federal courts in Houston and in other courts throughout the State of Texas. He is board certified in Civil Appellate Law by the Texas Board of Legal Specialization. Mr. Risley is designated as an expert on attorney's fees. For approximately the last ten years, Mr. Risley has provided expert opinions and testimony concerning the reasonableness of attorney's fees for litigation in various locations in Texas. This has been based on his familiarity with the legal fees customarily charged in Texas for the type of legal work involved in civil litigation such as the present case. Mr. Risley may also testify in rebuttal to testimony by Plaintiff's experts within the area of his expertise.

## **II.** **PLAINTIFFS' EXPERTS**

Defendants also reserve the right to call for a direct or cross examination any one or more person named by Plaintiff as expert witnesses in this case. In this regard, Defendants do not wish to be misunderstood as having designated those individuals as Defendants' experts, as Defendants do not necessarily agree with the opinions of those experts. Defendants, however, reserves the right to call those witnesses and elicit opinions and mental impressions from them at the time of trial. Defendants reserve the right to challenge Plaintiff's expert witnesses without limitation on any issue, including their qualifications and opinions and the basis for their opinions.

## **III.** **CROSS DESIGNATION OF EXPERTS**

Defendants reserve by designation the right and privilege to call to testify the experts which may be designated by Plaintiff, but without necessarily adopting or endorsing any of their opinions, and without waiving Defendants right to challenge Plaintiff's experts on any issues, including without limitation their qualifications, conclusions and opinions. Further, Defendants reserves the right to cross-examine Plaintiff's expert witnesses and reserves the right to use Plaintiff's expert's documents and/or depositions in the cross-examination of Plaintiff's experts and direct examination of experts.

Defendants reserve the right to use testimony, either live or by deposition, from any of the experts listed by any of the parties in this case, whether in cross-examination, rebuttal, or direct testimony. In addition, Defendants may use deposition testimony or ask questions live at trial of any one or more of the people who have been deposed in this case, and whose testimony qualifies them with expertise in the respective areas inquired about. These witnesses are too numerous to list here, but simply cover all of the people who have been deposed, or will be deposed, in this case before the case goes to trial.

Defendants further reserve the right to call undesignated expert witnesses in rebuttal, whose identities and testimony cannot reasonably be foreseen until Plaintiff's named experts have written reports in this case, provided depositions, and/or have presented evidence at trial.

Defendants reserve the right to supplement its expert witness disclosures, once Plaintiff properly disclose the identity of his experts, and provide the information required under Texas Rule of Civil Procedure 194.2, including the identity of his trial witnesses, the nature of each of his expert witness' testimony, and/or Plaintiff's theories against Defendants.

Defendants reserve the right to withdraw the designation of expert witnesses and aver positively that any such previously designated expert will not be called as an expert witness at trial, and to re-designate same as consulting expert who cannot be called by opposing counsel.

Defendants reserve the right to call rebuttal expert witnesses to refute the testimony of any and all expert witnesses called by Plaintiff. Defendants may further supplement this designation after they have completed further discovery.

Defendants further reserve any additional rights it may have regarding expert witnesses under the Texas Rules of Civil Procedure, Texas Rules of Evidence, and/or any other case law or rulings of this Honorable Court.

**REQUEST 194.2(g):** any discoverable indemnity and insuring agreements;

**RESPONSE:** Copies of the responsive insurance policies have been requested and will be supplemented.

**REQUEST 194.2(h):** any discoverable settlement agreements;

**RESPONSE:** No responsive documents have been discovered to date, but Defendants search for responsive documents is ongoing. Defendants will supplement to the extent that discoverable settlement agreements are located.

**REQUEST 194.2(i):** any discoverable witness statements;

**RESPONSE:** At this time, Defendants have not located any responsive documents; Defendants search for responsive documents is ongoing. Defendants will supplement to the extent that discoverable witness statements are located.

**REQUEST 194.2 (j):** in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills that are reasonably related to the injuries or damages asserted or, in lieu thereof, an authorization permitting the disclosure of such medical records and bills;

**RESPONSE:** Not applicable.

**REQUEST 194.2 (k):** in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills obtained by the responding party by virtue of an authorization furnished by the requesting party;

**RESPONSE:** Not applicable.

**REQUEST 194.2(i):** the name, address, and telephone number of any person who may be designated a responsible third party.

**RESPONSE:** Amy Ruth Brunsting  
2582 Country Ledge  
New Braunfels, Texas 78132

Anita Kay Brunsting  
C/o Stephen A. Mendel  
Bradley E. Featherston  
The Mendel Law Firm, L.P.  
1155 Dairy Ashford, Suite 104  
Houston, Texas 77079

Unofficial Copy Office of Chris Daniel District Clerk

**MICKEY R. DAVIS**  
**Davis & Willms, PLLC**

Board Certified - Estate Planning and Probate Law  
Texas Board of Legal Specialization

3555 Timmons Lane, Suite 1250  
Houston, Texas 77027

Phone (281) 786-4500

Fax (281) 742-2600

mickey@daviswillms.com

**EDUCATION:**

- University of Texas School of Law, J.D. with High Honors, 1982. Chancellors; Order of the Coif; Associate Editor, TEXAS LAW REVIEW; Member, Board of Advocates
- University of Arizona, B.B.A. with High Distinction, 1979. Beta Alpha Psi; Beta Gamma Sigma

**OTHER QUALIFICATIONS:**

- Fellow, The American College of Trust and Estate Counsel (ACTEC), (Chairman: Estate & Gift Tax Committee; Member: Business Planning, Fiduciary Income Tax, and Program Committees)
- Board Certified, Estate Planning and Probate Law, Texas Board of Legal Specialization
- Adjunct Professor, University of Houston School of Law, 1988–2013, teaching Income Taxation of Trusts and Estates and Postmortem Estate Planning
- Best Lawyers in America, Trusts and Estates
- Named *Best Lawyers'* 2013 Houston Trusts and Estates "Lawyer of the Year"
- Named by *Texas Lawyer* as a 2013 "Top Notch Lawyer" for Trusts and Estates
- Admitted to Practice: State Bar of Texas; Federal District Court for the Southern District of Texas; United States Tax Court
- Certified Public Accountant, Texas, Certified 1983

**PROFESSIONAL ACTIVITIES:**

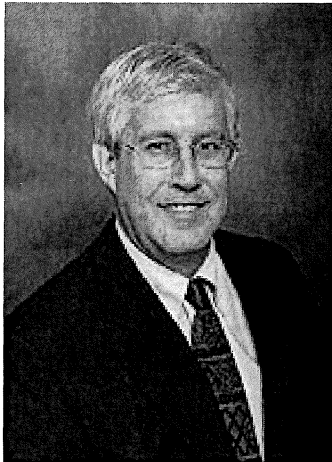
- Member of the Board of Directors, ACTEC Foundation (Chairman; Grant-making Committee)
- Editor, ACTEC LAW JOURNAL (2012-2013)
- Member, State Bar of Texas (Sections of Real Estate, Probate and Trust Law; Tax); Houston Bar Association (Probate, Trusts and Estates Section); The College of the State Bar of Texas; Houston Estate and Financial Forum
- Member, Texas Society of Certified Public Accountants, Houston Chapter
- Estate Planning and Probate Law Exam Commission, Texas Board of Legal Specialization (Member 1993-2003, Chair 2000-2003)

**RECENT SPEECHES AND PUBLICATIONS:**

- Co-Author: Streng & Davis, RETIREMENT PLANNING—TAX AND FINANCIAL STRATEGIES (2nd ed., Warren, Gorham & Lamont 2001, updated annually)
- Speaker: Basis Adjustment Planning, State Bar of Texas 38th Annual Advanced Estate Planning and Probate Course, 2014
- Co-Author/Panelist: Recipes for Income and Estate Planning in 2014, State Bar of Texas 20th Annual Advanced Estate Planning Strategies Course, 2014
- Co-Author/Speaker: Income Taxation of Trusts and Estates—Ten Things Estate Planners Need to Know, Southern Arizona Estate Planning Council, 2014
- Co-Author/Panelist: The American Taxpayer Relief Act of 2012 One Year Later, Houston Estate and Financial Forum, 2014
- Author/Speaker: Funding Unfunded Testamentary Trusts, University of Miami 48<sup>th</sup> Annual Heckerling Institute on Estate Planning, 2014
- Co-Author/Panelist: Trust and Estate Planning in a High-Exemption World and the 3.8% "Medicare" Tax: What Estate and Trust Professionals Need to Know, The University of Texas School of Law 61<sup>st</sup> Annual Tax Conference – Estate Planning Workshop, 2013; Amarillo Estate Planning Council 23<sup>rd</sup> Annual Institute on Estate Planning, 2014
- Author/Speaker: Who Is Your Spouse? The Demise of DOMA and Its Impact on Estate Planning in Texas, Attorneys in Tax and Probate (Houston), 2013
- Author/Speaker: Tax Considerations in Lawsuits and Settlements, Texas Society of CPAs Advanced Estate Planning Conference, 2013
- Co-Author/Speaker: Taxes for Trusts and Estates—New Taxes, New Rates, New Challenges, State Bar of Texas 37th Annual Advanced Estate Planning and Probate Course, 2013
- Co-Author/Speaker: Estate and Trust Planning: Why You Can't Ignore Tax Issues Despite Portability and High Exemptions, Hidalgo County Bar Association, 2013 Probate, Trust & Guardianship Law Course, 2013
- Co-Author/Speaker: Living With the "New" Estate Tax—New Taxes, New Rates, New Challenges, 18th Annual Texas Society of CPAs CPE by the Sea, 2013
- Co-Author/Panelist: Planning and Administering Estates and Trusts: The Income Tax Consequences You Need to Consider, ACTEC-ALI CLE Phone Seminar, 2013
- Author/Panelist: Funding Testamentary Trusts: Tax and Non-Tax Issues, State Bar of Texas 19th Annual Advanced Estate Planning Strategies Course, 2013; Dallas Estate Planning Council, 2013; Disability & Elder Law Attorneys Association (Houston), 2013

- Author/Speaker: Warning! Your Annual Exclusion May Be an Illusion, ACTEC 2013 Annual Meeting
- Co-Author/Panelist: Using the \$5 Million Gift Tax Exemption: A 2012 Toolbox, State Bar of Texas 18th Annual Advanced Estate Planning Strategies Course, 2012; Attorneys in Tax and Probate (Houston), 2012
- Co-Author/Speaker: Peace Treaties: Considerations when Negotiating, Drafting & Enforcing Settlement Agreements, Houston Bar Association Probate Section, 2012
- Co-Author/Speaker: Using the \$5 Million Gift Tax Exemption: Advanced "New Age" Estate Planning Strategies, Texas Society of CPAs-Houston Chapter, 2012
- Co-Author/Speaker: Administration of Estates with Revocable Trusts—Drafting to Head Off Pre- And Post-Death Problems, State Bar of Texas 22st Annual Estate Planning and Probate Drafting Course, 2011; Estate Planning Council of Central Texas, 2012
- Co-Author/Speaker: Fixing Broken Trusts: How to Tell if Your Ox is in the Ditch, and How to Get it Out, Texas Society of CPAs Advanced Estate Planning Conference, 2012
- Co-Author/Speaker: Recent Developments and Predictions in Tax Law—Pending Legislation, Portability and Decanting, South Texas College of Law Wills & Probate Institute, 2012
- Author/Speaker: Tax, Procedural And Administration Rules: Contrasting Revocable Trusts with Estates, 46th Annual Southern Federal Tax Institute, 2011
- Author/Speaker: Update on Administering 2010 Estates—What Have We Learned So Far?, State Bar of Texas 35th Annual Advanced Estate Planning and Probate Course, 2011; Houston Business and Estate Planning Council, 2011; Texas Society of CPAs Advanced Estate Planning Conference, 2010
- Panelist: Keeping Your Plan From Getting Waylaid in Administration, State Bar of Texas 17th Annual Advanced Estate Planning Strategies Course, 2011
- Author/Speaker: Practical Issues and Esoterica of Form 1041 Preparation and Presentation, 45th Annual Southern Federal Tax Institute, 2010
- Author/Panelist: 2010 and Beyond: Estate Planning and Administration Issues, South Texas College of Law Wills & Probate Institute, 2010
- Author/Speaker: Estate Planning in Changing and Challenging Times, Texas Society of CPAs Advanced Estate Planning Conference, 2010; South Texas College of Law Wills & Probate Institute, 2009; San Antonio Estate Planners Council, 2009
- Author/Panelist: Practicing in Interesting Times—Administering Estates in 2010 and Beyond, American College of Trust and Estate Counsel Summer Meeting, 2010
- Program Director: State Bar of Texas 16th Annual Advanced Estate Planning Strategies Course, 2010
- Author/Speaker: Trust and Estate Accounting Issues, Corpus Christi Estate Planning Council, 2010
- Author/Speaker: Unfunded Testamentary Trusts, and Other Thorny Issues, Dallas Bar Association Probate Section, 2010
- Author/Speaker: Estate Planning in a New Financial Environment, Texas Society of CPAs Advanced Estate Planning Conference, 2009
- Author/Speaker: Income Taxation of Trusts and Estates, State Bar of Texas 33rd Annual Advanced Estate Planning & Probate Course, 2009
- Panelist: Hard Times And Changing Landscapes: Reassessing Estate Plans While The Financial World Is Falling Apart, State Bar of Texas 15th Annual Advanced Estate Planning Strategies Course, 2009
- Author/Speaker: Section 6694 And Circular 230 Present Your New Estate Planning Client: The IRS, 43rd Annual Southern Federal Tax Institute, 2008; Texas Society of CPAs Advanced Estate Planning Conference, 2008
- Author/Speaker: Irrevocable Life Insurance Trusts and Bypass Trusts: Drafting and Funding, 10th Annual University of Texas Estate Planning, Guardianship and Elder Law Conference 2009
- Panelist: Income Tax Nuggets—Pre and Post Death, State Bar of Texas 14th Annual Advanced Estate Planning Strategies Course, 2008
- Author/Speaker: Post-Mortem Estate Planning, Houston TSCPA Foundation, 2007
- Author/Speaker: Pre-Mortem and Post-Mortem Income Tax Issues, University of Texas 55th Annual Taxation Conference, 2007
- Author/Panelist: The Morning After: Avoiding Tax Surprises in Trust and Estate Litigation, Houston Bar Association Probate Section, 2008; ABA—eCLE, 2008, ABA Joint Meeting of the Tax Section and the Real Property Trust and Estate Law Section, 2007
- Author/Speaker: Funding Unfunded Bypass Trusts, Dallas Estate Planning Council, 2008; Texas Society of CPAs Advanced Estate Planning Conference, 2007; Midland Memorial Foundation and Midland College Tenth Annual Estate Planning Seminar, 2007; Houston Business & Estate Planning Council, 2007; State Bar of Texas 30th Annual Advanced Estate Planning and Probate Course, 2006
- Panelist: The Plan: How We Analyze Information About Assets and the People Who Own Them, State Bar of Texas Advanced Estate Planning Strategies Course, 2007
- Author/Speaker: Basic Estate Planning, State Bar of Texas Annual Building Blocks of Wills, Trusts and Estate Planning/Live Satellite Broadcast, 2001-2014
- Author/Speaker: A New Look at Funding Marital Deduction and Bypass Trusts, 9th Annual University of Texas Estate Planning, Guardianship and Elder Law Conference 2007; Texas Society of CPAs Advanced Estate Planning Conference, 2005
- Author/Speaker: Top Ten Issues in Estate and Gift Tax Law, South Texas College of Law 2006 Wills & Probate Institute, 2006
- Author/Speaker: Asset Preservation in Light of Bankruptcy Reform, Houston Association of Insurance and Financial Advisors, 2006
- Author/Speaker: Funding Clauses, Houston Bar Association 2006 Wills & Probate Institute, 2006

- Author/Speaker: Post-Mortem Estate Planning, 40th Annual Southern Federal Tax Institute, 2005
- Author/Speaker: Revocable Trust: Annotated, State Bar of Texas, 16th Annual Advanced Drafting: Estate Planning and Probate Course, 2005
- Author/Speaker: Ten Things Estate Planners Need to Know About Income Taxation of Trusts and Estates, San Antonio Estate Planners Council's Docket Call in Probate Court, 2007; Travis County Bar Association; Estate Planning & Probate Section, 2005; Austin Estate Planning Council, 2002
- Author/Speaker: Allocating the GST Tax Exemption: All You Need to Know to Fill out the Form, San Antonio Estate Planners Council's Docket Call in Probate Court, 2005; San Antonio Young Lawyer's Association, 2002; Houston Chapter Texas Society of CPAs 2001 Tax Expo, 2001; Texas Society of CPAs Advanced Estate Planning Conference, 2001; 35th Annual Southern Federal Tax Institute, 2000
- Author/Speaker: What is Trust Income? A Look at the New Texas and IRS Rules Houston Estate & Financial Forum, 2005
- Author/Speaker: Estate Planning for the Moderately Wealthy Client, Houston Bar Association Wills and Probate Institute, 2005
- Co-Author/Speaker: Tax Considerations In Settlements & Judgments, State Bar of Texas 29th Annual Advanced Estate Planning and Probate Course, 2005
- Co-Author/Speaker: Current Developments in Income Taxation of Trusts and Estates, Houston Bar Association Section of Taxation, 2005
- Author/Speaker: Estate Planning in the Shadow of Estate Tax Repeal—Planning in Anticipation of Legislative Change, Texas Society of CPA's 2004 Advanced Estate Planning Conference, 2004
- Speaker: Fiduciary Income Tax, Texas Bankers Association—26th Annual Texas Trust School, 2004
- Program Director: State Bar of Texas 27th Annual Advanced Estate Planning and Probate Course 2003
- Author/Speaker: Estate Planning Under the Economic Growth and Tax Relief Reconciliation Act of 2001—Drafting in Anticipation of Legislative Change, State Bar of Texas Advanced Estate Planning Strategies Course, 2003
- Author/Speaker: Income Tax Planning for Irrevocable Trusts and Estates, 38th Annual Southern Federal Tax Institute, 2003
- Author/Speaker: Estate Planning Under the Economic Growth and Tax Relief Reconciliation Act of 2001, Houston Bar Association Tax Section, 2002
- Author/Speaker: Funding Marital Deduction and Bypass Trusts—How to Handle Post-death Income, Appreciation and Other Changes in Assets, Texas Bankers Association—Estate Administration Seminar, 2002
- Author/Speaker: Funding Testamentary Trusts: Tax and Non-Tax Issues, Dallas Estate Planning Council, 2002
- Author/Speaker: Closing the Estate—Distributions and Funding, TSCPA 2002 Advanced Estate Planning Conference, 2002
- Speaker: Estate Planning under the 2001 Tax Act, Center for American and International Law Wills and Probate Institute, 2002
- Author/Speaker: Estate Planning Under the Economic Growth and Tax Relief Reconciliation Act of 2001—Planning for an Uncertain World, Houston Business & Estate Planning Council, 2001
- Author/Speaker: Income Tax Consequences (and Fiduciary Implications) of Trusts and Estates Holding Interests in Pass-Through Entities, State Bar of Texas 25th Annual Advanced Estate Planning and Probate Course, 2001; 36th Annual Southern Federal Tax Institute, 2001
- Author/Speaker: Fiduciary Accounting: Distinguishing Between Principal and Income Under the Texas Trust Code, Texas Society of CPA's 2000 Advanced Estate Planning Conference, 2000
- Speaker: Texas Estate Planning Course, PESI, 2000-2002
- Author/Speaker: What Estate Planners Need to Know About Income Tax Matters, State Bar of Texas, 24th Annual Advanced Estate Planning and Probate Course, 2000
- Author/Speaker: Estate Planning for the Moderately Wealthy Client, Texas Society of CPA's 2000 Tax Exposition, 2000; Houston Chapter Texas Society of CPAs 2001 CPE Family Conference, 2001; Disability and Elder Law Attorneys Association (Houston), 2002
- Speaker/Panel Discussion Leader: Wills, Estates and Probate Satellite Program, State Bar of Texas, 2000



**KEVIN F. RISLEY**

**Partner**

krisley@thompsoncoe.com

**Houston**

One Riverway  
Suite 1400  
Houston, Texas 77056  
713-403-8295 direct  
713-403-8299 fax

**Assistant:**

Josie Hart  
713-403-8375 direct  
jhart@thompsoncoe.com

**Overview**

Kevin Risley is Board Certified in Civil Appellate Law by the Texas Board of Legal Specialization and also has first-chair trial experience in more than 25 cases, running the gamut from insurance coverage to product liability and personal injury to banking and commercial litigation, and constitutional law. He has been lead appellate counsel on more than 150 cases including more than 50 cases that have resulted in written opinions.

On both the trial and appellate level, Kevin has substantial experience not only in multiple substantive areas of the law as well as a broad variety of procedural issues including jury charge preparation and objections, personal and subject matter jurisdiction, mandamus, injunctive and other extraordinary relief, setting aside default judgments, and appellate jurisdiction. Kevin also regularly serves as an expert witness on the issues of the reasonableness and necessity of attorney's fees.

**Representative Experience**

- Lead trial counsel and lead appellate counsel for all defendants in upholding the 1997 asbestos reform litigation against a variety of constitutional challenges
- Represented major American insurance company in appeal from trial court ruling imposing a duty to defend international cell phone manufacturer in potential class action litigation involving claims of cellular injury caused by exposure to radiation waves
- Represented building materials company in mandamus proceeding in which the Texas Supreme Court held that the work-product privilege is perpetual and survives the conclusion of the case in which a privileged document was created
- Obtained summary judgment on behalf of general liability insurer and obtained affirmance of judgment on appeal in one of the first cases in Texas involving the pollution exclusion clause.
- Represented manufacturer of asbestos-containing products in defining the application of the one-action rule and the statute of limitations in a mesothelioma claim
- Reduced judgment against general liability insurer arising out of nursing home claims by \$1,000,000: *United States Fire Ins. Co. v. Scottsdale Ins. Co.*, 264 S.W.3d 160 (Tex. App. – Dallas 2008, no pet.)

- Obtained reversal of \$24 million dollar default judgment against a non-resident product manufacturer in two mesothelioma cases: *Combustion Engineering Co. v. Vukich*, No. 13-01-00750-CV (Tex. App. – Corpus Christi 2002, no pet.)
- Obtained dismissal for lack of personal jurisdiction of claims against out-of-state lawyers who had represented Texas residents: *Weldon-Francke v. Fisher*, 237 S.W.3d 789 (Tex. App. – Houston [14th Dist.] 2007, no pet.)
- Represented Lloyds of London entities in obtaining reversal of anti-suit injunction which had prohibited the continuation of an insurance coverage suit filed by the insurers in Louisiana: *Travelers Ins. Co. v. J. Ray McDermott, Inc.*, No. 09-05-00110-CV (Tex. App. – Beaumont 2005, no writ)
- Significantly reduced judgment against pipeline company in property damage claims arising out of explosion of underground gas storage dome: *Seminole Pipeline Co. v. Broad Leaf Partners*, 979 S.W.2d 738 (Tex. App. – Houston [14th Dist. 1998], no writ)

## Professional & Community Activity

- Board of Editors, Appellate Lawyer (on-line publication of Appellate Section of Houston Bar Association)
- Board of Adjustments, City of Piney Point Village (2006-present)
- American Printing History Association (2007-present)

## Speeches & Presentations

- *Constitutional and Medical Issues in Texas Asbestos Litigation*, Harris-Martin Texas Asbestos Seminar, Houston, Texas. November 2008.
- *Current Issues in Texas Tort Law*, Eighth Annual Seminar on Texas Insurance Law Developments, Dallas, Texas. November 2008.
- *Update on Texas Tort Law: It's Child's Play*, Texas Insurance and Tort Law Update 2008, Houston, Texas. September 2008.

## Professional Recognition

- Board Certified in Civil Appellate Law, Texas Board of Legal Specialization
- Named a 2013 Top Rated Lawyer in Appellate Law by American Lawyer Media and Martindale-Hubbell™
- Law Clerk to The Honorable Pierce Lively, United States Court of Appeals for the Sixth Circuit, 1981-82
- "AV" Peer Review Rated by *Martindale-Hubbell*.

## Practices

- Appellate
- Insurance Litigation & Coverage
- Litigation

## Industries

- Insurance

## Education

- Georgetown University Law Center



- Centre College of Kentucky

**Bar Admissions**

- Texas, 1981
- United States Court of Appeals Fifth and Sixth Circuits

**E-Alerts**

- 02.15.13 Texas Supreme Court Adopts New Rules for Dismissal of Baseless Causes of Action and for Expedited Actions
- 06.16.11 HB 274 - "Loser Pay Rule"

**News**

- 07.29.13 Thompson Coe Attorneys Secure Verdict in Legal Malpractice Case
- 12.05.12 Houston Attorneys Secure Unanimous Verdict

Unofficial Copy Office of Chris Daniel District Clerk