

RICHARD O. FAULK

**Texas Address:
5353 Fannin #5209
Houston, TX 77004**

**Virginia Address:
11723 Crest Hill Road
Hume, VA 22639**

Virginia Phone: (540) 364-0261 Cell Phone: (713) 408-7023

Personal Email: therfaulks@aol.com

CURRENT AND PREVIOUS POSITIONS

Partner, Alexander Dubose Jefferson & Townsend LLP, Houston, Texas (March 1, 2016 – present). Civil appellate specialty boutique with largest concentration of Board-Certified appellate specialists in Texas.

Partner, Hollingsworth LLP, Washington, DC (June 2013 – February 2016). Mid-sized law firm with civil trial and appellate practice in toxic tort, pharmaceutical, environmental litigation.

Senior Director for Energy and the Environment, George Mason University School of Law, Arlington, Texas (June 2013 – February 2016). Responsible for organizing and presenting programs for judges, state attorney generals, congressional staff, and public regarding critical issues.

Partner, Gardere Wynne Sewell LLP (1996-2013). Trial, Appellate and Environmental Partner and Chair of Litigation and Environmental Departments in one of the largest law firms in Texas.

Partner, Akin Gump Strauss Hauer & Feld LLP, Houston, Texas (1990-1996). Initiated and maintained toxic tort and environmental practice for Houston office (in conjunction with Washington, DC office).

Senior Litigation Counsel, Shell Oil Company (1982-1990). First chair trial and appellate counsel responsible for catastrophic injury, environmental and toxic tort litigation arising from corporate operations in Texas, Arkansas, California, Oklahoma, Oregon, and Washington.

Associate, Foreman & Dyess, Houston, Texas. (1978-1982). Trial and appellate experience in oil and gas and insurance subrogation litigation.

SUMMARY OF EDUCATION, RESPONSIBILITIES AND EXPERIENCE

College: University of North Texas, Denton, Texas, B.M. 1974

Law School: Southern Methodist University School of Law, Dallas, Texas: J.D. 1977; Leading Articles Editor, Journal of Air Law & Commerce, 1976-1977; Awarded Journal of Air Law & Commerce Symposium Scholarship, 1976-1977; Awarded William Harris Scholarship, 1976-1977; Awarded Stallcup, Johnson, Meyers & Miller Scholarship, 1974-1975; Honor Student, 1974-1977.

Licensed to Practice: Texas, District of Columbia, United States Supreme Court, United States Court of Appeals, D.C. Circuit, Fifth Circuit, and Ninth Circuit, United States District Court, Northern, Southern and Eastern Districts of Texas.

Leadership and administrative experience: as Chair of Litigation and Environmental Departments of Gardere Wynne Sewell LLP for over eight years. Supervised eight practice groups of trial, appellate, and environmental partners, associates and legal assistants.

Trial Practice: Environmental and toxic tort litigation, including air and water pollution class actions, international water pollution claims, mass tort cases, oilfield pollution class actions, mass torts involving contamination of residential subdivisions, claims of environmental justice, CERCLA cost recovery claims, underground storage tank litigation, defense of toxic tort cases arising from occupational exposures at refineries and petrochemical manufacturing facilities.

Appellate Practice: Federal and state appellate experience, including arguments before the United States Supreme Court, and *en banc* Courts of Appeals, especially in environmental and mass tort cases, including contribution claims under CERCLA, prosecution of writs of mandamus to challenge unfairly constructed mass tort trial plans, oppressive interlocutory rulings, judicial disqualification, international pollution claims, and challenges to the admissibility of unreliable opinions of scientific and medical expert witnesses.

Speaker and Author: Speaker and author regarding climate change, environmental law, mass torts, class and group actions, complex environmental and toxic tort litigation, trial and appellate strategy and tactics, and scientific and technical evidence issues. Winner, William Burton Award for Legal Achievement, Library of Congress, Washington, D.C. (2015, 2012, 2009, 2003).

Memberships: American Law Institute. Council Member, International Law Section, State Bar of Texas. Member, Section of Litigation, Mass Torts Committee, American Bar Association. Member, International Association of Defense Counsel. Member, State Bar of Texas, Litigation, Appellate and Environmental Sections. Member, Houston Bar Association, Litigation, Appellate and Environmental Sections.

REPRESENTATIVE TRIAL COURT EXPERIENCE

Member of trial and appellate team representing Stewart Title Guaranty Company in breach of title insurance policy action. Plaintiffs sought over \$50,000,000 in damages under Mexican law. After ten week trial, jury returned a verdict finding no liability and damages. Judgment was affirmed on appeal.

Worked as Special Counsel in a Chapter 11 bankruptcy proceeding for LyondellBasell Industries in the Southern District of New York. Successfully challenged over 500,000 toxic tort claims made against the debtor by demonstrating comprehensive failure to allege adequate factual basis for claims and authority of counsel to pursue them. All claims were ultimately dismissed.

Led a trial team as lead defense counsel that successfully defended vapor intrusion litigation filed against Texas Instruments in Dallas federal and state court. The mass tort litigation was filed by over 125 residents of a neighborhood located near the client's manufacturing facility. The suits sought relief under CERCLA Sec. 107 and 113, and alleged various state law causes of action, including trespass, public and private nuisance, and negligence. The residents claimed damages in the form of diminished property values, investigative costs, and punitive damages. The suits were dismissed after the evidence conclusively established that there was no reliable scientific basis for plaintiffs' vapor intrusion claims.

Successfully served as lead trial and appellate counsel for Aviall Inc. against Cooper Industries in major contract, CERCLA and Texas environmental claims. Lawsuit sought contribution and damages for cleaning up contaminated properties at Texas airports. After rulings by the en banc 5th Circuit and United States Supreme Court, Aviall obtained complete liability findings against Cooper Industries on remand. The case then settled.

Defeated a mass tort controversy as lead defense counsel for Alcoa in state court in Seattle, Washington by 200 employees who claimed injuries from exposure to asbestos, silica and coal tar pitch. The employees sought to evade the bar of workers compensation by claiming that their injuries resulted from Alcoa's intentional misconduct. The cases were consolidated before a single judge in Seattle. After substantial discovery, Alcoa filed motions for summary judgment which resulted in dismissal of the plaintiffs' claims.

Won a defense verdict as lead defense counsel for Alcoa in a living mesothelioma claim before a jury in Seattle, Washington state court. Plaintiff claimed that she suffered from mesothelioma as a result of childhood exposures to asbestos in her grandfather's home. The grandfather was employed by Alcoa at its smelting facility in Wenatchee, Washington. After a three

week trial, the jury found that Alcoa was not negligent. The defense judgment was later affirmed on appeal.

Led a trial team that defended a mass tort controversy against Alcoa in Milam County, Texas. Several hundred plaintiffs claimed injuries allegedly caused by toxic exposures at Alcoa's manufacturing facility. In the process of discovery, it was learned that many of the "diagnoses" made by plaintiffs' doctors were done by a doctor who conceded he was "not practicing medicine" when he rendered his findings, and that many of the x-ray reports used to diagnose plaintiffs' diseases were "templates" filled out before the examinations. Moreover, plaintiffs' industrial hygiene witness was stricken in pre-trial proceedings. As a result, the entire controversy was settled favorably.

Led trial teams that successfully defended a series of toxic tort claims against Mobil Corporation, Atlantic Richfield Corporation and Lyondell Chemical Company in Beaumont (malignant melanoma) and Houston, Texas (aplastic anemia, lung cancer), as well as in Detroit, Michigan (multiple myeloma). All cases resulted in summary judgments on the basis of lack of causation under applicable scientific evidence rules. The two Houston cases were affirmed on appeal.

Led team that defeated class certification of a putative medical monitoring class action involving over 13,000 putative class members against Citgo Petroleum in Corpus Christi, Texas. Plaintiffs claimed damages against Citgo and other local refiners for alleged groundwater and air pollution by benzene and chromium.

REPRESENTATIVE APPELLATE EXPERIENCE

As Counsel for Party:

Volvo Powertrain Corporation v. United States, No. 14-748, *cert. denied* (U.S., June 15, 2015). Represented Volvo in certiorari petition to U.S. Supreme Court from decision by D.C. Circuit affirming awards of penalties under consent decree.

Citigroup Global Markets Realty Corp. v. Stewart Title Guaranty Company, Nos. 14-11-00900 and 14-11-00901 (Tex. App. [14th Dist.], Oct. 2, 2013). Secured affirmation of defense verdict for Stewart Title affirmed in suit for breach of Mexican title policies). Unpublished but the opinion is available at <http://caselaw.findlaw.com/tx-court-of-appeals/1646096.html>

Aviall Services, Inc. v. Cooper Industries, 312 F.3d 677 (5th Cir. 2002), *rev'd and remanded*, *Cooper Industries v. Aviall Services, Inc.*, 543 U.S. 157, 125 S.Ct. 577, 160 L.Ed.2d 548 (2004). Secured en banc 5th Circuit decision regarding federal jurisdiction over CERCLA cost recovery actions following cleanup pursuant to state agency directives, later reversed and remanded

by Supreme Court to permit pursuit of other federal statutory claims. Served as lead counsel in all trial and appellate courts, including oral argument in the United States Supreme Court.

Schott Glas v. Adame, 178 S.W.3d 307 (Tex. App. – Houston [14th Dist.] 2005, pet. denied) (represented German manufacturer in class action litigation filed by Persian Gulf War veterans. Secured dismissal of claims for lack of personal jurisdiction and affirmance of dismissal order on appeal.

Frias v. Atlantic Richfield Company, 104 S.W.3d 925 (Tex. App. -- Houston [14th Dist.], May 15, 2003). Secured affirmation of summary judgment finding plaintiffs' experts' evidence legally insufficient in case alleging death from aplastic anemia caused by occupational exposure to benzene)(served as lead counsel in trial and appellate courts.

Daniels v. Atlantic Richfield Company, 99 S.W.3d 722 (Tex. App. -- Houston [1st Dist.] 2003) Secured cured affirmation of summary judgment holding plaintiffs' expert opinions legally insufficient in case alleging death from lung cancer caused by occupational exposure to benzene)(served as lead counsel in trial and appellate courts.

In re Chevron U.S.A., Inc., 103 F.3d 1016 (5th Cir.1997). Secured writ of mandamus vacating unfairly constructed mass tort trial plan.

In re Chevron, U.S.A., Inc., 121 F.3d 163(5th Cir.1997) Secured writ of mandamus seeking judicial disqualification for racial bias – district judge entered order of recusal after 5th Circuit decision.

Ahumada v. The Dow Chemical Company, 992 S.W.2d 555 (Tex. App. [14th Dist.] 1999, pet. denied). Secured affirmation of summary judgment for U.S. parent company against mass tort claims of Colombian fishermen on basis of affirmative defenses under Colombian law. (Served as lead counsel in trial and appellate courts)

Anpac v. Dow Quimica de Colombia, S.A., 988 F.2d 559 (5th Cir. 1993), *cert. denied*, 510 U.S. 1041 (1994) Secured dismissal of mass tort pesticide pollution action by Colombian fishermen for lack of personal jurisdiction over U.S. parent's Colombian subsidiary. (Served as lead counsel in all trial and appellate courts).

Duane v. Oklahoma Gas & Electric Co., 833 P.2d 284 (Okla. 1992). Secured affirmation of summary judgment that oil company owed no duty to warn or instruct plaintiffs' employer, which was a sophisticated user of the insulation oils used in a switch that exploded and injured plaintiff. (Served as lead counsel in trial and appellate courts).

As Counsel for *Amicus Curiae*:

Bible v. United Student Aid Funds, Inc., 807 F.3d 839 (7th Cir. 2015), *cert. denied*, 136 S. Ct. 1607 (May 16, 2016) Represented National Association of Manufacturers and other trade associations supporting overruling of *Auer v. Robbins*, 519 U.S. 576 (1997) and *Bowles v. Seminole Rock*, 325 U.S. 410 (1945), which authorized judicial deference to regulatory agency interpretations of its own vague and ambiguous regulations.

Antero Resources Corp. et al. v. Strudley, 347 P.3d 149 (Colo. 2015) Represented National Association of Manufacturers and other trade associations supporting use of “Lone Pine” case management orders.

Utility Air Regulatory Group v. EPA, 134 S.Ct. 2427 (2014) Represented 75 state and local Chambers of Commerce opposing regulation of greenhouse gas emissions from small business operations.

Grain Processing Corp. v. Freeman, 848 N.W.2d 58 (Iowa 2014), *cert. denied*, 135 S.Ct. 712 (2014). Represented National Association of Manufacturers and other trade associations in Iowa Supreme Court and on certiorari to U.S. Supreme Court supporting preemption of state nuisance lawsuits by federal Clean Air Act.

Bell v. Cheswick Generating Station, 734 F.3d 188 (3rd Cir. 2013), *cert. denied sub nom. GenOn Power Midwest v. Bell*, 134 S.Ct. (2014) Represented National Association of Manufacturers and other trade associations in Iowa Supreme Court and on certiorari to U.S. Supreme Court supporting preemption of state nuisance lawsuits by federal Clean Air Act.

Connecticut v. American Electric Power, et al, 564 U.S. 410, 131 S. Ct. 2527, 180 L. Ed. 2d 435 (2011). Represented National Association of Manufacturers, American Chemistry Council, American Coatings Association, National Petrochemical Refiners Association, Property Casualty Insurance Association, and Coalition for Public Nuisance Fairness in support of petition for certiorari by defendants and in merits amicus brief on justiciability of climate change tort litigation).

Atlantic Richfield Company v. County of Santa Clara, et al, 50 Cal. 4th 35, 112 Cal. Rptr.3d 697, 235 P.3d 21 (2010), *cert. denied*, 131 S.Ct. 920 (2011). Represented National Association of Manufacturers, American Chemistry Council, American Coatings Association, National Petrochemical Refiners Association, Property Casualty Insurance Association, and Coalition for Public Nuisance Fairness in support of petition for certiorari by defendants in challenge to California Supreme Court decision allowing public authorities to use contingent fee counsel to prosecute public nuisance cases.

Native Village of Kivalina v. ExxonMobil, et al, 696 F.3d 849 (9th Cir. 2012), *cert. denied*, 133 S. Ct. 2390 (2013). Represented American Chemistry Council, American Coatings Association, American Petroleum Institute, Property Casualty Insurance Association of America and Coalition for Public Nuisance Fairness on issue of application of public nuisance liability to climate change claims, including standing and political question concerns.

Comer v. Murphy Oil Co., 607 F.3d 1049 (5th Cir. 2010) Represented American Chemistry Council, Texas Chemical Council, American Coatings Association, National Petrochemical Refiners Association, Property Casualty Insurance Association of America, and Coalition for Public Nuisance Fairness on *en banc* rehearing re application of public nuisance liability to climate change claims.

State of Rhode Island v. Lead Industries Assn., et al, 951 A.2d 428 (R.I. 2008). Represented The Coalition for Public Nuisance Fairness and The Property and Casualty Insurance Association of America on issue of expansion of public nuisance liability. Potential \$2.5 billion liability reversed and rendered with articles authored by Faulk cited four times in the Court's decision.

City of St. Louis v. Benjamin Moore & Co., et al, 226 S.W.3d 110 (Mo. 2007). Represented American Chemistry Council on issue of viability of "market share liability" in public nuisance cases.

In Re Garlock Sealing Technologies LLC, No. 06-0881 (Texas Supreme Court, 2007) Represented American Chemistry Counsel in support of mandamus petition regarding application of Texas evidentiary standards regarding scientific evidence to causation in asbestos litigation.

ExxonMobil Corp. v. Altimore, 256 S.W.2d 415 (Tex. App. – Houston [14th Dist.], 2008). Represented The American Chemistry Council on issue of expansion of duties owed by premises owners in asbestos litigation.

Dennis Bates v. Dow Agro sciences LLC, 544 U.S. 431, 125 S.Ct. 1788, 161 L.Ed.2d 687 (2005). Represented The American Chemistry Council on issue of scope of federal preemption under FIFRA. Amicus brief cited in Court's opinion.

Burlington N. & Santa Fe Ry. Co. v. City of Houston, 171 S.W.3d 240, 245 (Tex. App. – Houston [14th Dist.] 2005, no pet.). Represented The American Chemistry Counsel on appeal of condemnation and other property concerns regarding rail lines serving local industries.

REPRESENTATIVE PUBLICATIONS
(Complete list available on request)

Publications designated with an asterisk (*) are available for review online at
http://works.bepress.com/richard_faulk)

Faulk, *Writing Appellate Briefs*, in APPELLATE PRACTICE IN FEDERAL AND STATE COURTS 10-1 (David Axelrad, ed., 2016) (Treatise chapter).

Faulk and Fowler, *Federal Clean Air Act Preemption of Public Nuisance Claims: The Case for Supreme Court Review*, CONTEMP. L. NOTES (Wash. Leg. Found., Nov. 2014) (Winner, 2015 William Burton Award for Distinguished Legal Writing, Library of Congress, Washington, D.C.).*

Faulk and Gray, *Public Nuisance at the Crossroads: Policing the Intersection Between Statutory Primacy and Common Law*, 15 CHAPMAN L. REV. 495 (2012) (Winner, 2012 William Burton Award for Legal Achievement, Library of Congress, Washington, D.C.).*

Faulk, *Uncommon Law: Ruminations on Public Nuisance*, 18 MO. ENVTL. L. & POLICY REV. 1 (2011).*

Faulk and Gray, *A Lawyer's Look at the Science of Global Climate Change*, BNA WORLD CLIMATE CHANGE REPORT (March 10, 2009), also published in BNA Environmental Report (March 12, 2009).*

Faulk and Gray, *Alchemy in the Courtroom? The Transmutation of Public Nuisance Litigation*, 2007 MICH. ST. L. REV. 941 (2008) (Winner, 2009 William Burton Award for Legal Achievement).*

Faulk and Gray, *Alchemy in the Courtroom? The Transmutation of Public Nuisance Litigation*, 2007 MICH. ST. L. REV. 941 (2008) (Winner, 2009 William Burton Award for Legal Achievement, Library of Congress, Washington, D. C.).*

Faulk, *Armageddon Through Aggregation: The Use and Abuse of Class and Group Actions in International Dispute Resolution*, 10 MICH. STATE J. INT'L L. 205 (2002), re-published in INTERNATIONAL PERSPECTIVES ON CONSUMERS' ACCESS TO JUSTICE (Cambridge University Press, 2003). (Winner, 2003 William Burton Award for Legal Achievement, Library of Congress, Washington, D.C.).*

RATINGS, AWARDS AND ADVISORY BOARDS

Member, American Law Institute (2011-present).

Member, International Assn. of Defense Counsel (2010-present).

Member and participant, National Association of Manufacturers, Environmental Legal Strategy Group (2010-2014).

Member, Board of Overseers, Civil Justice Institute, George Mason University School of Law, Fairfax, Va. (2010-present).

Member, Board of Overseers, Searle Civil Justice Institute, Searle Center for Law, Regulation and Economic Growth, Northwestern University School of Law, Chicago, Illinois (2008-2010).

Multiple Award Winner, William H. Burton Awards for Legal Achievement (Awarded at Library of Congress, June 16, 2015, June 11, 2012, June 15, 2009, June 17, 2003).

“AV Preeminent” peer review rating, Martindale Hubble Lawyer Directory.

Named one of “America’s Leading Lawyers for Business” and “Leading Lawyer in Environmental Law” by Chambers USA (2005-2016).

Named one of the “Top 100” lawyers in Houston, Texas by Texas Monthly Magazine (2011).

Named one of “Texas’ Best Lawyers” by Incisive Media Publications (2008-2016).

Recognized, “The Best Lawyers in America” by Woodard/White, Inc. (2007-2010)

Named to Lawdragon 3000 List of Leading Lawyers in America (2007-2008)

Named one of “Houston’s Top Lawyers” by H Texas Magazine (2006-2007).

Named Texas “Super Lawyer” (2003-2016).

Named Washington, DC “Super Lawyer” (2013-2016).

Member, Board of Advisors, CLASS ACTION LITIGATION REPORTER, Bureau of National Affairs, Washington, D.C.

Member, Board of Advisors, EXPERT EVIDENCE REPORT, Bureau of National Affairs, Washington, D.C.

Governor's Award for "Outstanding Service to the Oil and Chemical Industry" (Feb. 1990).

Who's Who in America, Who's Who in American Law, Who's Who of Emerging Leaders in America.

"Outstanding Author" Award, Texas Tech School of Law (1986).

REPRESENTATIVE CONFERENCE SPEECHES
(complete list available on request)

Speaker and Panel Member, *U.S. Supreme Court Wrap-Up: Energy and Environmental Issues in the 2014-2015 Term*, National Press Club, Washington, D.C. (July 8, 2015), video available at <http://www.masonlec.org/events/event/294-supreme-court-wrap-up-energy-environmental-issues---term>

Speaker and Panel Member, *U.S. Supreme Court Wrap-Up: Energy and Environmental Issues in the 2013-2014 Term*, National Press Club, Washington, D.C. (July 1, 2014), video available at <http://www.masonlec.org/events/event/201-supreme-court-wrap-up-energy-environmental-issues---term>

Speaker and Panel Member, *U.S. Supreme Court Preview: Energy and Environmental Issues in the 2014-2015 Term*, National Press Club, Washington, D.C. (September 18, 2014), video available at <http://masonlec.org/events/event/233-supreme-court-preview-energy-environmental-issues---term>

Moderator and Speaker, *EPA's Proposed Regulations Under Section 111(d) of the Clean Air Act: Clean Power or Power Play?*, George Mason University School of Law, Arlington, VA (February 4, 2015), video available at <http://www.masonlec.org/events/event/286-epas-proposed-regulations-under-section-d-clean-air-act-clean-power-or-power-play>

Speaker and Advocate, *Mock United States Supreme Court Argument: Climate Change Liability*, Institute for Energy and the Environment, University of Houston, Houston, Texas (January 19, 2012) See http://horvitzlevy.com/images/ps_attachment/attachment671.pdf and video available at <https://www.youtube.com/watch?v=0LPIwdNiVfE>

Speaker and Advocate, *Mock United States Supreme Court Argument: Climate Change Liability*, George Mason University School of Law, Arlington, Va. (April 10, 2012) (Before Kenneth Starr, Paul Clement, and John Cruden) (Before Kenneth Starr, Paul Clement, and John Cruden, President of the Environmental Law Institute).

Speaker and Advocate, *Mock United States Supreme Court Argument: Climate Change Liability*, Pepperdine University School of Law, Malibu, California (October 9, 2012) (Presented as part of Annual William French Smith Lecture Series before Judge David B. Sentelle , Judge Timothy M. Tymkovich, and Kenneth Starr).

Keynote Luncheon Speaker, *Avoiding and Exploiting Analytical Gaps in Scientific Evidence*, Judicial Symposium on Scientific Evidence, George Mason University Law and Economics Center (April 23, 2012).

COMMUNITY SERVICE

Chair, Camp for All Gala (2011) (raised over \$600,000 for camp for special needs children).

Chair, American Diabetes Association, Houston Chapter (2005-2008), Board Member (2004-2011). Awarded Distinguished Service Award (2009).

Endowed and Funded Scholarships:

Richard and Candace Faulk Scholarship Program
College of Music, University of North Texas

Anshel Brusilow Chair in Orchestral Studies
College of Music, University of North Texas

John Yarrington Fellowship in Choral Conducting
College of Music, Houston Baptist University

Member, Board of Trustees, Houston Grand Opera (1996-2002).

Member, Board of Advisors, College of Music, University of North Texas (2008-present).

Judge, Annual Martin Luther King, Jr. Oratorical Contest (1995-2011) (Gardere event for elementary school children)

Alexis de Tocqueville Society Member, United Way Campaigns (2004-2009).