



attached hereto and incorporated herein fully by reference:

- A) Deposition excerpt of Edward C. Snyder, attached herein as Exhibit A.

**III.**  
**ARGUMENTS & AUTHORITIES**

As previously noted, Plaintiffs' characterization of their legal malpractice claim as a breach of fiduciary duty and negligent misrepresentation claim is not supported by Texas law. *Deutsch v. Hoover, Bax & Slovacek, L.L.P.*, 97 S.W.3d 179, 189 (Tex. App.—Houston [14<sup>th</sup> Dist.] 2002, no pet.) (this rule serves to prevent legal malpractice plaintiffs from opportunistically transforming a claim that sounds only in negligence into other claims" to avail themselves of longer limitations periods, less onerous proof requirements, or other tactical advantages).

In this case, Plaintiffs allege that Adkinson and Malouf failed to handle a matter entrusted to them by Plaintiffs, and/or gave Plaintiffs erroneous legal advice. These allegations mimic precisely the types of actions that form the bases of legal malpractice claims, not an independent cause of action for breach of fiduciary duty. *Ulrickson v. Hibbs*, No. 2-02-161-CV, 2003 Tex. App. LEXIS 9482 (Tex. App.—Fort Worth 2003, no pet. h.). In fact, Plaintiffs' own expert, Edward C. Snyder, admits that the breach of fiduciary duty claim against Defendants arises from the same set of facts that form the basis of the negligence/legal malpractice claim.

- Q:** And with respect to the breach of fiduciary duty claim that the plaintiffs have alleged in this case—
- A:** Uh-huh.
- Q:** --have—do—have the —the problems in this that you've identified, do they fall into the same category as a breach of fiduciary duty?
- A:** I think so. Because my—as I recall, Texas law and the subject, really the malpractice and the negligence and

fiduciary duty merge. I believe the same facts would support the –both, yes.<sup>1</sup>


Consequently, Plaintiffs' improperly fractured fiduciary duty claim fails as a matter of law.

**VI.**  
**PRAYER**

WHEREFORE, Defendants ask this Court to grant Defendants' original and supplement to Traditional and No-Evidence Motions for Summary Judgment, in whole or in part, and for any further relief to which Defendants may be justly entitled.

Respectfully submitted,

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

By:   
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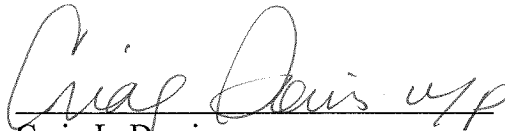
**COUNSEL FOR DEFENDANTS  
MALOUF, LYNCH, JACKSON, AND  
SWINSON, P.C., AND BRENDA REYNOLDS  
ADKINSON**

<sup>1</sup> Exhibit A, deposition excerpt of Edward C. Snyder, pg. 46, ln. 16-25.

**CERTIFICATE OF SERVICE**

I certify that on this 28th day of December, 2010, a true and correct copy of the foregoing document was served on the following counsel of record in accordance with the Texas Rules of Civil Procedure:

Ernest W. Leonard  
Friedman & Feiger, LLP  
5301 Spring Valley Road, Suite 200  
Dallas, Texas 75254

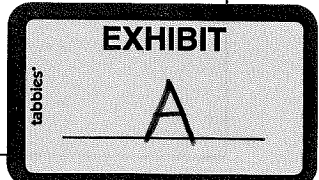
  
Craig L. Dowis

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CAUSE NO. DC-09-10931  
RANDY KOGUTT, MICHAEL KOGUTT,\* IN THE DISTRICT COURT OF  
ANGELA KOGUTT, SAMUEL KOGUTT,\*  
AND IRENE KOGUTT,\*  
\*  
\*  
Plaintiffs,\*  
\*  
\*  
V.\* DALLAS COUNTY, TEXAS  
\*  
\*  
MALOUF, LYNCH, JACKSON, AND \*  
SWINSON, P.C., AND BRENDA \*  
REYNOLDS ADKINSON,\*  
\*  
\*  
Defendants.\* 298TH JUDICIAL DISTRICT

\*\*\*\*\*  
ORAL AND VIDEOTAPED DEPOSITION OF  
EDWARD C. SNYDER  
DECEMBER 2, 2010  
\*\*\*\*\*

ORAL AND VIDEOTAPED DEPOSITION OF EDWARD C. SNYDER,  
produced as a witness at the instance of the DEFENDANTS,  
and duly sworn, was taken in the above-styled and  
-numbered cause on DECEMBER 2, 2010, from 1:31 p.m. to  
4:21 p.m., before Joy L. Dunkin, CSR No. 7848 in and for  
the State of Texas, reported by machine shorthand, at the  
law offices of Freidman & Feiger, LLP, 5301 Spring Valley  
Road, Suite 200, Dallas, Texas 75254, pursuant to the  
Texas Rules of Civil Procedure and any provisions stated  
on the record or attached hereto.



1 A. She could have attempted to do it. But you  
2 know, again, as a prudent lawyer, I don't think we go  
3 about the business of giving legal opinions on laws of  
4 other jurisdictions that we're not licensed in.

5 Q. So is it your testimony that under no  
6 circumstances should she have given any opinions to the  
7 Kogutts?

8 A. I think that's right. The end of the day, that  
9 is my bottom line opinion. This is not something a  
10 lawyer should be doing, particularly giving the  
11 complexity of what this investment represented.

12 Q. Are there any -- is there anything else that  
13 Brenda Adkinson or Malouf Lynch did or didn't do that you  
14 believe was negligent?

15 A. No. I think that encapsulates it.

16 Q. And with respect to the breach of fiduciary duty  
17 claim that the plaintiffs have alleged in this case --

18 A. Uh-huh.

19 Q. -- have -- do -- have the -- the problems in  
20 this that you've identified, do they fall into the same  
21 category as a breach of the fiduciary duty?

22 A. I think so. Because my -- as I recall, Texas  
23 law and the subject, really the malpractice and the  
24 negligence and fiduciary duty merge. I believe the same  
25 facts would support the -- both, yes.

1 CAUSE NO. DC-09-10931  
 2 RANDY KOGUTT, MICHAEL KOGUTT,\* IN THE DISTRICT COURT OF  
 3 ANGELA KOGUTT, SAMUEL KOGUTT,\*  
 AND IRENE KOGUTT, \*  
 4 Plaintiffs, \*  
 5 V. \* DALLAS COUNTY, TEXAS  
 6 MALOUF, LYNCH, JACKSON, AND \*  
 SWINSON, P.C., AND BRENDA \*  
 7 REYNOLDS ADKINSON, \*  
 8 Defendants. \* 298TH JUDICIAL DISTRICT  
 9

10 REPORTER'S CERTIFICATION  
 DEPOSITION OF: EDWARD C. SNYDER  
 DECEMBER 2, 2010

11 I, Joy L. Dunkin, Certified Shorthand Reporter  
 12 in and for the State of Texas, hereby certify to the  
 13 following:

14 That the witness, EDWARD C. SNYDER, was duly  
 15 sworn by the officer and that the transcript of the oral  
 16 deposition is a true record of the testimony given by the  
 witness;

17 That the deposition transcript was  
 18 submitted on December 14, 2010, to the witness,  
 EDWARD C. SNYDER c/o Ernest Leonard, for examination,  
 19 signature and return to Steve Gentry & Associates, Inc.,  
 2379 Gus Thomasson Road, Suite 100, Mesquite, Texas 75150  
 20 by January 6, 2011.

21 That the amount of time used by each party at  
 the deposition is as follows:

- 22 1. MR. ERNEST LEONARD
- 23 TIME: 0 Hours, 0 Minutes
- 24 2. MS. ALISON H. MOORE
- 25 TIME: 2 Hours, 40 Minutes

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That pursuant to information given to the deposition officer at the time said testimony was taken, the following includes counsel for all parties of record:

1. MR. ERNEST LEONARD  
Counsel for Plaintiffs

2. MS. ALISON H. MOORE  
Counsel for the Defendants

I further certify that I am neither counsel for, related to, nor employed by any of the parties in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

Further certification requirements pursuant to Rule 203 of TRCP will be certified to after they have occurred.

Certified to by me this 14<sup>th</sup> day  
of December, 2010.



Joy L. Dunkin, Texas CSR No. 7848  
CSR Exp: 12/31/10 Firm Reg No. 195  
Steven H. Gentry & Associates, Inc.  
2379 Gus Thomasson Road, Suite 100  
Mesquite, Texas 75150  
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