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Sudden Stroke Claims Life of Legendary Insurance Law Attorney

By Angela Morris



Mark Kincaid, an insurance law attorney who created seminal case law and spent decades influencing the Texas Legislature on insurance bills, passed away this week from a stroke. He was 56.

Kincaid, the president-elect of the Texas Trial Lawyers Association and a partner in George Brothers Kincaid & Horton in Austin, suffered a stroke on New Year's Eve and was unconscious until his death Jan. 19. His funeral service is Jan. 22 at 2:30 p.m. at St. David's Episcopal Church in downtown Austin.

"Mark Kincaid was thought of by really good lawyers as being a whole level above: really exceptional mind, the keenest intellect, incredible attention to detail. The fact that he used those talents to represent deserving individual clients—people injured by negligence and defective products, and when an insurance company didn't live up to its obligation—it was indicative of the fact he as a person was very generous," said TTLA President Jeffrey Simon. "Everyone who knew him feels the loss," he said.

Kincaid represented insurance policyholders who sued insurance companies for handling claims improperly. He was a well-known expert on Texas insurance law who spoke frequently at continuing legal education seminars.

"Mark's thing was he really liked representing the underdog. You hear people say that about lawyers all the time. Mark, more than anybody I ever met, really put that into his life. One thing I'm not sure people realize: Mark has handled many of the really seminal cases in Texas on insurance policyholder rights," said George Brothers partner Russ Horton. Other insurance law attorneys would know the holdings in some of Kincaid's cases just from hearing the case names, he added.

Among other cases, Kincaid argued *Vail v. Texas Farm Bureau*, a landmark case that established a policyholder's right to sue for unfair insurance settlement practices. He also argued *Rocor v. National Union*, which set the rights of liability policyholders to sue for an insurer's unfair refusal to settle.

Austin insurance law solo Joe Longley said that *Vail* is Kincaid's real legacy. Before, a policyholder who thought his insurance company wrongly denied a claim could not recover enough money to justify a lawsuit. *Vail* allowed a policyholder to collect treble damages.

"It was a huge jump from just actual damages to three times actual damages. That's a huge incentive to do the right thing rather than the wrong thing. From our perspective, the right thing is pay the claim to the policyholder who has paid the premium," Longley said.

Early in his career, Kincaid was an associate at Longley's firm for eight years. The pair tried 12 jury trials together. Longley said he'll always remember something that a juror said about Kincaid after they won a trial.

"She said, 'I just wanted to hug him like a koochie bear,'" Longley said, noting that he's not sure what that is, but it's probably a type of teddy bear. "That's the effect he had on jurors, especially women jurors—they just loved him."

Horton worked with Kincaid for 20 years—first in a two-man firm that later merged with George Brothers. Horton recalled that in their first firm, he and Kincaid had a simple partnership agreement to split everything down the middle. They once sought a loan, and the banker thought their agreement was a joke—it didn't look real, Horton said.

"You could trust Mark implicitly on all sorts of matters," Horton said. "That's what I'm going to miss the most. He was very collaborative in the way he worked and the way he did things. He honored his commitments and took them seriously. He's a tough, tough friend and partner to lose. The hole is not going to be filled as far as the rest of my career."

Chris Martin, founding partner in Houston's Martin Disiere Jefferson & Wisdom, was opposing counsel to Kincaid in many cases. Because of the way the pair evaluated cases, they could reach settlements in weeks, even in multimillion dollar cases, Martin said. Kincaid was committed to solving problems and caring for his clients, rather than pursuing cases just for the sake of litigation, he said.

Martin said he respected Kincaid because as a young lawyer, Kincaid authored legal papers that explained how the insurance code worked even before caselaw or legal books explained it. He was a trailblazer, Martin said.

"He was just a mental giant," Martin said. "He influenced the arguments being made by good lawyers who persuaded trial and appellate courts to consistently interpret the statute—the insurance code. He always was an advocate, but his professionalism meant he never took liberties."

Lobbying Legacy

Horton recalled that he and Kincaid—both Democrats—loved to talk about politics. Kincaid's mother and father died when he was just 11 years old, and he lived with relatives in Athens, Texas. When Kincaid was hospitalized after his stroke, Horton said that visiting family members told him stories about Kincaid's childhood. As a young boy, he was already enthralled with politics, Horton said.

It was a lifelong passion for Kincaid.

For three decades, Kincaid was a frequent and important voice in legislative hearings over bills proposing changes to Texas insurance law. Lawmakers often gave Kincaid a seat at negotiations.

"He was one of our state's leading experts on matters of policy. Everyone who heard him was always impressed with the depth of his knowledge, his willingness to consider counter arguments and deal with those fairly," Simon said.

David Chamberlain, who lobbies on behalf of the Texas Chapters of the American Board of Trial Advocates and worked closely with Kincaid, said that Kincaid was well known in the Capitol and people regarded him as one of the few authorities on insurance legislation.

"He's going to be very hard to replace. There are several experts in insurance in what you would consider the insurance company side. There's just not a whole lot of them on the plaintiffs side—the policyholder's side," Chamberlain said.

Hull Henricks partner Mike Hull of Austin, a lobbyist for Texans for Lawsuit Reform, often opposed Kincaid in the legislature.

"I am deeply saddened by the loss," Hull wrote in an email. "He was at all times a zealous advocate, a skilled lawyer and a perfect gentleman. Mark was one of those few people I would gladly sell a house to on a handshake and never once worry about it."

Horton noted that Kincaid never got paid for lobbying even though he spent six to eight months at the Capitol during legislative sessions. But Kincaid never truly enjoyed the "down and dirty" of the lawmaking process, Horton said.

"That was one of the things I would always see in Mark, is the darkening of his mood when he would be over there for long periods of time. But he kept doing it," Horton said. "We all benefited from the work Mark did, basically kind of laboring in the legislature, trying to look out for folks he is never going to meet."

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