

MEMORANDUM OF LAW AND FACTS IN SUPPORT OF DECLARATORY JUDGMENT REGARDING LIVING TRUST

III. BACKGROUND FACTS

1. Trust Formation and Early Amendments:

- a. In 1996, Elmer and Nelva Brunsting established the “Brunsting Family Living Trust” for the benefit of themselves and their five adult children, with Elmer and Nelva serving as co-trustees and initially naming Anita Brunsting as the sole successor trustee.
 - b. In 1999, a separate Irrevocable Life Insurance Trust was created naming Anita Brunsting as trustee.
 - c. On January 12, 2005, the trust was restated (the “2005 Restatement”) to replace the original 1996 instrument. The 2005 Restatement removed Anita Brunsting as the sole successor trustee and replaced her with Amy Brunsting and Carl Brunsting as successor co-trustees.
2. An amendment in 2007 replaced Amy Brunsting with Candace Curtis as co-trustee alongside Carl Brunsting, with Frost Bank designated as an alternate trustee.

3. Triggering of Irrevocability and Post-2008 Alterations:

- a. On June 9, 2008, after Elmer Brunsting was certified non compos

mentis by three physicians, the trust became irrevocable in accordance with Article III of the 2005 Restatement.

b. Despite the trust's irrevocability, a series of purported amendments were executed after June 9, 2008. These instruments, dated July 1, 2008; February 24, 2010; June 15, 2010; and August 25, 2010, were drafted and notarized by estate planning attorneys (including Candace Kunz-Freed and Bernard Lisle Mathews III) without the necessary dual settlor signatures or court approval mandated by Article III of the 2005 Restatement.

4. Single Nucleus of Operative Facts:

a. **Manipulation of Trust Documents:** Both the District Court and Probate Court cases, filed by attorney Bobbie G. Bayless in the name of Carl Brunsting, reveal that key trust documents were manipulated, including the improper drafting and execution of the 8/25/10 Qualified Beneficiary Designation and Testamentary Power of Appointment, (the QBD).

b. **Breach of Fiduciary Duty:** Defendants are alleged to have breached their fiduciary duties by engaging in self-dealing, misrepresentation, and the unauthorized transfer of trust assets to themselves and others who are not trust beneficiaries. These included

improper shifts in trustee control designed to benefit certain family members and affiliated counsel at the expense of rightful beneficiaries and trustees.

c. Undue Influence and Conspiracy: The operative facts show that defendants employed undue influence, conspiratorial tactics, and deceptive practices to execute amendments that misrepresented Nelva Brunsting's intentions and improperly altered the trust's administration.

d. Improper Asset Transfers: Allegations extend to the unauthorized transfer and conversion of trust assets, including the reallocation of significant financial holdings (e.g., stock interests) from the intended beneficiaries to accounts controlled by the defendants, further evidencing the improper administration of the trust.

5. The cumulative effect of these actions has undermined the original trust intent, subverted the duly established trustee structure under the 2005 Restatement as amended in 2007, and directly harmed the rights of both Plaintiff and other rightful beneficiaries.

IV. LEGAL ISSUES

Invalidity of Post-2008 Amendments:

- a. Defendant's summary judgment motion (Ex 1-6) attached the 2005

Restatement (Ex 1-6a) as an exhibit of the trust but their rubber-stamped proposed Summary Judgment Order (Ex 3-3) refers to the forged 8/25/2010 QBD as if it were in evidence. It is not. Amendment to the trust were controlled by Article III of the restatement and required the signature of both settlors. The 8/25/2010 QBD is invalid as it was allegedly signed by Nelva alone, after Elmer had passed, Article III defines it as an amendment and it does not qualify as the valid exercise of a “testamentary power of appointment” lacking the formalities required of testamentary instruments.

b. The trust was effectively rendered irrevocable on June 9, 2008 when Elmer was certified non compos mentis. Elmer passed April 1, 2009. All purported amendments executed thereafter, including the unauthorized modifications to trustee designations, violate the clear requirements of Article III of the trust and Texas trust law as set forth in Texas Property Code §112.051.

c. The procedural deficiencies—such as the absence of dual settlor signatures, the lack of court approval, and conflicting notarial evidence—render these instruments void ab initio in any event.

Breach of Fiduciary Duty and Unauthorized Control:

a. The actions of defendants, as demonstrated by the single nucleus of

operative facts, reveal a deliberate strategy to manipulate trust documents, seize control, breach fiduciary duty, and execute unauthorized asset transfers for their own benefit and to the injury of the other beneficiaries.

Tortuous Interference with fiduciary duties of the de jure Co-Trustees

b. Such conduct constitutes a violation of the fiduciary responsibilities owed to the trust and its beneficiaries, significantly harming the rightful trustee structure and preventing performance of distribution mandates established by the deceased settlors.

Misapplication of fiduciary property in excess of \$300,000.00

c. The attorneys coerced settlement agreements (Exhibits C-1 thru C-15) constitute state law felony misapplication of fiduciary property, a predicate act under the RCO statutes.

d. A summary of the fiduciary assets transferred by the very persons enjoined under the federal injunction

V. CLAIMS FOR RELIEF

Plaintiff respectfully requests that this Court:

A. Declaratory Judgment

1. Declare that the “2005 Restatement as amended in 2007” is the last valid trust instrument governing the Brunsting family trusts;
2. Declare that all trust instruments, amendments, and trustee appointments executed or purportedly executed after June 9, 2008, are null and void due to noncompliance with the express language of the trust instrument and applicable Texas law; and
3. Declare that Carl Brunsting and Candace Curtis are the lawful and de jure co-trustees of the irrevocable trust established by Elmer and Nelva Brunsting.

B. Injunctive Relief

1. Enjoin Defendants and all persons acting under their authority from relying on, enforcing, or otherwise acting upon any amendments or instruments executed after June 9, 2008;
2. Order that all records, notices, or certificates issued under the invalid instruments be expunged or declared null and without effect.

C. Equitable Relief

1. Grant any further equitable remedies required to safeguard the integrity of the trust and ensure its proper administration;

2. Award Plaintiff costs, attorney's fees, and any other relief deemed just and proper to vindicate the rights of the trust beneficiaries and to prevent further breaches of fiduciary duty.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff Candace Curtis respectfully prays that this Court enter a judgment as follows:

1. Declaratory Judgment:

- a. Affirm that the valid trust instrument is the "2005 Restatement as amended in 2007";
- b. Declare all post-2008 amendments and trustee appointments invalid; and
- c. Declare that Carl Brunsting and Candace Curtis are the rightful, lawful co-trustees of the irrevocable trust.

2. Injunctive Relief:

Enjoin Defendants from enforcing any instruments or amendments executed in violation of the trust and Texas law.

3. Equitable Relief:

Grant further equitable relief as needed, including costs and attorney's fees, to protect the trust and its intended administration.

4. Interest:

Award pre-judgment and post-judgment interest as applicable under
Texas law.

Respectfully submitted,

[Attorney Name]

[Law Firm Name]

[Address]

[City, State, Zip]

[Phone Number]

[Bar Number]

Attorney for Plaintiff Candace Curtis

VII. CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has
been served on all counsel of record on this 14th day of March 2025.

[Attorney Name]

Respectfully submitted to the Court for prompt adjudication of this
declaratory judgment action.