

INTRO: It is now July, 2019 - a long 23 YEARS after the start of this mess in December 1994 - and ongoing. I HAD FUN REMINISCING in marking this stuff up - so the reader can maybe laugh - or cry - upon my journey - into the skeleton closets of our court circus.

RICHARD L. RAY
Attorney at Law
A PROFESSIONAL CORPORATION

www.DamnCourthouseCriminals.com
www.OpenJustice.US

300 S. TRADE DAYS BLVD.
(300 S. Hwy. 19)
CANTON, TEXAS 75103

(903) 567-2051
(903) 567-6101
FACSIMILE (903) 567-6998

MOTION FOR ENTRY OF JUDGMENT
by Attorney Richard Ray. ALL FRAUD.
See box below.

Robbery by any other name -
is still ROBBERY.

June 30, 1998

Ms. Nancy Young
Van Zandt County District Clerk
2nd Floor, Courthouse
Canton, Texas 75103

Dear Ms. Young:

This was AFTER the May 29, 1998 VERDICT - where the jury found a UNANIMOUS verdict of ZERO damages. Mr. Ray NEVER presented the jury with a question of whether an INJUNCTION should be entered. NEVER any claim to the JURY of whether there was a threat of "imminent and irreparable harm" - so as to warrant the court to issue an INJUNCTION. His focus was ALWAYS on that "holiest of holies" - ATTORNEY FEES.

RE: Cause No. 95-63
Jones
vs.
Birnbaum

Enclosed for filing is Plaintiff's Motion For Judgment On Verdict and Judgment. I have also enclosed a copy of same, which I would appreciate your file marking and returning to me.

Thank you for your assistance in this matter.

This all may have been a LONG LONG time ago - but it is what allowed G. David Westfall - and Judge Paul Banner - to fall upon me.

Sincerely,

Carla Hester-Hemphill
Secretary to Richard L. Ray

ch
Enclosures
cc: Mr. William Jones
Mr. Udo Birnbaum

Cause No. 95-63

WILLIAM B. JONES

vs.

UDO BIRNBAUM

§ IN THE DISTRICT COURT
§
§ VAN ZANDT COUNTY, TEXAS
§
§ 294TH JUDICIAL DISTRICT

PLAINTIFF'S MOTION FOR JUDGMENT ON VERDICT

WILLIAM B. JONES, Plaintiff in the above-entitled cause of action, moves that the Court enter judgment for Plaintiff against Defendant, UDO BIRNBAUM, and would show the Court that the jury, in open Court on May 29th, 1998, by its answers to the special issues, gave a verdict granting an injunction and for attorney fees and costs for the Plaintiff and against the Defendant. Plaintiff therefore requests that the Court enter judgment granting Plaintiff an injunction, attorney fees and costs against Defendant in accordance with attached form of judgment.

Respectfully submitted,

Not so. The JURY returned a unanimous ZERO damages verdict. Matter of INJUNCTION - never submitted to the jury. Mr. Ray was NOT a "winning party". Attorney Ray's Motion is ALL FRAUD.

Robbery by any other name - is still ROBBERY.

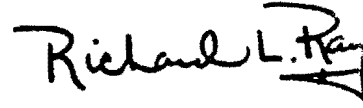
By: Richard L. Ray
RICHARD L. RAY
ATTORNEY AT LAW
300 SOUTH TRADE DAYS BLVD.
CANTON, TEXAS 75103
903 567-2057
903 567-6998 (Fax)
STATE BAR NO. 16606300

ATTORNEY FOR PLAINTIFF

Lynda Bragg, C.S.R.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been sent via U.S. Certified Mail, Return Receipt Requested, on this the 29th day June, 1998, to Mr. Udo Birnbaum; Rt. 1 Box 295; Eustace, Texas 75124.



RICHARD L. RAY

This was AFTER the May 29, 1998 VERDICT - where the jury found a UNANIMOUS verdict of ZERO damages. Mr. Ray NEVER presented the jury with a question of whether an INJUNCTION should be entered. NEVER any claim to the JURY of whether there was a threat of "imminent and irreparable harm" - so as to warrant the court to issue an INJUNCTION. The ZERO damages of course speaks to this - NOT entitled to attorney fees - not a "winning party" - whatever he presented as a "problem" - was NOT my doing!
AMEN

Not so at all!
Jury returned a ZERO damages verdict.
Matter of INJUNCTION - never
submitted to the jury.
ALL FRAUD. See "Court's Charge".

www.DamnCourthouseCriminals.com
www.OpenJustice.US

Cause No. 95-63

WILLIAM B. JONES

vs.

UDO BIRNBAUM

§ IN THE DISTRICT COURT
§
§ VAN ZANDT COUNTY, TEXAS
§
§ 294TH JUDICIAL DISTRICT

JUDGMENT

Robbery by any other name -
is still ROBBERY.

The above-entitled cause came on regularly for trial on May 27th, 1998. Plaintiff, WILLIAM B. JONES, appeared in person and by attorney. Defendant, UDO BIRNBAUM, appeared in person (pro se). A jury of twelve persons was duly accepted, impaneled, and sworn to try the action.

After hearing the evidence, arguments of counsel, and parties, and instructions of the Court, the special issues were submitted to the jury. On May 29th, 1998, the jury returned its special verdict. On the basis thereof the Court is of the opinion that, on the merits, judgment should be rendered in favor of Plaintiff.

It is therefore adjudged that:

1. Plaintiff is granted a permanent injunction, that Defendant be and is perpetually enjoined and prohibited from obstructing a creek (known as Steve's Creek) in the full and nature flow of water or permitting or causing the creek to be so obstructed and perpetual mandatory injunction compelling the Defendant to remove any dam located on the Defendant's land and to restore the flow of water in the creek (known as Steve's Creek) to its natural condition which would allow the creek to overflow upon Plaintiff's adjoining property.
2. Plaintiff recover \$10,000.00 for attorney fees from Defendant with interest on this amount at the rate of 12% percent per annum from the date of rendition of this judgment until paid, for trial before this Court.
3. Plaintiff recovers \$5,000.00 for attorney fees from Defendant should this judgment be appealed to the Court of Appeals with interest at 12% percent per annum compounded annually from date of rendition of this judgment.

No such dam ever!

Not a "winning party" - not entitled

"would allow" - is of course
NONSENSE. Is the OPPOSITE of
what he sued for. See AMENDED
with "would NOT allow"

4. **Cost of this suit** be taxed against Defendant.

Robbery by any other name -
is still ROBBERY.

SIGNED on this the _____ day of July, 1998.

JUDGE JAMES ZIMMERMANN

This was AFTER the May 29, 1998 VERDICT - where the jury found a UNANIMOUS verdict of ZERO damages. Mr. Ray NEVER presented the jury with a question of whether an INJUNCTION should be entered. NEVER any claim to the JURY of whether there was a threat of "imminent and irreparable harm" - so as to warrant the court to issue an INJUNCTION. The ZERO damages of course speaks to this - NOT entitled to attorney fees - not a "winning party" - whatever he presented as a "problem" - was NOT my doing!
AMEN

WILLIAM B. JONES * IN THE DISTRICT COURT
vs. * OF VAN ZANDT COUNTY, TEXAS
UDO BIRNBAUM * 294TH JUDICIAL DISTRICT

This was my ANSWER - to Attorney Ray claiming that he was a "winning party".
To "examine" him - on his crazy claim - upon the VERDICT.

DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR JUDGMENT ON VERDICT:
DEFENDANT'S PLEADING TO EXAMINE PLAINTIFF'S CLAIM OF AWARD
~~~~~

UDO BIRNBAUM, Defendant in the above Cause, moves the Court to also hear him, by examination, in open court, of Plaintiff's claim of award of injunction, attorney's fees, and costs.

FILED FOR RECORD  
98 JUL 13 PM 3:22  
NANCY YOUNG  
DIST. CLERK VAN ZANDT CO. TX.  
BY \_\_\_\_\_ DEP.

Udo Birnbaum

UDO BIRNBAUM  
PRO SE DEFENDANT  
RT. 1, BOX 295  
EUSTACE, TEXAS 75124  
(903) 479-3929

CERTIFICATE OF SERVICE  
~~~~~

I hereby certify that a true and correct copy of this document has been sent via U.S. Certified Mail, Return Receipt Requested, on this the 13th day of July, 1998, to Richard L. Ray, 300 S. Trade Days Blvd., Canton, TX 75103.

Cert Mail # 376 319 817

Udo Birnbaum
Udo Birnbaum

NOTE: This is still one of those old rat-tat-tat-tat "dot matrix" printers - i.e. "multi-hammer" print head upon a print RIBBON.

WILLIAM B. JONES

*

IN THE DISTRICT COURT

VS.

FILED FOR RECORD

OF VAN ZANDT COUNTY, TEXAS

UDO BIRNBAUM

98 JUL 20 PM 2:24

294TH JUDICIAL DISTRICT

NANCY YOUNG
DIST. CLERK VAN ZANDT CO.
INSTRUCTIONS TO CLERK OF COURT:

See below

BY
INSTRUCTION TO HAVE SUBPOENA DUCES TECUM SERVED
~~~~~

I, the Defendant in the Cause, require that you, NANCY YOUNG, Clerk of Court, issue and have served by the Sheriff, subpoena duces tecum, upon WILLIAM B. JONES, Route 1, Box 355, Eustace, Texas 75124, to appear as a WITNESS, AT 10:00 A.M. on July 24, 1998, in this Cause, and to PRODUCE and PROVIDE the following:

1. Evidence, if any, contrary to the jury's determination that the flooding of Jones' property in October, 1994 was normal and natural
2. Evidence of flooding, if any, of Jones' property, after October, 1994, that was not normal and natural.
3. Evidence of obstructions, if any, upon Birnbaum's property, after October, 1994, that were not normal and natural.
4. Quantitative historical data regarding the "natural condition" of the flow of water referred to in the proposed JUDGMENT, served upon Birnbaum attached to Jones' May 29, 1998 PLAINTIFF'S MOTION FOR JUDGMENT ON VERDICT.
5. Evidence of the CURRENT AND/OR FUTURE necessity for the removal of "any dam located on the Defendant's land" and to "restore the flow of water in the creek to its natural condition", as mandated in the above referenced proposed JUDGMENT.
6. Evidence that the mandates of the "permanent injunction" embedded in the referenced proposed JUDGMENT are necessary, and rational.
7. All communication received from or provided to the Texas Natural Resource Conservation Commission (TNRCC), and evidence to support his representations.

Such subpoena to be made returnable immediately. Upon completion of service, I would appreciate your filing the Sheriff's Return. Payment of \$ 58.00 is for costs of subpoena and service. Please provide a receipt.

This the 20th Day of July, 1998

This was my attempt to bring the nominal plaintiff, William B. Jones - before the judge. All this "stuff" - about ME having built a dam - Mr. Jones NEVER said such - all fabricated by Attorney Ray - to create himself - on PAPER - a "cause of action" - i. e. one can't sue over WILD NATURAL BEAVERS!

Udo Birnbaum

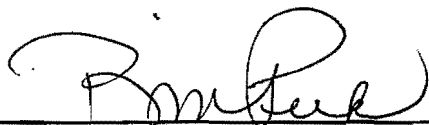
UDO BIRNBAUM  
PRO SE DEFENDANT  
RT. 1, BOX 295  
EUSTACE, TEXAS 75124  
(903) 479-3929





All other relief not expressly granted herein is denied.

SIGNED this 6<sup>th</sup> day of February, 1998.

  
\_\_\_\_\_  
JUDGE PRESIDING

APPROVED AS TO FORM:

COWLES & THOMPSON  
909 ESE Loop 323  
Suite 777  
Tyler, Texas 75701  
(214) 581-5588  
(214) 581-3701 - FAX

By:   
\_\_\_\_\_

Don W. Kent  
State Bar No. 11316500

ATTORNEYS FOR DEFENDANT

Lyons: Thompson

This is where I had gone to a Tyler appeals attorney - and he gave me this piece of paper - as to why "thems" - were NOT entitled to "judgment" against me.

- ① Since jury awarded 0 in question No. 2 as a result he is not entitled to atty fees.
- ② Take nothing judgment.
- ③ TIs have waived any right to an injunction by not submitting to the jury.
- ④ Interest rate is improper - 10%
- ⑤ No interest ~~to~~ should be ~~awarded~~ awarded on future atty fees.
- ⑥ No underlying basis for award of atty fees.

**RICHARD L. RAY**  
*Attorney at Law*  
A PROFESSIONAL CORPORATION

300 S. TRADE DAYS BLVD.  
(300 S. HWY. 19)  
CANTON, TEXAS 75103

(903) 567-2051

(903) 567-6101

FACSIMILE (903) 567-6998

EMAIL: RLR.ATTY@AOL.COM

Robbery by any other name -  
is still ROBBERY.

July 24, 1998

Ms. Nancy Young  
Van Zandt County District Clerk  
2<sup>nd</sup> Floor, Courthouse  
Canton, Texas 75103

Dear Ms. Young:

This was AFTER the May 29, 1998 VERDICT - where the jury found a UNANIMOUS verdict of ZERO damages. Mr. Ray NEVER presented the jury with a question of whether an INJUNCTION should be entered. NEVER any claim to the JURY of whether there was a threat of "imminent and irreparable harm" - so as to warrant the court to issue an INJUNCTION. The ZERO damages of course speaks to this - NOT entitled to attorney fees - not a "winning party". Whatever he presented as me being "the problem" - was NOT my doing! AMEN

vs.  
Birnbaum

Enclosed for filing is Plaintiff's **Amended** Motion For Judgment On Verdict and Judgment. I have also enclosed a copy of same, which I would appreciate your file marking and returning to me.

Thank you for your assistance in this matter.

Sincerely,

Carla Hester-Hemphill  
Secretary to Richard L. Ray

ch  
Enclosures

cc: Mr. William Jones  
Mr. Udo Birnbaum

Cause No. 95-63

WILLIAM B. JONES

§  
§  
§  
§  
§

IN THE DISTRICT COURT

vs.

VAN ZANDT COUNTY, TEXAS

UDO BIRNBAUM

294<sup>TH</sup> JUDICIAL DISTRICT

**JUDGMENT**

The above-entitled cause came on regularly for trial on May 27<sup>th</sup>, 1998. Plaintiff, WILLIAM B. JONES, appeared in person and by attorney. Defendant, UDO BIRNBAUM, appeared in person (pro se). A jury of twelve persons was duly accepted, impaneled, and sworn to try the action.

After hearing the evidence, arguments of counsel, and parties, and instructions of the Court, the special issues were submitted to the jury. On May 29<sup>th</sup>, 1998, the jury returned its special verdict. On the basis thereof the Court is of the opinion that, on the merits, judgment should be rendered in favor of Plaintiff.

It is therefore adjudged that:

1. Plaintiff is granted a permanent injunction against Defendant, that Defendant be and is perpetually enjoined and prohibited from obstructing a creek (known as Steve's Creek) in the full and natural flow of water or permitting or causing the creek to be so obstructed and perpetual mandatory injunction compelling the Defendant to remove any dam located on the Defendant's land and to restore the flow of water in the creek (known as Steve's Creek) to its natural condition which would not allow the creek to overflow upon Plaintiff's adjoining property.
2. Plaintiff recover \$10,000.00 for attorney fees from Defendant with interest on this amount at the rate of 12% percent per annum from the date of rendition of this judgment until paid, for trial before this Court.
3. Plaintiff recovers \$5,000.00 for attorney fees from Defendant should this judgment be appealed to the Court of Appeals with interest at 12% percent per annum compounded annually from date of rendition of this judgment.

← corrects previous "would allow"

4. Cost of this suit be taxed against Defendant.

SIGNED on this the \_\_\_\_\_ day of July, 1998.

JUDGE JAMES ZIMMERMANN

**RICHARD L. RAY**  
*Attorney at Law*  
A PROFESSIONAL CORPORATION

300 S. TRADE DAYS BLVD.  
(300 S. HWY. 19)  
CANTON, TEXAS 75103

(903) 567-2051  
(903) 567-6101  
FACSIMILE (903) 567-6998

**REQUEST FOR SETTING**

June 30<sup>th</sup>, 1998

Betty Davis  
Court Administrator  
121 East Dallas Street, Room 301  
Canton, Texas 75103-1465

NON-JURY Cause No.: 95-63

FULL STYLE OF CASE: William B. Jones vs. Udo Birnbaum

NATURE/TYPE OF HEARING: **Entry of Judgment**

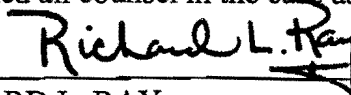
MONTH REQUESTED SET: Next available docket

COURT TIME REQUIRED: 30 Minutes

Plaintiff's Attorney & Address: Richard L. Ray  
300 South Trade Days Blvd.  
Canton, Texas 75103

Defendant's Attorney & Address: None/ Pro se

The undersigned hereby certifies that his pleadings are in order, good faith negotiations have been made to attempt settlement, and that he expects to be ready for trial. A copy of this request has been furnished all counsel in the case as listed below.

  
\_\_\_\_\_  
RICHARD L. RAY

ALL parties with their addresses requiring notice:

|                            |                      |
|----------------------------|----------------------|
| Richard L. Ray             | Mr. Udo Birnbaum     |
| Attorney at Law            | Rt. 1 Box 295        |
| 300 South Trade Days Blvd. | Eustace, Texas 75124 |
| Canton, Texas 75103        |                      |

MY RESPONSE - details as to WHY  
he is NOT entitled - to judgment  
against me.

COPY  
NO: 95-63

www.DamnCourthouseCriminals.com  
www.OpenJustice.US

WILLIAM B. JONES

VS.

UDO BIRNBAUM

FILED FOR RECORD  
98 SEP -4 PM 4:12  
NANCY YOUNG  
DIST. CLERK VAN ZANDT CO. TX.

IN THE DISTRICT COURT  
OF VAN ZANDT COUNTY  
294TH JUDICIAL DISTRICT

BY \_\_\_\_\_ DEP.

**DEFENDANT'S RESPONSE TO PLAINTIFF'S AMENDED MOTION  
FOR JUDGMENT ON VERDICT AND DEFENDANT'S MOTION FOR  
ENTRY OF TAKE NOTHING JUDGMENT**

NOW COMES, Udo Birnbaum, Defendant, and files this Defendant's Response To Plaintiff's Amended Motion For Judgment On Verdict and Defendant's Motion For Entry Of Take Nothing Judgment and would show the following:

1. Plaintiff filed suit under Section 11.086 of the Texas Water Code, which states,
  - (a) *"No person may divert or impound the natural flow of surface waters in this state, or permit a diversion or impounding by him to continue, in a manner that damages the property of another by the overflow of the water diverted or impounded.*
  - (b) *A person whose property is injured by an overflow of water caused by an unlawful diversion or impounding has remedies at law and in equity and may recover damages occasioned by the overflow.*
  - (c) *The prohibition of Subsection (a) of this section does not in any way affect the construction and maintenance of levees and other improvements to control floods, overflows, and freshets in rivers, creeks, and streams or the construction of canals for conveying water for irrigation or other purposes authorized by this code. However, this subsection does not authorize any person to construct a canal, lateral canal, or ditch that obstructs a river, creek, bayou, gully, slough,*

*ditch, or other well-defined natural drainage.*

*(d) Where gullies or sloughs have cut away or intersected the banks of a river or creek to allow floodwaters from the river or creek to overflow the land nearby, the owner of the flooded land may fill the mouth of the gullies or sloughs up to the height of the adjoining banks of the river or creek without liability to other property owners.”*

2. **Plaintiff failed to determine issue of** whether Defendant *“diverted or impounded the natural flow of surface waters or permitted a diversion or impounding by him to continue, in a manner that damages the property of another by the overflow of the water diverted or impounded.”*

3. **Jury determined Defendant did not cause Plaintiff damages.**

4. Plaintiff now claims the jury verdict entitled him to the following:

*“Plaintiff is granted a permanent injunction against Defendant, that Defendant be and is perpetually enjoined and prohibited from obstructing a creek (known as Steves’s Creek) in the full and natural flow of water or permitting or causing the creek to be so obstructed and perpetual mandatory injunction compelling the Defendant to remove any dam located on Defendant’s land and to restore the flow of water in the creek (known as Steve’s Creek) to it’s natural condition which would not allow the creek to overflow upon Plaintiff’s adjoining property.*

5. The jury found Plaintiff was **NOT** injured by Defendant. Even if the jury had found Plaintiff was injured by Defendant the following must be applied:

6. **11.086 (49) INJURY, INJUNCTIONS, AND EQUITABLE REMEDIES:**

*Plaintiff, injured by defendant’s violation of Vernon’s Ann.Civ.St. art. 7589a (repealed; now, this section), **had to show serious injury or threatened injury** before Plaintiff would be entitled to extraordinary remedy of permanent mandatory injunction. Nolte Irr. Co. v. Willis (Civ.App.1944) 180 S.W.2d 451, error refused.*

**Serious injury or threatened injury had to be shown in order to entitle injured party to mandatory injunctive relief, under Vernon’s Ann.Civ.St. art 7589(a) against unlawful**



*diversion of natural flow of surface water or impounding of such water. Cabla v. Shockley (Civ.App.1966) 402 S.W.2d 289, ref. n.r.e.*

7. **11.086 (58) PRESUMPTIONS AND BURDEN OF PROOF**

*In proceeding by county for injunction commanding landowner to remove levee obstructing surface waters, the burden was upon the county to establish facts entitling it to the injunctive relief sought. Brittian v. Hale County (Civ. App. 1957) 297 W.W.2d*

8. **11.086 (60) INSTRUCTIONS:**

*Upon retrial of Plaintiff landowners' action against municipality for damages because of city's approval of construction of subdivision on adjoining land resulting in diversion of natural water flow to Plaintiff's land, trial court would be required to submit explanatory instructions as to unreasonableness as would enable jury to determine question of unreasonableness of city's action. Carter v. Lee (Civ. App.1973) 502 S.W.2d 925, ref. n.r.e.*

9. **11.086 (61) FINDINGS**

*In proceedings by landowner to compel city to abate nuisance caused by discharge of storm waters through culvert under city street onto property owner's land, record failed to establish that city had ever done anything to change natural flow of water in neighborhood of property. City of Dallas v. Winans (Civ.App. 1953) 262 S.W.2d 256.*

10. **11.086 (62) VERDICT**

*Because of court's use of term "the property in question belonging to plaintiff" in suit by plaintiffs for damage to land caused by defendant adjoining owner's diversion of natural flow of water the verdict was ambiguous and rendered so that it was impossible for court to be certain as to jury's intent in answering damage issue and required reversal of judgment. Carter v. Lee (Civ.App. 1973) 502 S.W.2d 925, ref. n.r.e.*

11. Plaintiff seeks to recover attorneys fees under Article 38.001 Code of Civil Remedies which states:

***"A person may recover reasonable attorney fees from an individual or corporation, IN ADDITION TO the amount of a VALID claim or costs, if the claim is for:***

- (a) rendered services;***
- (b) performed labor;***
- (c) furnished material;***
- (d) freight or express overcharges;***

Suit - whether over BEAVERS, or whether over "Texas Water Code" - as he sued me for - is NOT one of the narrow categories - for which "attorney fees" is allowed. PERIOD.

- (e) lost or damaged freight or express;
- (f) killed or injured stock;
- (g) a sworn account; or
- (h) an oral or written contract.

Suit - whether over BEAVERS, or whether over "Texas Water Code" - as he sued me for - is NOT one of the narrow categories - for which "attorney fees" is allowed. PERIOD.

12. Plaintiff failed to show existence of any such claim and no underlying claim for attorney's fees. The following must be applied;

13. **38.001 (18) VALIDITY OF CLAIM, RIGHT TO RECOVER**

**"Party who successfully defends against action on main issue is "prevailing party" for purposes of recovering attorney fees under contract provisions granting such right. G. Richard Goins Const. Co. Inc. v. S.B.McLaughlin Associates, Inc. (App. 12 Dist. 1996) 930 S.W/ 2d 124, rehearing overruled, error denied, rehearing of writ of error overruled."**

**Term "prevailing party," for purposes of awarding attorney's fees, refers to party who successfully prosecutes action or successfully defends against action on main issue. Emery Air Freight Corp. v. General Transport Systems, Inc. (App. 14 Dist. 1996) 933 S.W.2d 312.**

14. **38.001 (19) JUDGMENT, RIGHT TO RECOVER**

**Under statute, plaintiff to be entitled to attorney's fees as costs, had to obtain judgment for full amount of the claim as presented for payment. Texas Southeastern Ry. Co. v. Brown (Civ. App.1916) 186 S.W. 273.**

**In context of suit that goes to trial, judgment is condition precedent to recovery of attorney fees because valid claim is not established until plaintiff gets judgment that is supported by pleadings and proof. Corpus Christi Development Corp. v. Carlton (App. 13 Dist. 1982) 644 S.W.2d 521.**

15. **38.001 (20) DAMAGES, RIGHT TO RECOVER**

**Where no recovery was awarded plaintiff for services rendered in his suit to recover services rendered, no attorney fees were authorized. Cook v. Layne Texas Co., Inc. (Civ.App.1973) 495 S.W.2d 377, ref. n.r.e.**

**CONCLUSION**

**Defendant committed no crime. Defendant violated no statutes. Defendant caused no damages. Defendant breached no contract. All of Plaintiff's claims are frivolous. As a matter of law, Plaintiff's lawyer is not entitled to any fees from Defendant.**

WHEREFORE PREMISES CONSIDERED, Defendant prays this Court deny Plaintiff's Amended

Motion For Judgment on Verdict in it's entirety and that this Court grant Defendant's Motion For Take

Nothing Judgment.

I am asking for "take nothing judgment" - i.e. that he gets to take "nothing" - and be ordered to "go whence". See my proposed judgment, below.

Respectfully submitted,

*Udo Birnbaum*

UDO BIRNBAUM, Defendant, Pro Se  
Rt. 1, Box 295  
Eustace, TX. 75124

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of this document was mailed to Richard L. Ray,  
certified mail, return receipt requested number 2 376 322 135 on September 4, 1998.

*Udo Birnbaum*  
UDO BIRNBAUM

✓

COPY

NO: 95-63

My proposed "take nothing" judgment

www.DamnCourthouseCriminals.com  
www.OpenJustice.US

**WILLIAM B. JONES**

VS.

**UDO BIRNBAUM**

(  
(  
(  
(  
(

**IN THE DISTRICT COURT  
OF VAN ZANDT COUNTY  
294TH JUDICIAL DISTRICT**

Per "pattern" provided to me, I put in all that good "BLA-BLA"

**TAKE NOTHING JUDGMENT**

On the 26th day of May, 1998, **came on to be heard** the above-entitled and numbered cause and the Plaintiff appeared in person and by attorney of record and announced ready for trial, and Udo Birnbaum, appeared in person, Pro Se, and announced ready for trial and a jury having been previously demanded, a jury consisting **of twelve good and lawful jurors** was **duly empanelled** and the case proceeded to trial.

At the conclusion of the evidence, the Court submitted the case to the jury on special issues. The Charge of the Court, including the special issues, and the verdict of the jury, are **incorporated herein for all purposes** by reference. **It appearing to the Court** that the verdict of the jury was for the Defendant and against the Plaintiff, judgment should be rendered upon the verdict in favor of the Defendant and against the Plaintiff.

IT IS, THEREFORE, **ORDERED, ADJUDGED AND DECREED** by the court that Plaintiff take nothing by this suit, and the Defendant, Udo Birnbaum, be in **all things discharged** and **go hence without delay**. All costs of Court are taxed against Plaintiff, for which **let execution issue**.

All other relief **not expressly granted** herein **is denied**.

SIGNED this \_\_\_ day of October, 1998.

\_\_\_\_\_  
Judge Presiding

**DEFENDANT'S BRIEF ON ENTRY OF JUDGMENT**  
This is where I finally hired an attorney - to pound some sense into Judge Zimmermann - to no avail.

www.DamnCourthouseCriminals.com  
www.OpenJustice.US

CAUSE NO. 95-63  
FILED FOR RECORD

WILLIAM B. JONES 98 OCT -6 AM 9:10 §  
VS. NANCY YOUNG §  
DIST. CLERK VAN ZANDT CO TX. §  
UDO BIRNBAUM BY \_\_\_\_\_ §  
DEP. 294TH JUDICIAL DISTRICT

**DEFENDANT'S BRIEF ON ENTRY OF JUDGMENT**

TO THE HONORABLE JUDGE OF THIS COURT:

Defendant, Udo Birnbaum, files this brief **after trial** of this matter and **before entry of Judgment**.

I.  
HISTORY OF CASE

This matter was tried before a jury on date of May 29, 1998. Plaintiff, William B. Jones, at this time had filed a Second Amended Original Petition which requested the court to grant relief of (1) **monetary damages** (2) defendant to be ordered **to remove a dam** (3) defendant **be enjoined** from obstructing a spring creek, and (4) that **attorney fees** be awarded under Article 38.001 of the Code of Civil Remedies.

Three issues were presented to the Jury in this matter as follows:

- (1) **Did Birnbaum allow** dams upon his land to flood Jones' upstream property in October, 1994? Answer - **Yes**.
- (2) **What sum of money**, if paid in cash, would fairly and reasonable compensate William B. Jones for his loss, if any, resulting from the occurrence in question? **Answer - Zero**.
- (3) What sum of money, if any, do you find from a preponderance of the evidence would be reasonable and necessary attorney's fees for the services, if any, performed by Plaintiff's attorney? (a) For legal services rendered in preparation and trial of this cause in this court? Answer \$10,000.00 (b) For legal services if this cause is appealed to the Court of Appeals? Answer \$5,000.00 (c) For legal services if application is made for a writ of error to the Supreme Court of Texas? Answer- Zero.

II.  
ISSUES

Plaintiff and Defendant have now presented proposed Judgments to this court. The issues on which the parties differ is as follows:

- (1) **Should attorney fees** be granted to Plaintiff under his request based on **Article**

**38.001** of the Civil Practice and Remedies Code?

(2) **Should a Permanent Injunction** be issued to prevent actions by Defendant and if granted what should be the extent of this Injunction?

(3) **Should cost of court** be awarded to Plaintiff?

III.  
ISSUE NO. 1

**Should attorney fees be granted to Plaintiff under his request based on Article 38.001 of the Civil Practice and Remedies Code?**

**The general rule in Texas is that each litigant must compensate his or her own attorney.** [Turner v. Turner, 385 SW2d 230, 233 (Tex. 1965)]. Further, a party may not recover attorney's fees in tort actions, such as negligence actions, unless either a contract is involved or a statute authorizes recovery in that type of action. [Huddleston v. Pace, 790 SW2d 47, 49-50 (Tex.App.--San Antonio 1990, den.)]. The particular statute under which Plaintiff claims a right to recovery of attorney fees is Article 38.001 Texas Civil Practice and Remedies Code which reads as follows:

Section 38.001 Recovery **of Attorney Fees**

A person may recover reasonable **attorney's fees** from an individual or corporation, in addition to the amount of a valid claim and costs, **if the claim is for:**

- (1) rendered services;
- (2) performed labor;
- (3) furnished material;
- (4) freight or express overcharges;
- (5) lost or damaged freight or express;
- (6) killed or injured stock;
- (7) a sworn account; or
- (8) an oral or written contract.

**None of the above stated claims are presented by the Plaintiff in this lawsuit.**

The above statute "is penal in character, and, consequently, should be construed strictly against the claimant." [Ridout v. Mobile Housing Inc., 497 SW2d 66 (Tex.Civ.App.--Austin, 1973)].

The judgment of the court shall conform to the pleadings, the nature of the case proved and the verdict, if any.... [TRCP 301]. No pleadings for recovery on any other grounds are presented by the Plaintiff. Further, Question number three of the charge does not inquire as to whether any attorney fees should be granted, but only what sum would be reasonable and necessary. Without a question being presented of whether attorney fees should be granted the Plaintiff would be required to show he is entitled to recovery as a matter of law. No such proof has been provided.



The fact the Jury answered the question presented on attorney fees is not significant. The Court, in rendering Judgment, may disregard questions that are immaterial. [Driver v. Worth Construction Co. 154 Tex. 66 (Tex. 1954)]; McDonald Texas Civil Practice Section 27:69]. A question is immaterial when (1) it should not have been submitted, or (2) though properly submitted, it has been rendered immaterial by other findings. [Ridout v. Mobile Housing Inc., 497 SW2d 66, (Tex.Civ.App.--Austin, 1973 writ ref'd n.r.e.)].

IV.  
ISSUE NO. 2

Should a **Permanent Injunction** be issued to prevent actions by Defendant and if granted what should be the extent of this Injunction?

The jury question number one only answered the fact that on date of October, 1994 the defendant allowed dams upon his land to flood Jones' upstream property. No question was presented as to whether the condition exists at the current time. Further, there is a finding by the jury the condition caused no damage to Plaintiff's land.

"A successful applicant for injunctive relief must demonstrate the following four grounds for relief: 1) the existence of a wrongful act; 2) the existence of imminent harm; 3) the existence of irreparable injury; and 4) the absence of an adequate remedy at law. [D. Priest and Van Zandt Commission Company, Inc. V. Texas Animal Health Commission, 780 SW2d 874 (Tex. App.--Dallas, 1989), quoting Frey v. DeCordova Bend Estates Owners Ass'n, 632 SW2d 877, 881 (Tex.App.--Fort Worth, 1982, affd.)].

Particularly since the jury found the Plaintiff suffered no damages injunctive relief should be denied. A plaintiff injured by a defendant's violation of Section 11.86 Texas Water Code has to show serious injury or threatened injury before being entitled to the extraordinary remedy of permanent mandatory injunction. [Nolte Irr. Co. V. Willis, 180 SW2d 451 (Civ. App. 1944), see also Cabla v. Shockley, 402 SW2d 289 (Civ. App. 1966, ref. n.r.e.)].

Defendant admits that only ultimate issues of fact are submitted for jury determination in the issue of granting an injunction [State v. Texas Pet Food, Inc. 591 SW2d 800, 803 (Tex. 1979)], but it is essential to the granting of injunctive relief to prove the conditions still exist and they will probably recur. [Burkland v. Hackett, 575 SW2d 389 (Tex.App.--Tyler, 1978)]. "In the absence of showing that the acts complained of probably will occur again, the acts and practices occurring prior to the suit will not furnish a basis for injunctive relief." [Edgar v. Glenn W. Turner Enterprises, Inc., 487 SW2d 847, 849 (Tex.App.--Austin 1972, Rehearing Denied)].

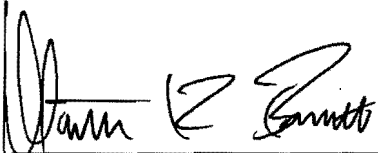
V.  
ISSUE NO. 3

Should **cost of court** be awarded to Plaintiff?

Rule 131 Texas Rules Civil Procedure states "[t]he successful party to a suit shall recover of his adversary all costs incurred therein, except where otherwise provided." The question present in this case is whether the Plaintiff was a "successful party." Since Plaintiff did not recover damages he is not a successful party. "A plaintiff is not a successful party if he obtains favorable findings on liability but not on damages." [ Crow v. Burnett, 951 SW2d 894 (Tex.App.-Waco 1997) *see also* Lovato v. Ranger Ins. Co. 597 SW2d 34, 37 (Tex.Civ.App.--Amarillo 1980, writ ref'd n.r.e.); Collerain v. City of Granbury, 760 SW2d 364, 368 (Tex.App.--Fort Worth 1988, no writ)].

CONGRATS, Martin.  
Very good job!

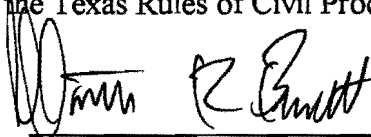
RESPECTFULLY SUBMITTED,



Martin R. Bennett  
Texas Bar No. 00795037  
Attorney for Defendant  
P.O. Box 152  
Athens, TX 75751  
(903) 675-5151 Telephone  
(903) 677-4950 Facsimile

**Certificate of Service**

I certify that a true and correct copy of this document was forwarded to Richard L. Ray on date of October 5, 1998 complying with the Texas Rules of Civil Procedures.



Martin R. Bennett



This motion addresses the only real issue - attorney Richard Ray trying to ROB me via that "holiest of holies" - ATTORNEY FEES. The question on attorney fees to jthe jury - SHOULD OF COURSE NEVER HAVE EVEN BEEN ASKED

FILED FOR RECORD  
98 OCT -6 AM 9:15  
NANCY YOUNG  
DIST. CLERK VAN ZANDT COUNTY TEXAS

BY \_\_\_\_\_ DEP.

WILLIAM B. JONES § IN THE DISTRICT COURT OF  
VS. § VAN ZANDT COUNTY, TEXAS  
UDO BIRNBAUM § 294TH JUDICIAL DISTRICT

MOTION FOR JUDGMENT  
NOTWITHSTANDING THE VERDICT

TO THE HONORABLE JUDGE OF THIS COURT:

Udo Birnbaum, Defendant, asks the Court to render judgment notwithstanding the verdict of the jury, and in support of this motion shows:

I.

The Court submitted the following question to the jury as follows:

Question No. 3.

What sum of money, if any, do you find from a preponderance of the evidence would be reasonable necessary attorney's fees for the services, if any, performed by plaintiff's attorney?

a. For legal services rendered in the preparation and trial of this cause in this Court?

Answer in dollars and cents, if any.

We Answer: \$10,000.00

b. For legal services if this cause is appealed to the Court of Appeals?

Answer in dollars and cents, if any.

We Answer: \$ 5,000.00

c. For legal services if application is made for a writ of error to the Supreme Court of Texas?

Answer in dollars and cents, if any.

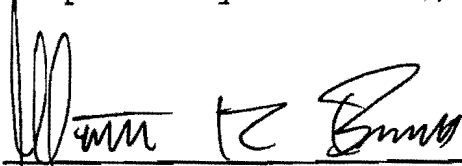
We Answer: \$ 0

It would have been proper to direct or instruct a verdict on the above Question No. 3. Accordingly, judgment should be rendered in favor of Defendant notwithstanding the verdict of the jury because Plaintiff is denied, as a matter of law, from presenting such question. More specifically, Movant would show the Court that, under Article 38.001 of the Code of Civil Remedies, Plaintiff is not a person who may recover reasonable attorney's fees. The pleadings of Plaintiff asked for such attorney's fees only under Article 38.001 of the Code of Civil Remedies, yet no evidence has been presented to show Plaintiff to be a proper person under this pleading or Article.

WHEREFORE, Defendant requests the Court, after notice and hearing, to render judgment notwithstanding the verdict of the

jury, and that Plaintiff take nothing under the Question No. 3 which was presented to the jury.

Respectfully submitted,



MARTIN R. BENNETT  
Bar No. 00795037

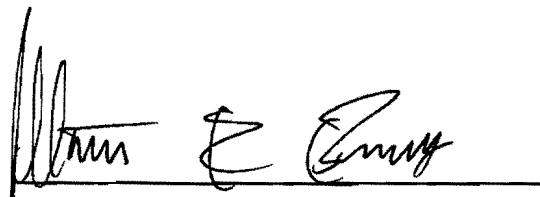
CONGRATS, Martin.  
Very good job!

KUGLE, SKELTON & BENNETT, P.C.  
P.O. Box 152  
Athens, TX 75751  
903/675-5151 Telephone  
903/677-4950 Telecopier

CERTIFICATE OF SERVICE

I certify that on October 2, 1998, a copy of this paper was delivered by ~~mailing~~ <sup>faxing</sup> a true and correct copy to:

Mr. Richard L. Ray  
300 S. Trade Days Blvd.  
Canton, TX 75103



FILED FOR RECORD

98 OCT -6 AM 9:15  
No. 95-63

NANCY YOUNG  
DIST. CLERK VAN ZANDT CO. TX.

|                  |   |                          |
|------------------|---|--------------------------|
| WILLIAM B. JONES | § | IN THE DISTRICT COURT OF |
| VS.              | § | VAN ZANDT COUNTY, TEXAS  |
| UDO BIRNBAUM     | § | 294TH JUDICIAL DISTRICT  |

MOTION FOR ENTRY OF JUDGMENT

Udo Birnbaum, Defendant in the above entitled cause of action, moves the Court to enter judgment in favor of Defendant, and in support of this motion shows:

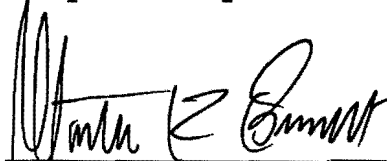
On May 29, 1998, this case was submitted to the jury on three jury questions, said verdict being included herein by reference. Question No. 1 confirmed that Defendant Birnbaum allowed dams upon his land to flood Jones' upstream property in October, 1994. Question No. 2 confirmed that Plaintiff, William B. Jones, was awarded zero damages due to the action of Defendant, Udo Birnbaum. Question No. 3 was presented to the Court asking for a sum of money which would compensate Plaintiff for reasonable and necessary attorney's fees. No question was predicated to Question No. 3 as to whether such attorney's fees should be paid. As a matter of law under Art. 38.001 of the Civil Practice and Remedies Code of the State of Texas, Plaintiff is not entitled to recovery of such attorney's fees.

WHEREFORE, Movant requests that the Court render judgment in accordance with the jury verdict and that:

(1) Plaintiff have and recover zero damages from Defendant;

(2) Plaintiff recover zero attorney's fees from Defendant.

Respectfully submitted,



MARTIN R. BENNETT  
Bar No. 00795037

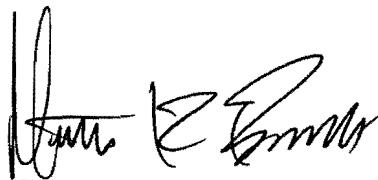
KUGLE, SKELTON & BENNETT, P.C.  
P.O. Box 152  
Athens, TX 75751  
903/675-5151 Telephone  
903/677-4950 Telecopier

CONGRATS, Martin.  
Very good job!

CERTIFICATE OF SERVICE

I certify that on October 2, 1998, a copy of this paper was delivered by <sup>faxing</sup> mailing a true and correct copy to:

Mr. Richard L. Ray  
300 S. Trade Days Blvd.  
Canton, TX 75103



COPY

NO: 95-63

**WILLIAM B. JONES**

**VS.**

**UDO BIRNBAUM**

(  
(  
(  
(  
(

**IN THE DISTRICT COURT  
OF VAN ZANDT COUNTY  
294TH JUDICIAL DISTRICT**

**TAKE NOTHING JUDGMENT**

On the 26th day of May, 1998, came on to be heard the above-entitled and numbered cause and the Plaintiff appeared in person and by attorney of record and announced ready for trial, and Udo Birnbaum, appeared in person, Pro Se, and announced ready for trial and a jury having been previously demanded, a jury consisting of twelve good and lawful jurors was duly empanelled and the case proceeded to trial.

At the conclusion of the evidence, the Court submitted the case to the jury on special issues. The Charge of the Court, including the special issues, and the verdict of the jury, are incorporated herein for all purposes by reference. It appearing to the Court that the verdict of the jury was for the Defendant and against the Plaintiff, judgment should be rendered upon the verdict in favor of the Defendant and against the Plaintiff.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the court that Plaintiff take nothing by this suit, and the Defendant, Udo Birnbaum, be in all things discharged and go hence without delay. All costs of Court are taxed against Plaintiff, for which let execution issue.

All other relief not expressly granted herein is denied.

SIGNED this \_\_\_ day of October, 1998.

\_\_\_\_\_  
Judge Presiding

The essence of this mess - is attorney Richard Ray arguing - that because he got by with UNLAWFULLY sneaking in - a question on ATTORNEY FEES - he is entitled to \$10,000 "attorney fees". (He here in even ADMITS - that the question was NOT PROPER!

www.DamnCourthouseCriminals.com  
www.OpenJustice.US

WILLIAM B. JONES 98 OCT -6 AM 10: 08 IN THE DISTRICT COURT OF  
VS. NANCY YOUNG §  
DIST. CLERK VAN ZANDT CO. TX. VAN ZANDT COUNTY, TEXAS  
UDO BIRNBAUM BY \_\_\_\_\_ § DEP. 294<sup>TH</sup> JUDICIAL DISTRICT

**WILLIAM JONES' BRIEF IN SUPPORT OF PLAINTIFF'S  
OBJECTIONS TO DEFENDANT'S MOTION FOR ENTRY OF JUDGMENT  
AND DEFENDANT'S MOTION FOR JUDGMENT  
NOTWITHSTANDING THE VERDICT**

COMES NOW, WILLIAM JONES and files this his brief in support of his objections to Motion for Entry of Judgment and Motion for Judgment Notwithstanding the Verdict filed by UDO BIRNBAUM in this cause and would show this Court as follows:

Anything procured by FRAUD - is forever FRAUD. There is no "untimely" - on FRAUD. Issue of fraud can be raised in ANY setting - at ANY time. PERIOD.

**I.**

**Facts**

The case came to trial by jury on May 27<sup>th</sup>, 1998. Plaintiff, WILLIAM JONES, appeared in person and by attorney. Defendant, UDO BIRNBAUM, appeared in person (pro se). A jury of twelve persons, duly accepted, impaneled and sworn tried the action. After hearing evidence, arguments of counsel and parties, and instructions of the Court, the special issues were submitted to the jury. On May 29<sup>th</sup>, 1998, the jury returned its verdict.

In answering question number three before it, the jury awarded Plaintiff attorney's fees in the amount of \$10,000 for services rendered in the preparation and trial of this case.

Defendant made no objection to the admission of evidence concerning attorney's fees or the submission of this charge to the jury.

In essence, Mr. Ray is going to argue, that because I, a non-lawyer, did not formally "object" - that that makes his question on "attorney fees" - a legitimate question!

## II.

### Application of Law to Facts

This Court is the Court of continuing jurisdiction. The Plaintiff is entitled to attorney's fees as awarded by the jury and to which any objection by Defendant has been waived. The question before the court is not whether the jury should have received the issue but whether Defendant waived his right to object by failing to do so at trial.

Defendant's Motion for Entry of Judgment and Motion for Judgment Notwithstanding the Verdict untimely raises the issue of attorney's fees; therefore, the award of attorney's fees to the Plaintiff by the jury is proper.

Anything procured by FRAUD - is forever FRAUD. There is no "untimely" - on FRAUD

In *Emery Air Freight v. General Transport Systems*, appellant argued that the appellee's prayer for relief did not entitle it to an award of attorney's fees. The court held that even if the party's pleadings did not justify an award of attorney's fees, the appellant had waived this error by allowing the court to decide the issue without objection. The court stated, "when a party allows the court to try an issue without objecting... that party cannot then raise the... deficiency for the first time on appeal." <sup>1</sup>

Rule 274 of the Texas Rules of Civil Procedure states that, "any complaint as to a question, definition, or instruction, on account of any defect, omission, or fault in pleading is waived unless specifically included in the objections." In addition, the Rule

---

<sup>1</sup> *Emery Air Freight Corporation v. General Transport Systems, Inc.*, 933 S.W.2d 312, 316 (Tex.App. - Houston [14<sup>th</sup> Dist.] 1996).



33.1(a) of the Texas Rules of Appellate Procedure states, “As a prerequisite to presenting a complaint for appellate review, the record must show that the complaint was made to the trial court by a timely...objection... and the trial court ruled on the...objection...”

Defendant made no objection to the admission of evidence of attorney’s fees or to submission of the jury charge at trial, and therefore waived his right to later object.<sup>2</sup>

In *Home Savings Association v. Louis Guerra*, Home Savings was held liable for only part of the claim at issue but was then held liable for all attorney’s fees. Home Savings objected, but the court allowed the award to stand because Home Savings waived the error by not objecting at the time of trial.<sup>3</sup>

In *Johnnie Hruska et ux v. First State Bank of Deanville*, the court failed to separate attorney’s fees between those services rendered for prosecution of the suit and those rendered for defense of the counterclaim. Although this failure to separate was an error, it was waived when Hruska failed to object, and Hruska was held liable for the full amount.<sup>4</sup>

In *Aero Energy, Inc. et al v. Circle C Drilling*, the Defendant plead causes of action for breach of contract and fraudulent inducement of contract and asked for attorney’s fees in both. Aero did not object or ask for the causes of action to be separated when the broad question including attorney’s fees was submitted to the jury. Therefore, the Defendant waived any objection regarding the issue of attorney’s fees.<sup>5</sup>

---

<sup>2</sup> *James W. Miller v. Joe Patterson*, 537 S.W.2d 360, 364 (Tex. Civ. App.—Ft. Worth, 1976).

<sup>3</sup> *Home Savings Association v. Louis Guerra*, 733 S.W.2d 134, 137 (Tex. 1987).

<sup>4</sup> *Johnnie W. Hruska et ux v. First State Bank of Deanville*, 747 S.W.2d 783, 785 (Tex. 1988).

<sup>5</sup> *Aero Energy, Inc. et al. v. Circle C Drilling Company*, 699 S.W. 2d 821 (Tex. 1985).

Here, the Defendant did not timely object to evidence introduced concerning attorney's fees or as the jury was instructed to consider the issue of attorney's fees. The Defendant now wishes to challenge the jury's award of attorney's fees to Plaintiff. The Defendant waived the right to object by failing to object when evidence of attorney's fees was offered or at the time the issue was submitted to the jury.

The jury award should be given full force and effect.

“On a jury verdict responsive to questions, wherein all controlling issues in the cause have been submitted and all necessary to a complete verdict have been answered, the orderly procedure, which normally should be followed, is to render judgment in harmony with the findings, even though errors occurring during the trial may compel the court later to set aside the judgment.<sup>6</sup> It has been declared that ‘where the answers to [questions] are conclusive of the right of one of the parties to a judgment in his favor the act of rendering judgment on the verdict is ministerial.’<sup>7,8</sup>

### Conclusion

Evidence of attorney's fees was introduced without objection by Defendant. The jury was charged concerning attorney's fees and returned a verdict including attorney's fees without objection by Defendant. If error occurred in the submission of evidence, charging of the jury or returning of the verdict, the Defendant waived the error by not timely objecting and receiving a ruling at trial. The judgment awarding attorney's fees to Plaintiff must be entered to conform with the jury's verdict and controlling Texas law.

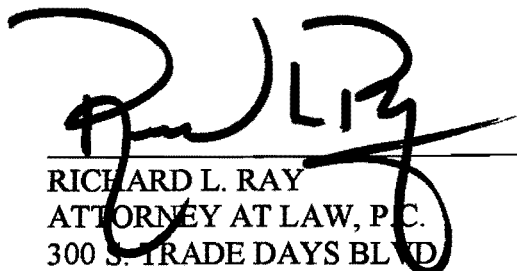
---

<sup>6</sup> *Farmer v. Denton*, 231 S.W. 2d 908 (Tex. Civ. App.—Amarillo 1950).

<sup>7</sup> *Williams v. Wyrick*, 151 Tex 40, 245 S.W.2d 961, 962 (1952).

<sup>8</sup> McDonald Texas Civil Practice Section 27:65(b).

Respectfully submitted,

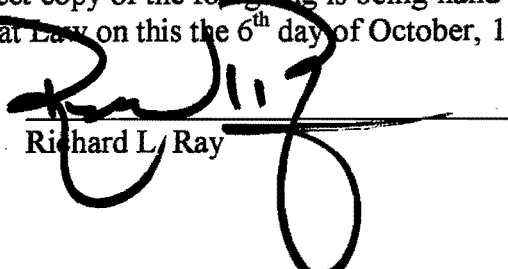


RICHARD L. RAY  
ATTORNEY AT LAW, P.C.  
300 S. TRADE DAYS BLVD  
CANTON, TEXAS 75103  
903-567-2051  
903-567-6998 (FAX NO.)  
BAR NO. 16606300

ATTORNEY FOR PLAINTIFF

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing is being hand delivered to Mr. Martin Bennett, Attorney at Law on this the 6<sup>th</sup> day of October, 1998.



Richard L. Ray

---

William Jones' Brief to Support  
Objections to Udo Birnbaum's  
Motions for Entry of Judgment and  
Judgment Notwithstanding the Verdict;

This is my "thank you" - to my attorney Martin Bennett - for having done a bang-up job. And throwing some REAL JABS - at poor Judge Zimmermann!

December 8, 1998

COPY

FILED FOR RECORD

98 DEC -8 PM 1:26

Martin R. Bennett, Attorney  
P. O. Box 152  
Athens, Texas

(903) 675-5151

FX (903) 677-4950

NANCY YOUNG  
DIST. CLERK  
VAN ZANDT CO. TX

Ref: Jones v. Birnbaum, Cause No. 95-63

BY \_\_\_\_\_ DEP

Dear Mr. Bennett,

Thank you very much for representing me to show Judge Zimmermann the case law pertaining to the jury's determination that I caused **ZERO** damages to Mr. Jones. It was always crystal clear to me, that the verdict of **ZERO** damages, established as a fact, that the Plaintiff **NEVER HAD A CASE!**

I had to resort to you, an attorney, to recite the law to the judge, because I had been unable to connect, perhaps because I was pro-se. But it is clear to me now that "pro-se" was not the problem.

I am slowly coming to grips with the implications of the judge's more than half hour seance with you and opposing counsel, at the bench, and hearing passages from Judge Zimmermann that "[Judge Zimmermann] just wanted to be sure you [Bennett] knew", regarding his view of my supposed view of the "judicial system".

Also, I have been considering what was on his mind, when a few months back, when I was simply visiting the Court, Judge Zimmermann called me to the bench, to express to me that at the trial I must have misunderstood the jury. I made some kind of comment to the effect that "No, I did not misunderstand, perhaps the jury misunderstood his question." Whereupon, the judge emphatically replied, "No, the jury knew EXACTLY what they meant!" Even as a layperson it is clear to me that it is immaterial and irrelevant what the jury "meant", or that they all "meant" the same, or whether the judge thought he "knew" what they "meant". All that was relevant was the jury's ANSWER - "ZERO DAMAGES" - to the judge's question.

And, a couple of weeks ago there was another matter when I was again visiting the courtroom. In the middle of a proceeding, Judge Zimmermann suddenly asked me, "Mr. Birnbaum, can you hear?" And, just before the noon recess, from the bench, Judge Zimmermann asked me, "Mr. Birnbaum, can you come up here for a minute?". Judge Zimmermann proceeded to tell me that he had received a "brief" from you and asked me if it would be convenient for me for him to have a hearing upon it, and if December 14 would be alright with me. He mentioned your law firm and I steered him to your name - Martin Bennett.

Judge Zimmermann turned to Betty Davis, Court Coordinator, to set it for December 14. I did not immediately recognize his problem, for he is the judge and I am just a commoner before him. But, I am convinced that he had forgotten that the "brief" pertaining to the "zero damages" awarded by the jury had already been heard by him back in October. And, he had forgotten

that I had already had plaintiff's attorney on the witness stand regarding "zero damages". And, he had forgotten that he has been sitting on **TWO** motions for entry of judgment, mine and Richard Ray's, for nearly **FIVE MONTHS**. And, **he obviously had forgotten that I am represented by an attorney.**

And then there is the matter of Judge Zimmermann signing an order in early 1997, demanding that I **HAD UNTIL THE DAY BEFORE** to pay \$600!

Now, I am not a medical or legal expert, but I have seen my 93 year old mother, now in a nursing home, deteriorate. And, I have seen my father gradually deteriorate, and then deteriorate much more rapidly after he only saw that which was right in front of him, and no longer noticed that which was missing, or left undone. And, I know others, both inside and outside the courtroom have similar problems.

Along with all of the above concerns, I am concerned that the statute of limitations for causes at law will run out before Judge Zimmermann ever takes action, and that I will be hanging in the court at the whims of this judge. I am unwilling to put up with this.

As I stated earlier, I am completely satisfied with your services. You did exactly what you said you would do, and you did a slam-bang job of it. However, I do believe that I must do what has to be done.

It is for all of the above reasons that I instruct you to officially withdraw as my counsel on this the 8th day of December, 1998.

Sincerely,

*Udo Birnbaum*

Udo Birnbaum  
Rt. 1, Box 295  
Eustace, Texas 75124  
PH. (903) 479-3929  
FX. (903) 479-3871

P.S.

*There is no record in the Clerk's office of you ever having entered an appearance, filed any brief or motion, or that any hearing was ever held.*

*Udo 12-8-98*

This is me, Pro Se again, after having thanked good bye to my attorney, Martin Bennett, of Athens, Texas.

No. 95-63

WILLIAM B. JONES

)

Vs.

)

UDO BIRNBAUM

)

)

)

FILED FOR RECORD  
01 APR 20 11:41  
IN THE DISTRICT COURT  
DIST. CLERK NANCY YOUNG  
294<sup>TH</sup> JUDICIAL DISTRICT  
BY VAN ZANDT COUNTY, TEXAS  
DEP.

**MOTION FOR NEW TRIAL**

COMES NOW, Udo Birnbaum ("Birnbaum"), Defendant in the above styled and numbered cause and would show the Court the following:

**Introduction**

1. This Cause stems from a Van Zandt landowner by the name of William B. Jones ("Jones") undertaking to claim land from nature, by excavating the creek on his property, and doing so without acquiring professional advice and guidance.
2. Conflict between the parties arose sometime in the fall of 1994, when Jones, after having killed all beaver on his property, for the first time ever complained to Birnbaum about beavers or water, and demanded the removal of a small beaver dam ("dam" or "dams") on Birnbaum's land supposedly backing water up on Jones' property.
3. This cause of action under Section 11.086 of the Texas Water Code, alleging that Birnbaum, as a person, in 1994 built a specifically described dam ("The Dam") that supposedly violated such Code, arose *sua sponte* upon a piece of paper a certain Canton attorney by the name of Richard L. Ray ("Ray") filed as "Original Petition".
4. This Motion for New Trial arises from the circumstances surrounding the trial in this cause, including the jury making only irrelevant findings of fact, as described below, that makes it impossible for this Court to enter a judgment that "conforms to the pleadings and verdict". That is the below described "dilemma" before this Court.

**The Pleadings**

5. Plaintiff claims (Exhibit A) that Birnbaum "wrongfully built and has at all times since then wrongfully maintained" a specifically described dam ("The Dam") and seeks removal of said supposed dam. Birnbaum pleads fabrication, being legally assaulted, fraudulent process, and seeks affirmative relief by having this Court to refer these matters to the U. S. Justice Department.

## **The Trial**

6. The cause was filed February 6, 1995 and came to trial May 26 through May 29, 1998. Testimony was heard regarding everything under the sun except as to the matter of Birnbaum having built a supposed "The Dam" dam, Birnbaum "maintaining" any such "The Dam", that any such "The Dam" violated the Texas Water Code, or Jones having been flooded or in any way damaged by any such "The Dam" dam.

7. Testimony about "dams" was strictly in the context of "dams" built by beavers in a creek known as Steve's Creek. The issues ranged from as to why beavers build dams, how they build dams, what beavers eat, whether they are nocturnal, whether they are in the rodent class, how one counts beaver dams, i.e. does one count a big one the same way one counts a little one, or does one count the little one as a fraction of a "standard" beaver dam, the difference between beaver "dams" and beaver "terraces", etc, etc.

8. Not one shred of evidence about "The Dam". When Birnbaum attempted to show "The Dam" fabrication by showing Plaintiff's Original Petition, First Amended Original Petition, and Second Amended Original Petition, Birnbaum was instructed by the Court that these documents could not be shown to the jury, could not be read to the jury, and could not be talked about to the jury, because pleadings were not "evidence". "The Dam" dam had procedurally disappeared.

## **A Verdict but no Judgment**

9. The Court's Charge consisted of only three questions. The Verdict of the jury (Exhibit B) was as follows:

QUESTION NO. 1: Did Birnbaum allow dams upon his land to flood Jones' upstream property in 1994? We Answer: YES

INSTRUCTION: If you have answered "Yes" to Question No. 1, then answer Question No. 2. Otherwise, do not answer Question No. 2.

QUESTION NO. 2: What sum of money, if paid now in cash, would fairly and reasonably compensate William B. Jones for his loss, if any, resulting from the occurrence in question? We Answer: 0

INSTRUCTION: If you have answered "Yes" to Question No. 1, then answer Question No. 3. Otherwise, do not answer Question No. 3.

QUESTION NO. 3: What sum of money, if any, do you find from the preponderance of the evidence would be reasonable and necessary attorney's fees for the services, if any, performed by Plaintiff's attorney: We Answer: \$10,000



10. Judge Zimmermann told the jury that he was particularly proud of them for "not going back there and giving a lick and a promise, and coming back in 10 minutes with a verdict", and that "You spent however much time you needed, and that's the way it ought to be - - And no one can thank you enough for giving this week to justice in Van Zandt County." Yet despite a verdict, no judgment was pronounced or entered.

### The "dilemma" before the Court

11. Rule 300 RCP requires that the Court enter judgment:

**Rule 300. Court to Render Judgment:** Where a special verdict is rendered, or the conclusions of fact found by the judge are separately stated the court shall render judgment thereon unless set aside or a new trial is granted, or judgment is rendered notwithstanding verdict or jury finding under these rules. (emphasis added)

12. Rule 301 RCP however places restrictions on such judgment:

**Rule 301. Judgments:** The judgment of the court shall conform to the pleadings, the nature of the case proved and the verdict, if any, and shall be so framed as to give the party all the relief to which he may be entitled either in law or equity. Provided, that upon motion and reasonable notice the court may render judgment non obstante veredicto if a directed verdict would have been proper, and provided further that the court may, upon like motion and notice, disregard any jury finding on a question that has no support in the evidence. Only one final judgment shall be rendered in any cause except where it is otherwise specially provided by law. Judgment may, in a proper case, be given for or against one or more of several plaintiffs, and for or against one or more of several defendants or intervenors. (emphasis added)

13. No judgment is possible conforming to Plaintiff's pleading of damage by a "The Dam", Birnbaum's pleadings that "The Dam" dam is a fabrication, and a verdict that makes no finding upon "The Dam" dam issue. The jury's findings regarding beaver "dams" are entirely irrelevant.

14. The transcript of the hearing of October 6, 1998 (Exhibit C) fully shows the "dilemma" before the Court, and why a new trial is the only way out. (See transcript for details).

15. And on August 17, 1999, at the last hearing in this cause, again to "enter judgment", Judge Zimmermann recused himself (Exhibit D). There is no judge currently assigned to the case (Exhibit E).



**Motion for New Trial**

For all of the above reasons Birnbaum hereby moves the Court for a new trial in this matter.

Respectfully submitted,

*Udo Birnbaum*

UDO BIRNBAUM, *Pro Se*

540 VZ 2916

Eustace, Texas 75124

(903) 479-3929

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of this document has been served via Regular Mail on this the 20 day of April, 2001 upon Richard L. Ray, 300 S. Trade Days Blvd. (300 S. HWY 19), Canton, Texas 75103.

*Udo Birnbaum*

UDO BIRNBAUM

April 20, 2001

FILED FOR RECORD

To: Betty Davis, Court Administrator  
121 E. Dallas St., Room 301  
Canton, Texas 75103

CMRR 7099 3220 0010 0566 0066  
APR 20 4:42

NANCY YOUNG  
DIST. CLERK VAN ZANDT CO. TX.

Sandy Hughes  
First Administrative Judicial Region  
133 N. Industrial LB50  
Dallas, Texas 75207

CMRR 7099 3220 ~~0010 0566 0028~~ DEP.

**NOTE:** No judge currently assigned. Judge Zimmermann recused himself at the last hearing (transcript attached)

**REQUEST FOR SETTING FORM**  
**294<sup>TH</sup> JUDICIAL DISTRICT COURT - VAN ZANDT COUNTY**

CIRCLE ONE EACH : JURY or Non JURY CONTESTED or NON-CONTESTED  
*JURY Cause, Non JURY Hearing:*

FULL STYLE OF CASE:  
*No.: 95-63*  
**WILLIAM B. JONES**  
*VS:*  
**UDO BIRNBAUM**

NATURE/TYPE OF HEARING/MOTION:  
**MOTION FOR NEW TRIAL**

MONTH REQUESTED SET: **ASAP**

ESTIMATED TIME REQUIRED: **10 minutes**

PLAINTIFF'S ATTORNEY:  
**Richard L. Ray**  
**300 S. Trade Days Blvd.**  
**(300 S. Hwy 19)**  
**Canton, Tex 75103**

DEFENDANT'S ATTORNEY:  
**Udo Birnbaum, Pro Se**  
**540 VZ 2916**  
**Eustace, Texas 75124**  
**(903) 479-3929**

Copy of the above referenced Motion for New Trial is attached. Stamped addressed envelopes enclosed for notifying above two (2) parties. There are no other parties requiring notice than those above.

The undersigned hereby certifies that a copy of this request has been furnished via CMRR (7000 0520 0022 8182 1525) to Richard L. Ray on this the 20 day of April, 2001.

*Udo Birnbaum*  
Party requesting setting

The Law Offices  
Of  
**RICHARD L. RAY**  
A Professional Corporation

300 S. TRADE DAYS BLVD.  
(300 S. HWY 19)  
CANTON, TEXAS 75103

RICHARD L. RAY  
JULIE CLAYTON STERN  
JOEL C. ELLIOTT

Telephone: 903 567-2051  
Facsimile: 903 567-6998  
RLRATTY@AOL.COM  
JSTERNATTY@AOL.COM  
JCEATTY@AOL.COM

May 9, 2001

Mr. Udo Birnbaum  
540 VZ CR 2916  
Eustace, Texas 75124

Dear Mr. Birnbaum:

RE: Case No. 3:99-CV-0696-R  
Birnbaum v. Ray, et al

Mr. Jones has delivered your enclosed note to my office for response.

If you wish to discuss some resolution of this matter, please contact me at the above telephone number.

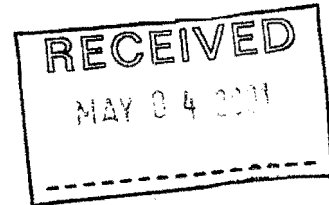
Sincerely,



Richard L. Ray

ch  
Enclosure  
cc: Mr. William Jones

April 28, 2001



Bill -

We really need to talk. We have both paid too many legal fees and we need to get that money back.

Give me a call - 479-3929.

Udo

WILLIAM B. JONES

Vs.

UDO BIRNBAUM

)  
)  
)  
)  
)

IN THE DISTRICT COURT

294<sup>TH</sup> JUDICIAL DISTRICT

VAN ZANDT COUNTY, TEXAS

**MOTION FOR RECUSAL OF JUDGE ZIMMERMANN**

COMES NOW, Udo Birnbaum ("Birnbaum"), Defendant in the above styled and numbered cause, and would show the Court the following:

1. Birnbaum brings this motion under RCP Rule 18b(2)(a, b) by reason of personal bias and prejudice against pro se Birnbaum.

**Rule 18b. Grounds for Disqualification and Recusal of Judges:**

A judge shall recuse himself in any proceeding in which:

- (a) his impartiality might reasonably be questioned;
- (b) he has a personal bias or prejudice concerning the subject matter or a party, or personal knowledge of disputed evidentiary facts concerning the proceedings;

2. Judge Zimmerman has a personal bias by reason of being sued, among others, on May 30, 1999, in the United States District Court for the Northern District of Texas, Dallas Division (No. 3-99-CV0696-R), under 18 U.S.C. § 1964(c) ("civil RICO"), such suit for participating, by a "pattern of racketeering activity", in "a scheme round and about the 294<sup>th</sup> District Courthouse in Canton, Texas ("Wallace's Court") in which one or more of the Defendants attempted to "enrich" themselves by using their relationships in the Court to extort legal fees, moneys, and other valuable things, by the use of fraudulent documents, arguments, and corrupt Court process as weapons for malicious prosecution."

Such personal bias indicated at the last hearing in this cause on August 17, 1999:

***THE COURT: Well, let me go back a minute, Mr. Birnbaum. If memory serves me correctly, you have filed suit in Federal Court suing, as near as I can tell, every person who has touched this case in any way, whatsoever; including me, Mr. Ray, the Court Coordinator, Judge Wallace and Judge McDowell. I don't know -- whoever else is involved in it.***

**(Page 6, "Motion to Enter Judgment", Aug. 17, 1999, attached)**

4. Judge James B. Zimmermann should be recused from this case to stop the hemorrhage flowing from these frivolous proceedings against me. As a reminder, I did not bring this lawsuit.

Respectfully submitted,  
*Udo Birnbaum*  
UDO BIRNBAUM, Pro Se  
540 VZ 2916  
Eustace, Texas 75124  
(903) 479-3929

**Attachment: Exhibit "A", Hearing of Aug. 17, 1999**

**AFFIDAVIT**

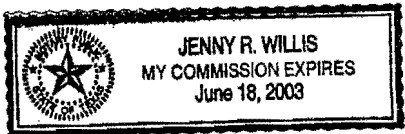
I certify that all statements in this motion are made upon personal knowledge, and that the attached copy of the referenced hearing is a true copy of the original.

*Udo Birnbaum*  
Udo Birnbaum

STATE OF TEXAS                   §  
                                                 §  
COUNTY OF VAN ZANDT       §

Before me, a notary public, on this day personally appeared Udo Birnbaum, known to me to be the person whose name is subscribed to the foregoing document, and being by me first duly sworn, declared that the statements therein contained are true and correct.

Given under my hand and seal of office this 2 day of May, 2003



*Jenny R. Willis*  
Notary in and for The State of Texas

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of this document (with attachment "A") and *Request for Setting Form* has been served via Regular Mail on this the 2 day of May, 2003, upon Richard L. Ray, 300 S. Trade Days Blvd. (300 S. HWY 19), Canton, Texas 75103.

*Udo Birnbaum*  
UDO BIRNBAUM

May 2, 2003

To: Court Administrator  
121 E. Dallas St., Room 301  
Canton, Texas 75103

**REQUEST FOR SETTING FORM**  
**294<sup>TH</sup> JUDICIAL DISTRICT COURT - VAN ZANDT COUNTY**

CIRCLE ONE EACH:      JURY or Non JURY      CONTESTED or NON-CONTESTED  
*JURY Cause, Non JURY Hearing:*

FULL STYLE OF CASE:  
*No.: 95-63*  
*WILLIAM B. JONES*  
*VS:*  
*UDO BIRNBAUM*

NATURE/TYPE OF HEARING/MOTION:  
*MOTION FOR RECUSAL OF JUDGE ZIMMERMANN*

MONTH REQUESTED SET:      **ASAP**

ESTIMATED TIME REQUIRED:      *10 minutes*

PLAINTIFF'S ATTORNEY:  
*Richard L. Ray*  
*300 S. Trade Days Blvd.*  
*(300 S. Hwy 19)*  
*Canton, Tex 75103*

DEFENDANT'S ATTORNEY:  
*Udo Birnbaum, Pro Se*  
*540 VZ 2916*  
*Eustace, Texas 75124*  
*(903) 479-3929*

Copy of the referenced Motion attached. There are no other parties requiring notice than those above.

The undersigned hereby certifies that a copy of this request and the motion (with attachment) has been furnished via Regular mail to Richard L. Ray on this the 2 day of May, 2003.

*Udo Birnbaum*  
Party requesting setting

JAMES B. ZIMMERMANN  
JUSTICE, COURT OF APPEALS-RETIRED  
6227 LAKEHURST AVE. • DALLAS, TEXAS 75230  
(214) 368-8608 • PAGER (214) 410-4447 • FAX (214) 361-4914

FAX COVER SHEET

DATE 9 July 03

ATTN

*Pam Kelly  
C/COORD*

TO 294<sup>th</sup> District Ct

FAX NO. (903) 567-5652

FROM JUDGE JIM ZIMMERMANN

PAGES (INCL THIS ONE) 2 ORIG FOLLOWS BY MAIL  Y  N

CONFIRMATION REQUESTED  Y  N

by Phone to (214) 368-8608

*or*

by Fax to (214) 361-4914

RE *Birnbaum*

MESSAGE

*Pam  
Here's the o on Birnbaum.  
Call if I can help.*

*Regards*

*Jim Zimmermann*



In the 294<sup>th</sup> District Court  
For Van Zandt County  
Canton, Texas

William B. Jones

v.

Udo Birnbaum

§  
§  
§  
§  
§

No. 95-63

BY \_\_\_\_\_ DEP

KAREN J. ZIMMERMANN  
JUST. CLERK VAN ZANDT CO. TX

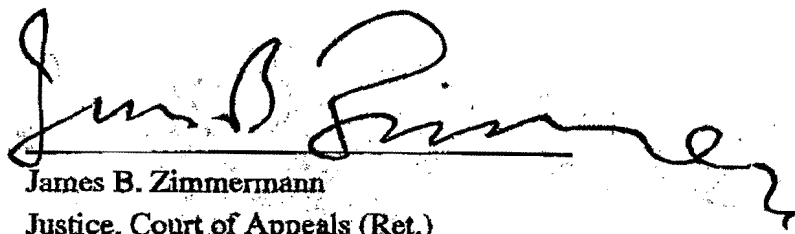
03 JUL 10 AM 9:55

FILED FOR REC'D

ORDER GRANTING MOTION TO RECUSE

Defendants motion to recuse Judge Zimmermann is granted.

Signed this 9<sup>th</sup> day of July 2003.



James B. Zimmermann  
Justice, Court of Appeals (Ret.)  
Sitting by Assignment

In the 294<sup>th</sup> District Court  
For Van Zandt County  
Canton, Texas

William B. Jones

v.

Udo Birnbaum

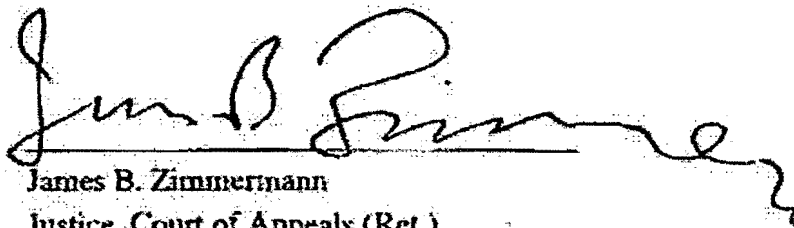
§  
§  
§  
§  
§

No. 95-63

ORDER GRANTING MOTION TO RECUSE

Defendant's motion to recuse Judge Zimmermann is granted.

Signed this 9<sup>th</sup> day of July 2003.



James B. Zimmermann  
Justice, Court of Appeals (Ret.)  
Sitting by Assignment

CAUSE NO. 95-63

WILLIAM B JONES  
Plaintiff

v.

UDO BIRNBAUM  
Defendant

§ IN THE DISTRICT COURT  
§  
§  
§ 294th JUDICIAL DISTRICT  
§  
§  
§ VAN ZANDT COUNTY, TEXAS

BY KAREN WILSON  
DISTRICT CLERK  
VAN ZANDT COUNTY TEXAS  
DEP.

FILED FOR RECORD  
2006 DEC -7 PM 2:44

**MOTION FOR RECUSAL OF JUDGE CHAPMAN**

WHEREFORE, Plaintiff UDO BIRNBAUM moves for recusal of Judge Ron Chapman by reason of RCP Rule 18b(2)(a), i.e. "his impartiality might reasonably be questioned", and Rule 18b(2)(b), i.e. "he has a personal bias or prejudice concerning the subject matter or a party".

Such mind-set shown<sup>1</sup> on April 1, 2004, as Judge Chapman charged into me:

- Judge Chapman was assigned solely to hear a motion to recuse (re Judge Banner).
- Judge Chapman found out early (at a get-together he called in the jury room, just before the hearing set solely for "motion to recuse"), that the cause was no longer in the trial court, but had just been turned down by the Texas Supreme Court.
- A motion for sanctions was served on me in the jury room. I stated that this was a total "surprise", and not on the agenda for today.
- Judge Chapman stated (in the jury room) to the effect that he believed a new judge could not be assigned to the case at this stage, but that he would proceed on "motion for recusal, as well as on sanctions."
- At the subsequent hearing (in the courtroom) Judge Chapman heard "motion to recuse", fully knowing that he was not going to recuse.
- Then, having denied "motion to recuse", instead of removing himself from the bench (letting Judge Banner go take over on this DEAD case would have been just as ludicrous), Judge Chapman charged right into "motion for sanctions", on issues IN this case, and IN other cases, and assessed an UNCONDITIONAL \$125,770 FINE ("sanction") against me. Exhibit "A"
- UNCONDITIONAL (not "coercive") sanctions are of course UNLAWFUL by civil process, for they are criminal in nature, i.e. one does not "carry the keys to one's release". Also note the "exemplary" notation on the docket sheet, i.e. PUNITIVE. Exhibit "A".

<sup>1</sup> The Law Offices of G. David Westfall, P.C. vs. Udo Birnbaum, No. 00-619, this 294<sup>th</sup> district court

- Then Judge Chapman threatened "*further sanctions*" if I engaged in "*any further actions*". Exhibit "B".
- All this while he KNEW that the case he was sitting on was DEAD in the trial court. (see his note on "*finality*", Exhibit "B")

Details in Exhibits "A", "B", and particularly Exhibit "C", all matters therein upon personal knowledge<sup>2</sup>.

Respectfully submitted,

*Udo Birnbaum*

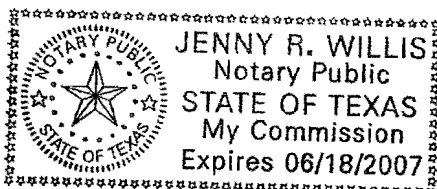
Udo Birnbaum, *Pro Se*  
 540 VZCR 2916  
 Eustace, Texas 75124  
 (903) 479-3929 phone and fax

STATE OF TEXAS  
 COUNTY OF VAN ZANDT

Before me, a notary public, on this day personally appeared Udo Birnbaum, known to me to be the person whose name is subscribed to above, and being by me first duly sworn, declared that the matters in this Motion For Recusal of Judge Chapman are true and correct, that exhibits "A" and "B" thereto are true copies of the originals, and that all matters in exhibit "C" are stated upon his personal knowledge.

*Udo Birnbaum*  
 Udo Birnbaum

Given under my hand and seal of office this 1 day of June, 2004.



*Jenny R. Willis*  
 Notary in and for The State of Texas

**Certificate of Service**

This is to certify that on this the 2 day of June, 2004 a copy of this document was provided to attorney Richard L. Ray at 300 South Trade Days Blvd., Canton, Texas 75103, via regular mail and fax to 903 567-6998.

*Udo Birnbaum*  
 Udo Birnbaum

<sup>2</sup> This document was not written specifically in support of this motion. This document, however, details just why and how Judge Chapman's "impartiality might reasonably be questioned" and that "he has a personal bias or prejudice concerning the subject matter, or a party", i.e. against me. RCP Rule 18b(a) and (b).

**CAUSE NO. 95-63**

**WILLIAM B. JONES**  
Plaintiff

v.

**UDO BIRNBAUM**  
Defendant

§  
§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT

294th JUDICIAL DISTRICT

VAN ZANDT COUNTY, TEXAS

**ORDER ON MOTION FOR RECUSAL OF JUDGE CHAPMAN**

A motion for recusal having been brought before this court, the Court makes the following  
ORDER per RCP Rule 18a(c) and/or (d):

Signed this the \_\_\_\_\_ day of \_\_\_\_\_, 2004

\_\_\_\_\_  
JUDGE PRESIDING

## ORDERS OF COURT CONTINUED

Minute Book  
Vol. PageDate of Orders  
Month Day Year

4 8 02 9R All present, jury selected, sworn in stacked, Open State, Enid Recor

4 10 02 9R all present, End center

4 11 02 9R All present, End center

Jury Verdict

7 30 02 9R all present, Jdt signed

3 17 03 Order for 5<sup>th</sup> Court of Appeals - clerks record4 1 04 ~~9R~~ Movant Bainsbaum P. No. 57 and atty Fleming representing

They are present. Hearing conducted on Bainsbaum's Motion to Revoke  
filed 9/30/03. Testimony presented. Both sides rec'd.

Arguments presented. Motion to revoke is in all things denied.

Hearing held on 11<sup>th</sup> Motion for sanctions filed this date.

Testimony presented. Both sides rec'd. Arguments presented.

Et find, based on the arguments, testimony, and pleadings

that grounds for sanctions do exist and the Ct ~~shall~~

exercise said sanctions for A's violation of Rule 13

of the TRCP and for Section 10.001 et seq. T.C.P.C. in the amount

of \$1,000- for actual damages and \$124,770- for exemplary damages.

Against Bainsbaum who is ordered to pay said sum to T.C.

The atty is instructed to draft a proposed order. Judge Calhoun had submit a copy of same to A.

156 228

Exhibit  
A

Complete & full access to its

Sections are for conduct outside of

Our jurisdictional environment. Justify of  
litigation after the parties have ~~been~~ avoided  
themselves of the reaches ~~of~~ available under  
our laws

You <sup>now</sup> have the keys as whether there  
are any further proceedings in this case in the  
future. Please be aware that any further actions  
might result in further revelations

62885  
2  
125770  
124770

Exhibit  
B

# Courthouse Vignettes — "Tales from the Hive"

Just like "court TV" — except real and in writing and in OUR courthouse  
From a fresh and personal perspective — go turn off judge Judy!



"A masterpiece of accomplishment" or "April fools"?"

How, on a **DEAD** case, **TWO** visiting judges, **ONE** hearing a motion to remove the **OTHER** from the case, **ONE** judge from the bench, the **OTHER** from the witness box, managed to assess a **\$125,770 FINE** ("sanction") against a **67 year old non-lawyer** on **April 1, 2004**.

For having filed (out of desperation) a **ONE** page "motion to recuse", **SIX (6) MONTHS AGO!**  
*"If there is insanity around, well, some of us gotta have it!"*

### APPEARANCES

- ONE:** Hon. Ron Chapman, Senior judge, assigned to hear a "motion to recuse"
- OTHER:** Hon Paul Banner, Senior judge, assigned to hear a suit over "open account"
- Non-lawyer:** Udo Birnbaum, was sued because beavers had built a dam on his farm
- Lawyer:** Frank C. Fleming, sued Birnbaum claiming \$38,121.10 "worth" of legal services in suing the ex-Van Zandt district judge and other state judges for racketeering.

#### 1.

*All "arising from" a dam built by BEAVERS!  
Watch YOUR fire ants — or YOU could be next*

It was April 1, 2004, "April Fools Day", and I was driving into town for yet another hearing in our district court.

The whole thing had started in 1995 when I was sued because BEAVERS had built a dam on my farm. Before that I was living peaceably on my farm in Van Zandt County, taking care of my cows and ninety (90) year old invalid mother, and had only known the courthouse from getting automobile license tags.

Even today, the beavers are still in court, after NINE years, with their THIRD judge, just assigned to the case.

#### 2.

*"Legal fees" and "legal fees" for collecting on "legal fees"  
"Smoke Old Mold — The ONLY cigarette that is ALL filter!"*  
But today's hearing was on a case where ... (continued page 2)

#### More

*"Tales from the Hive"*  
All from public records

**"Disciplinary Trial"**  
The problems the State Bar has with lawyers and vice versa ...

**"Case of res ipsa loquitur"**  
In OUR courthouse. NO, it is NOT a disease, or is it?

**"Bunk-bed Bunk"**  
A kid falls out of bed, and the lawyers ...

At w

**Exhibit**





2.

**"Legal fees" and "legal fees" for collecting on  
"legal fees"  
"Smoke Old Mold -- The ONLY cigarette that is  
ALL filter!"**

But today's hearing before Judge Chapman was on a case where FOUR years ago I was sued by a Dallas lawyer, in the name of his "Law Office", claiming I owed \$18,121.10 on a supposed unpaid OPEN ACCOUNT for "legal services". There of course never was an "open account", not with a \$20,000 non-refundable prepayment "for the purpose of insuring our availability in your matter", and the lawyer retainer agreement plainly stating, "We reserve the right to terminate ...for your [Birnbaum] non-payment of fees or costs". Also, an "open account" is where the parties are as buyer and seller, where there is a sale, followed by a delivery, such as between a lumber yard and a house builder, where there is actual delivery of "goods", or where a repairman delivers "services".

My paying a lawyer a non-refundable "up-front" retainer does not fit into that category! Then neither do BEAVERS building a dam on a live creek provide a "cause of action" for a lawyer to sue! Then of course my paying that lawyer in the first place does not make sense, certainly not in hindsight. All this was going through my mind as I was looking back over the last NINE years.

Anyhow, the judge on the beaver case did not submit the proper question to the jury. Neither did the judge on the "open account" case.

Add to this that the supposed \$38,121.10 "legal services" had been for suing Tommy Wallace, then 294th district judge, other state judges, the Van Zandt district attorney, several lawyers, plus assorted court personnel for racketeering (18 U.S.C. § 1964(c) "civil RICO") regarding the beaver dam scheme. The lawyer had talked me into it, but his suit in the Dallas federal court had NO WORTH because judges are absolutely immune from liability. Anyhow, I finally fired the lawyer, and waved bye-bye to my non-refundable \$20,000 retainer.

Yet a year later he comes back to file this \$18,121.10 "open account" suit against me in

Judge Wallace's court, to collect on "legal fees" for suing this very judge! There was of course method in this apparent madness, for if I had not made what is called a "mandatory counterclaim", under oath, denying the "account", it would have been "deemed" true, and the lawyer would have gotten by with it, lest the judge were honest, instead of going strictly by the letter of the Rules of Civil Procedure.

But since I did deny the account, under oath, the judge was supposed to appoint an auditor to determine the "state of the account", as the Rules say. But he did not. But that is another story.

3.

**\$62,885 FINE for being "well-intentioned"?  
They file cases in court all the time, BUT ... ..**

Not only did I deny the account, but I also filed a counterclaim under the anti-racketeering statute ("civil RICO) regarding the \$20,000 I had been fleeced out of, and asked for trial by jury. Instead the "visiting judge", Hon. Paul Banner, himself "weighs" the evidence, and FINES ("sanctions") me \$62,885 for that **piece of paper**, stating:

*"Mr. Birnbaum may be well-intentioned and may believe that he had some kind of real claim as far as RICO there was nothing presented to the court in any of the proceedings since I've been involved that suggest he had any basis in law or in fact to support his [civil RICO] suits against the individuals, and I think -- can find that such sanctions as I've determined are appropriate." (as caught by the court reporter)*

Filing a lawsuit is of course constitutionally protected conduct (First Amendment). And a court is to examine the acts or omissions of a party or counsel, not the legal merit of a party's pleading. (*McCain*, 858 S.W.2d at 757). And civil contempt sanctions are only to "coerce" one to do or not do something, like make child support payments, as previously ordered by a court, NOT to punish for a completed act. Punishment by civil process is UNLAWFUL, period. I had appealed those issues, to

the Dallas appeals court, and then to the Texas supreme court, and they had just denied hearing the case, without giving a reason.

So even though this "open account" case against me was clearly no longer in the local trial court, yet here we were about to have another "hearing" in what was clearly a DEAD case as far as the 294th district court was concerned!

#### 4.

*"Oh what tangled webs we weave,  
when first we practice to deceive!"*

The "hearing" was to hear "motion to recuse Judge Banner". "Motion" is "legalese" for the normal way of doing things before a judge, i.e. "moving" that something be "moved" a certain way, i.e. that a certain thing happen or not happen.

"Recusation", according to Blacks Law Dictionary, is "in civil law, a species of exception or plea to the jurisdiction, to the effect that a particular judge is disqualified from hearing the cause by reason of **interest or prejudice**". My "motion to recuse" was for the judge to step aside, i.e. asking for a different judge, because this judge's "impartiality might reasonably be questioned", to use the phrase out of the Rules of Civil Procedure.

On a motion to recuse a judge has TWO choices, 1) sign an "order of recusal", recusing himself, and asking that another judge be assigned, or 2) signing an "order of referral", asking that another judge be assigned to "hear" if he should be "recused", or allowed to stay. Anyhow, that was what we were here for, to hear "motion for recusal of Judge Banner".

I should of course not have had to ask Judge Banner to step aside, for he should not have been doing anything, yet there he had been, in September, 2003, while the case was in the appeals court, working with opposing counsel, to file "findings" to support the \$62,885 FINE, and painting me as some sort of monster to the judicial system, when he had clearly found me "well-intentioned".

No judge should of course been assigned to "hear" a recusal, because the case was DEAD, and Judge Banner certainly signed no order asking another judge to come "hear" if he should be allowed

to stay on the case. But here we were, on April 1, having just such "hearing"!

#### 5.

*Ready, get set, GO -- but WHERE?*

Hon. Ron Chapman had been assigned to hear the recusal, but that was way back in October, 2003, SIX months ago. Then it took about a month for the piece of paper assigning him to find its way into the files in the court. Then nothing happened. The assignment had appeared for a short time at the web site for the First Administrative Judicial Region in Dallas ([www.firstadmin.com](http://www.firstadmin.com)) who assign judges, then the posting had suddenly disappeared.

Judge Chapman made the national news when he was assigned to Tulia, Texas, and released a whole bunch of black prisoners who had been convicted on drug charges based solely on the testimony of an undercover officer, who had made "lawman of the year", but who had made the whole thing up. Via the internet I also learned that Judge Chapman ran for U.S. Congress in 2002, Texas 5th district, and was defeated by Republican Jeb Hensarling.

Judge Chapman had once before been assigned to this case in 2001 to hear an earlier motion to recuse Judge Banner, but had let Judge Chapman stay. Nevertheless, I had high hopes regarding Judge Chapman now being assigned to hear my "motion for recusal".

The hearing was to be in the downstairs county courtroom because district court was already going on upstairs. I did not believe anybody would show up, till I saw Judge Banner, whom I had subpoenaed to be present as a witness. I did not expect him to actually come, judges do pretty much as they want to. Then I saw Frank Fleming, the opposing lawyer, and someone with Judge Banner whom I did not recognize, but presumed to be some judge sent down to hear the matter. I did not recognize him as Judge Chapman, although I had been before him for about two hours in the fall of 2001.

6.

***"If one does not know where one is going,  
ANY road will lead there"***

***How about, "Let's try the JURY ROOM"***

We somehow started talking in the hall and wound up in the upstairs jury room sitting around the large table. Fleming handed me a two-page motion for sanctions against me. The man at the end of the table introduced himself as Judge Chapman.

Fleming wanted to start with his motion for sanctions. I stated that Fleming had SIX months to file such, if he wanted to, and that this came under the "no surprises" rule, that there be no "surprises", and that I be given time to properly respond to it. The assignment of Judge Chapman of course had been only to hear a motion to recuse, i.e. decide whether Judge Banner should stay as judge, NOT to hear anything "in the case":

***"This assignment is for the purpose of the assigned judge hearing a Motion to Recuse as stated in the Conditions of Assignment. This assignment is effective immediately and shall continue for such time as may be necessary for the assigned judge to hear and pass on such motion."***

Judge Chapman, on the other hand, seemed to recognize that something was wrong, and was thinking out loud that he was not sure whether he could remove Judge Banner from the case, since then ANOTHER judge would have to come in. Fleming wanted to get back to his motion for sanctions. I again said that such was a "surprise", and should be addressed at another time.

Judge Chapman wanted to know where the case stood, and I told him that the Texas Supreme Court had two days ago just denied to hear the case, and Fleming agreed. Next Chapman wanted to know whether there was any other litigation associated with the case, and I handed him a copy of a complaint for what is called "declaratory relief" under the Civil Rights statutes I had filed in the Tyler federal court, not seeking any damages, but asking them to declare that the \$62,885 fine Judge Banner had assessed was "contrary to law", and should be declared as such. There was of course no reporter present in the jury room.

Fleming complained that he had not been given a copy of my federal complaint. I told him that was because he was not a "party" to that case, only Judge Banner, and the ones I was to pay that \$62,885 to.

It must have been about this time that Chapman recognized who I was, stating that he heard my October 2001 motion to recuse Judge Banner, and that he would probably also hear the motion for sanctions today, or to that effect.

The purpose of bringing a witness of course is to "examine" him in a court proceeding, before a court reporter, and Judge Banner, as a subpoenaed witness, certainly had no place in this off-the-cuff proceeding. Anyhow, after about twenty minutes or so of this, we drifted out into the hallways again. The judges wound up somewhere near the coffee pot on the second floor, while I settled for a down-stairs bench.

7.

#### ***Small-talk in the halls***

County commissioners were still in the county courtroom, and would be in there for another 30 minutes or so. Judge Chapman and Judge Banner had settled on the bench in the hallway close to me. Both judges were quite friendly, and Judge Banner wanted to know about my background. I told him I was born in Houston, of German parents, but that they went back when I was one year old, and that I grew up in Germany during World War II, to come back here as a thirteen year old, go to high school in Houston, then on to college at Rice, then worked for Texas Instruments in Dallas, ultimately to retire to a farm in Van Zandt county. I told the judges that I was writing a book, and this information, plus a lot more about my childhood in Germany, could be found on my web page. It also contains all my court documents, and Fleming would later be complaining that whenever his name was typed into any internet search engine, one would always arrive at my web site.

But Judge Banner already knew a lot about me, for at the time of the trial in April 2002, I was running as an independent for county judge, and he had been concerned whether this would have an in-

fluence on the jurors in that trial.

I left the judges talking on the bench, letting them know I would be just outside the door right in front of them, sitting on the wall of the main entrance, and someone to come and get me when it was time.

8.

***Finally, the "real thing"  
Into an actual courtroom!***

The county commissioners finally finished, and we moved into the county courtroom. Of the two big tables in front of the bench, Fleming chose the one by the window, and I settled at the one near the door. Next I went to the court reporter to find out her name and where I might order a transcript of this hearing and to give her my name and address. It is a shame that courts are not in the 21st century, where one can make a six hour video recording for a dollar or two, instead of having a court reporter take it down, manually, and to have to pay literally thousands of dollars for it, at \$4.00 per page, and yet not have ALL of it show up on the record, certainly not the pauses, intonations, puzzled looks, and the like. But that is another matter. Anyhow, the recollections below are to the best of my ability.

Judge Chapman called the case, this time from the bench, and administered the oath to tell the truth, etc. I am not sure whether Fleming went first, or whether I did, we more or less did everything at the same time, from one table to the next, with the court reporter, settled near the empty witness box, somehow doing her best.

There was no one in the audience except someone who had come along with me, and there was of course Judge Banner, but I do not know where he settled down in the courtroom. It may have been in the jury box, but I am not sure, but I do remember asking that he be put "under the Rule". It is a term lawyers use, I have never heard under exactly what Rule, for asking a witness not to be present till called, and to remain outside the courtroom, and Judge Banner went out into the hall.

I was trying to show that Judge Banner's impar-

tiality "might reasonably be questioned" not only because of the \$62,885 sanction he had put on me, never mind whether it was lawful or not, but also that there was something drastically wrong when Fleming, while the case is in the appeals court, and starting with no more than Judge Banner's finding of "**well-intentioned**", comes up with a "finding" for Judge Banner to sign, that finds me "**vindictive**", "**harassing**", having made "**threats**", that my claim was "**vacuous**", "**manufactured**", "**intimidating**", "**simply for spite**", and all other kinds of hate-words in there, and Judge Banner signed it!

My point was that under such circumstances, Judge Banner's "impartiality might reasonably be questioned", at the present time, and that he should be removed from doing anything more to the case.

I do not remember all the "objections" Fleming made, that either what I was talking about was not "relevant", "material", or whatever, that it was either "before", or "after" and was therefore not relevant. I did get Judge Banner on the witness stand, and asked him point blank if under the present circumstances he could be impartial towards me, and his answer was "yes". That of course begged the question as to whether there was anything for him to do in the case, or to have been doing!

9.

***\$125,770 in "sanctions"  
In a DEAD case?***

Anyhow Judge Chapman quickly denied the motion to recuse Judge Banner, and proceeded to go into Fleming's motion for sanctions against me. That of course should have put Judge Banner back in charge, and Judge BANNER should have been on the bench, if there was indeed to be a hearing "in the case" on Fleming's motion for sanctions. But then NOBODY should have been here today. The case was DEAD!

Then Fleming started lighting into me, naming all the reasons I should be sanctioned. First for even questioning the "impartiality" of Judge Banner. Also for "suing Judge Banner", when my Civil Rights complaint had been not for damages, like an

ordinary suit, but procedural and solely for "declaratory relief", i.e. simply asking a federal judge to rule that what Judge Banner had done was "contrary to law".

Fleming was complaining that I had sued him, when he was just the lawyer, and that everything he did was as the lawyer. Lawyers seem to think that they are free to do ANYTHING as a lawyer. I tried to explain that it was exactly BECAUSE Fleming was a lawyer, that his conduct of lying in the court rose to such a level that it actually violated the anti-racketeering statute ("civil RICO").

Filing a lawsuit is of course constitutionally protected conduct, and they file lawsuits all the time. Besides that, why are we here, at a hearing on a "motion to recuse Judge Banner", arguing the merits of my civil rights suit for declaratory relief against Judge Banner, or the merits of my suit against lawyer Fleming, and on April 1, and on a DEAD case?

Anyhow Judge Chapman assessed \$125, 770, in unconditional fines against me, doing exactly DOUBLE the thing that I had been complaining about regarding Judge Banner, i.e. the unconditional \$62,885 fine he had assessed against me.

I had done my very best to show that unconditional punishment, which is not "coercive", where one does not have "the keys to one's release", such as paying child support, or sitting in jail till one testifies, is UNLAWFUL by civil process, so says no less than the U.S. Supreme Court!

#### 10.

##### *On "finality of litigation"*

##### *The case was DEAD!*

From the scratching Judge Chapman put on the back of Fleming's motion for sanctions, as I later found filed in the case, I remember the exact words Judge Chapman spoke. Judge Chapman "did not get it", meaning the law about "keys to one's release". Under his heading of "*Complete & full access to cts.*", he wrote:

*"Our jurisprudence envisions finality of litigation after the parties have availed themselves of the remedies available under our law,*

*"You now have the keys on whether there are any further proceeding in this case in the future. Please be aware that any further actions might result in further sanctions."*

I clearly do NOT have the "keys to my release" from this UNLAWFUL \$125,770 sanction. Also if there is any issue as to "finality", what were we doing here today on a DEAD case?

The scratching Judge Chapman did on the back of Fleming's motion for sanctions is interesting, to say the least. I see the amount of the original sanction of \$62,885 by Judge Banner, then a 2 below it, multiplied out to be \$125,770. The entry on the case on the docket sheet gives further clues:

*"grounds for sanctions do exist and the Ct. assesses said sanctions for [Birnbaum's] violations of Rule 13 of the TRCP and/or Sections Rule 10.001 et seq/ TCPRC in the amount of \$1,000 for actual damages and \$124,770 for exemplary damages against Birnbaum who is Ordered to pay said sums to [Westfalls]. [Westfalls'] attorney is instructed to draft a proposed Order and submit a copy of same to [Birnbaum]. (emphasis added)*

*Judge Ron Chapman.*

**Exemplary** (punitive) court sanctions are of course UNLAWFUL by CIVIL process!

#### 11.

##### *" Déjà vu all over again "*

I go home puzzled, having expected better than this from Judge Chapman. Then at 9:55 p.m. that same night, April 1, 2004, I receive a copy of Fleming's proposed sanction order faxed to Judge Chapman to sign. Just a few of the phrases:

- "Birnbaum's claims were **groundless, vacuous, manufactured**, and **totally unsupported** by any credible evidence whatsoever"
- "The testimony of Birnbaum ... .. was **biased, not credible**, and **totally uncorroborated** by any other evidence"

**\$125,770 total**

ORDERS OF COURT CONTINUED

| Date of Order |     |      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Minute Book |      |
|---------------|-----|------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|------|
| Month         | Day | Year |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Vol.        | Page |
| 4             | 8   | 02   | GR all present; jury selected; sworn in stand; Open State, End Recs                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |             |      |
| 4             | 10  | 02   | GR all present; bid order                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |             |      |
| 4             | 11  | 02   | GR all present; End costs <b>Jury Verdict</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |             |      |
| 7             | 30  | 02   | GR all present & dot signed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 156         | 228  |
| 3             | 17  | 03   | Order for 5 <sup>th</sup> Court of Appeals - check record                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |             |      |
| 4             | 1   | 04   | <del>Order for 5<sup>th</sup> Court of Appeals</del> <b>Movant Birnbaum P<sup>ro</sup> and et al. Filing representing</b><br>It is presented. Hearing conducted on Birnbaum's motion to reduce<br>filed 9/30/03. Testimony presented. Both sides rest.<br>Arguments presented. Motion to reduce is in all things denied.<br>Hearing held on the motion for sanctions filed this date.<br>Testimony presented. Both sides rest. Arguments presented.<br>It is found based on the arguments, testimony, and pleadings<br>that grounds for sanctions do exist and the et al. <del>is</del><br>assessed said sanctions for its violations of Rule 13<br>of the TCP & and/or Section 17.001 et seq. TCP & in the amount<br>of \$1,000 for actual damages and \$124,770 for exemplary damages<br>against Birnbaum who is ordered to pay said amount to the<br>other party if instructed to do so by the court. Judge Calhoun had submit a copy of same to A. |             |      |

2004

EXHIBIT  
(2 nd page)

Complete & full access to etc

Sanctions as for conduct outside of

Over jurisdictional economic faculty of  
litigation after the parties have ~~been~~ avoided  
themselves of the sanctions available under  
on law

now  
You have the keys as whether there  
are any further proceedings in this case in the  
future. Please be aware that any further actions  
might result in further sanctions

62885  
125770  
124770

**ABOVE:**  
Docket sheet in the case, assessing  
a FINE ("sanction") of \$125,770

**LEFT:**  
Warning that, "Please be aware  
that any further actions might re-  
sult in further sanctions"

- "Birnbaum filed a pleading containing a **completely false and outrageous** allegation that Judge Banner had conducted himself in a manner that showed bias and lack of impartiality"
- "Birnbaum's difficulties with judges and the repeated allegations of a lack of impartiality have had **nothing at all to do with the conduct of the judges** that Birnbaum has appeared before, but instead, is a **delusional belief** held only inside the mind of Birnbaum. (a mightical MEDICAL diagnosis!)"
- "The award of **exemplary and/or punitive damages is not excessive**"
- "The award of the **exemplary and/or punitive damage award is narrowly tailored** to the harm done" (\$124,770?)

Judge Chapman had said none of this! This is a repeat of what I had been complaining about to Judge Chapman about Judge Banner, where Fleming had faxed the likes over to Judge Banner late one evening, which had no basis in fact (remember "**well-intentioned**"?) and Judge Banner faxed me back immediately the next morning at 8:52 a.m., stating, "*I have this date signed and mailed to Mr. Fleming the Findings of Fact and Conclusions of law as received from Mr. Fleming*".

But that was AFTER I that evening recognized what Fleming and Banner were up to in this case, DEAD even then in this court, and out of desperation the next morning, Sept. 30, 2003, ran to the courthouse to file at **7:56 a.m.** my "Motion for Recusal of Judge Banner" that was the subject of this April 1, 2004 hearing.

## 12.

### *When in doubt -- PUNT*

But this time, with Judge Chapman also assigned to hear the case I had filed against the lawyer who had started it all with his BEAVER dam case, and also assigned to the BEAVER dam case against me, and with Fleming laying the groundwork at this "motion to recuse Judge Banner" for more sanctions against me because of my suit

against Fleming, and Judge Chapman threatening more sanctions against me, I decided I have but one choice, that they are after me, "To hell with the law, this man is rocking our boat, and has to be stopped, never mind the Constitution!"

I type out TWO simple "motion for non-suit", dropping my cases against the two lawyers, the "beaver dam" lawyer, and Fleming, and file it first thing April 2, 2004. By the Rules of procedure, they HAVE to sign it, lest there are counterclaims, of which there are none.

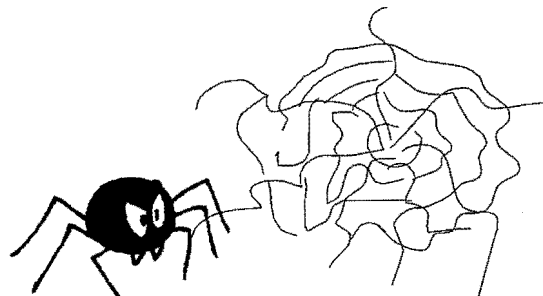
Judge Donald Jarvis has signed my non-suit against Fleming. Judge Chapman has not signed my non-suit against the beaver dam lawyer, nor the **\$125,770 FINE** he pronounced on April 1, 2004.

That leaves only my case in the Tyler federal court seeking "declaratory relief", i.e. that a federal judge declare Judge Banner's **\$62,885 FINE** against me is contrary to law.

Plus of course the original 1995 "beaver dam" case against me, now with Judge Ron Chapman as the judge sitting on that one, set for a "hearing" for July 9, 2004, where despite a UNANIMOUS jury verdict in 1998 of **ZERO damages**, the lawyer still wants \$10,000 in attorney's fees, plus a "permanent mandatory injunction" against me, demanding that water flow UPHILL.

### *Epilogue*

*"Oh what tangled webs we weave, when first we practice to deceive!"*



CAUSE NO. 95-63

WILLIAM B JONES  
Plaintiff

v.

UDO BIRNBAUM  
Defendant

§ IN THE DISTRICT COURT  
§  
§  
§ 294th JUDICIAL DISTRICT  
§  
§  
§ VAN ZANDT COUNTY, TEXAS  
§

BY  
KAREN W. JOHNSON  
DIST. CLERK VAN ZANDT  
COUNTY, TX

06 DEC 18 PM 12:57

FILED FOR RECORD

**SECOND MOTION FOR RECUSAL OF JUDGE CHAPMAN**

Judge Chapman, why do you hold such ugly thoughts against me as to assess a \$125,770.00 sanction (Exhibits "A", "B") at what started as a recusal hearing in a DEAD case twenty (20) months after FINAL JUDGMENT (Exhibit "C") -- find me guilty of "*delusional belief held only inside the mind of Birnbaum*", "*to stop Birnbaum and others like him*", "*to stop this litigant and others similarly situated*", and impose a PERPETUAL INJUNCTION (Exhibit "D") against me to forever do babysitting for **BEAVERS!**

I am 70 years old! Judge Chapman, your conduct is just plain objectively unreasonable.

Judge Chapman, at our first and ONLY meeting in this case (294th No. 95-63) on July 19, 2004, and SIX (6) YEARS after the verdict in the case (you having just been assigned to the case) your docket entry (Exhibit "D") reads:

*"All parties and attys present. Ct notes no motion to Recuse is in this file. Ct has been informed that Judge John Ovard, presiding judge of the 1st Administrative Region, has overruled a Motion to Recuse Judge Ron Chapman, due to the fact that said Motion is insufficient at law and fails to properly request Judge Chapman's Recusal, or, in the alternative, is denied on its merits due to Def. Birnbaum's abuse of the judicial process by filing repeated frivolous Motions to Recuse in this case and having twice been previously sanctioned by this Court for ??? actions. Ct notes Pltf's request to abandon any claims for atty fees. Ct finds that Jury Verdict rendered in May of 1998 requires a permanent injuntion to be entered in this case. Pltf to prepare Written Order for Ct's signature and provide a copy to Def." (emphasis added)*

**"repeated frivolous Motions to Recuse in this case":**

Judge Chapman, under what reasoning, if any, can you find that my motion to recuse judge Zimmermann was "*frivolous*", if it had **sufficient merit** for judge Zimmermann to **GRANT** my motion, and judge Ovard to **ASSIGN YOU** to come sit on THIS very case!



Judge Chapman, how can you find that my motion to recuse his predecessor, Judge Wallace, was "frivolous", if that one also had sufficient merit for Judge Wallace to GRANT it, and Judge Zimmermann be assigned!

**"Ct. has been informed", "Judge John Ovard ... ..has overruled":**

Judge Chapman, there is NO RECORD in the court of you even referring my motion to Judge Ovard, nor RECORD of judge Ovard ruling on it, or EVER EVEN SEEING IT!

**"or, in the alternative, is denied"** -- well, WHICH one is it?

**"jury Verdict rendered in May of 1998", "permanent injunction":**

Judge Chapman, did it not strike you as strange to be assigned to a case SIX (6) YEARS after a verdict? Did you not notice that the jury gave a unanimous verdict of ZERO damages? And why the extraordinary remedy of a "**permanent injunction**" -- to baby sit BEAVERS? There is no threat of "imminent or irreparable harm" as required for ANY injunction! With a ZERO verdict, the Plaintiff certainly was NOT even a "winning party"!

**"Ct notes Pltf's request to abandon any claims for atty fees":**

Judge Chapman, why does the Plaintiff have to "request to abandon any claims for atty fees"? Why not just abandon?

By what stretch of reason can the attorney suddenly bring "**Pltf's request**" -- when his client **DIED LONG AGO!** How can the attorney bring messages from the DEAD?

\* \* \* \* \*

Judge Chapman, how could you do this to me -- without even looking at the pleadings in this case, the verdict, the procession of judges bailing off this case, the insanity of me being sued because BEAVERS had built a dam on my farm, my complaints of FRAUD, the Plaintiff long DEAD, and you wanting me to baby sit BEAVERS into perpetuity! I am 70 years Old! Besides, the beavers are DEAD -- **dynamited** by the Plaintiff long ago.

Judge Chapman, it was exactly this fraudulent BEAVER dam case that got me all tangled up in this court. Before that I was peaceably living on my farm with my 90 year old invalid mother, tending to my cows, and had only known the courthouse from getting license plates.

\* \* \* \* \*

Judge Chapman, regarding your duty upon this *Second Motion to Recuse Judge Chapman*, you know that you are required to exercise ONE of exactly TWO options:

- If you decide to get off, enter an order of recusal requesting another judge be assigned.
- If you decide on staying, enter an order of referral so that another judge be assigned to hear whether you should be removed from this case.

Judge Chapman, if you would have abided by this rule on my [first] *Motion to Recuse Judge Chapman*, I would not be making this *Second Motion to Recuse Judge Chapman* in this cause.

Judge Chapman, if everybody would have gone by the rules, you would also not have found yourself sitting on a DEAD case on April 1, 2004 hearing THAT motion to recuse, and putting a \$125,770.00 PUNISHMENT on me, all on a DEAD case (294th No. 00-619), at a mere hearing for recusal!

Judge Chapman, you must have been having nightmares over me ever since, why else would you suddenly find this Oct. 24, 2006 (294th No. 00-619), the case DEAD more than FOUR YEARS since FINAL JUDGMENT of July 30, 2002, to actually put such ugly thoughts to paper:

*"was engaged in by Birnbaum with intent to harm"*. Findings No. 16.

*"to stop this litigant and others similarly situated"*. Finding No.19.

*"to stop Birnbaum and others like him"*. Conclusions of Law No.11.

*"concludes as a matter of law ... was brought for harassment"*. Conclusions No. 3.

*"the award of exemplary and/or punitive damages is not excessive"*. Conclusions No. 10.

*"... punitive damage award is narrowly tailored to the harm done"*. Conclusions No. 12.

*"is a delusional belief held only inside the mind of Birnbaum"*. Findings of Fact No. 7.

\* \* \* \* \*

Judge Chapman, WHY are you doing this to me? Is it a carry-over from your days as a mere lawyer that you just do NOT like people NOT hiring an attorney? To quote Richard Ray, deceased Plaintiff's attorney, to the jury at closing argument in THIS case on May 29, 1998:

*"I never had a case exactly like this. Hopefully, I'll not have the misfortune to have another one exactly like this, in terms of being the only lawyer and the other side not having one". Transcript p 670.*

*"I do believe that **if Mr. Birnbaum had chosen to hire counsel, rather than to represent himself, that we might have ever come this far – but that's purely speculative.**"* Transcript p 672.

*"... .. because all disputes do not have to end in jury trial -- But this one has been headed that way from day-one -- and **I had no way** to avail it. p 680.*

Judge Chapman, everybody all along was trying to make an example of me. I was a THORN in that I was self-representing, screaming FRAUD, wanted a jury trial, and was not entirely stupid. That was obviously on the agenda of who-so-ever caused YOU, Judge Chapman, to find in your *Order on Motion for Sanctions* (Exhibit "B") punishing me \$125,770.00 (No. 00-619):

*"to stop this litigant **and others similarly situated**".* Finding of Fact #19.

*"to stop Birnbaum **and others like him**".* Finding No. 11.

\* \* \* \* \*

Judge Chapman, I was trying to use the motion to recuse judge Banner to get the attention of SOMEONE to STOP Judge Banner from manufacturing documents behind the scene long after FINAL JUDGMENT, to cover up for **FINING me \$62,885**, when the court reporter caught him saying that he fined me for being "**well-intentioned**", just that he did not see the evidence as showing my claim (I had asked for trial by jury). That FINE of course was also on a DEAD case, Banner himself having issued FINAL JUDGMENT himself three months before that!

So what do YOU, Judge Chapman, do? Double it to a **\$125,770 FINE** on top of that!

UNCONDITIONAL (not coercive) punishment by civil process is of course unlawful. I do not "*hold the keys to my own release*".

ANY adverse action by a public servant because of the exercise of a constitutional Right (like access to the courts) of course also falls under the category of official oppression.

WHEREFORE, Plaintiff UDO BIRNBAUM moves for recusal of Judge Ron Chapman by reason of RCP Rule 18b(2)(a), i.e. "his impartiality might reasonably be questioned", and Rule

18b(2)(b), i.e. "he has a personal bias or prejudice concerning the subject matter or a party", as evidenced by his finding of :

**"to stop Birnbaum and others similarly situated"**

**"delusional belief held only inside the mind of Birnbaum"**

Judge Chapman, I know that you are neither a medical doctor, nor psychiatrist, nor were you conducting a sanity hearing, and you finding as a matter of fact that I am "**delusional**", that crosses the line. Your conduct is just plain "objectively unreasonable".

Having said that, I pity you and those that have the misfortune to come before you.

*Udo Birnbaum*  
Udo Birnbaum, Pro Se  
540 VZCR 2916  
Eustace, Texas 75124  
(903) 479-3929 phone and fax

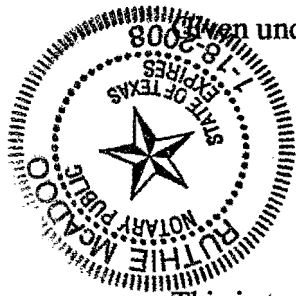
STATE OF TEXAS  
COUNTY OF VAN ZANDT

Before me, a notary public, on this day personally appeared Udo Birnbaum, known to me to be the person whose name is subscribed to above, and being by me first duly sworn, declared that the matters in this **Second Motion For Recusal of Judge Chapman** are true and correct, and that the exhibits thereto are true copies of the originals, and that all matters are stated upon his personal knowledge.

*Udo Birnbaum*  
Udo Birnbaum

Witnessed under my hand and seal of office this 18<sup>th</sup> day of December, 2006.

*Ruthie McAdoo*  
Notary in and for The State of Texas



**Certificate of Service**

This is to certify that on this the 18 day of December, 2006 a copy of this document was hand-carried to attorney Richard L. Ray, 300 South Trade Days Blvd., Canton, Texas 75103.

*Udo Birnbaum*  
Udo Birnbaum

ORDERS OF COURT CONTINUED

| Date of Orders | Month | Day | Year |
|----------------|-------|-----|------|
| 4 8 02         | 4     | 8   | 02   |
| 4 10 02        | 4     | 10  | 02   |
| 4 11 02        | 4     | 11  | 02   |
| 7 30 02        | 7     | 30  | 02   |
| 3 17 03        | 3     | 17  | 03   |
| 4 1 04         | 4     | 1   | 04   |

9/2 All present, jury selected; sworn in standard; Open State, Enid Recross

9/2 All present; Enid center

Jury Verdict

9/2 All present; Enid center

3/17/03 Order for 5<sup>th</sup> Court of Appeals - clerks record

~~9/2~~ Mount Bainsbaum P.O. and city. Fleming representing

are present. Hearing conducted on Bainsbaum's Motion to Recross filed 9/30/03. Testimony presented. Both sides rest.

Argument presented. Motion to recross is in all things denied.

Hearing held on 11/2 Motion for sanctions filed this date.

Testimony presented. Both sides rest. Argument presented.

Et Guild, based on the arguments, testimony, and pleadings that grounds for sanctions do exist and the Ct.

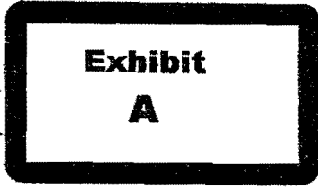
overruled said sanctions for A's violation of Rule 13

of the TRCP and for Section 11A.001 et seq. T.C.P.R.C. in the amount

of \$1,000 - for actual damages and \$124,770 - for exemplary damages

against Bainsbaum who is ordered to pay said amount to the

city in untraced to draft a proposed order. Judge Calhoun had submit a copy of same to A.



Complete & full access to the  
Systems as for conduct outside of

Our jurisdiction in a manner justly of  
litigation after the parties have ~~been~~ avoided  
themselves of the remedies available under  
our laws

<sup>Now</sup>  
You have the keys as whether there  
are any further proceedings in this case in the  
future. Please be aware that any further actions  
might result in further revelations

62885  
2  
125770  
124770



It is therefore, **ORDERED, ADJUDGED, and DECREED** that the motion by the defendant, Udo Birnbaum, that Judge Paul Banner be recused from further matters effecting this cause of action is denied.

It is therefore, **FURTHER ORDERED, ADJUDGED, and DECREED** that the Plaintiff, G. David Westfall, P.C., and Counter-Defendants, Christina Westfall and Stefani Podvin, are awarded damages as a sanction against and to be paid by defendant, Udo Birnbaum, to G. David Westfall, P.C., Christina Westfall, and Stefani Podvin as follows:

A. A monetary sanction in the amount of \$1,000.00 as actual damages, representing the reasonable value of the legal services rendered to the Sanctions Movants by their attorney for the defense of Birnbaum's Motion to Recuse and the prosecution of the Sanctions Movants' Motion for Sanctions.

B. A monetary sanction in the amount of \$124,770.00 as exemplary and/or punitive damages to serve as a deterrent to prevent Birnbaum from committing further similar acts again in the future.

**IT IS FURTHER ORDERED THAT** the judgment here rendered shall bear interest at the rate of five percent (5%) from the date of the signing of this order, until paid.

All other relief regarding any motions for relief on file in this cause of action not expressly granted in this order is hereby denied.

With regard to the award of sanctions, the Court makes the following findings and conclusions in support of the Court's award of sanctions and in support of the type and dollar amount of the sanctions imposed:



## Findings of Fact

---

1. Birnbaum's claims regarding the attempt to have Judge Paul Banner recused were groundless, vacuous, manufactured, and totally unsupported by any credible evidence whatsoever.
2. Birnbaum's claims regarding the attempt to have Judge Paul Banner recused were without merit and brought for the purpose of harassment and/or delay.
3. The testimony of Birnbaum regarding the attempt to have Judge Paul Banner recused was biased, not credible, and totally uncorroborated by any other evidence.
4. The sole purpose of Birnbaum filing the motion regarding the attempt to have Judge Paul Banner recused was an attempt to harass, intimidate, and inconvenience the Sanctions Movants.
5. Birnbaum has a track record and history of filing lawsuits, motions, and writs of mandamus against judges that rule against him in litigation.
6. Birnbaum filed a pleading containing a completely false and outrageous allegation that Judge Paul Banner had conducted himself in a manner that showed bias and a lack of impartiality.
7. Birnbaum's difficulties with judges and the repeated allegations of a lack of impartiality have had nothing at all to do with the conduct of the judges that Birnbaum has appeared before, but instead, is a delusional belief held only inside the mind of Birnbaum.
8. Birnbaum will seemingly go to any length, even filing new lawsuits in State and Federal courts in an attempt to re-litigate issues which a court has already ruled upon and which all appropriate courts of appeal have affirmed.
9. Birnbaum's filing of this Motion to recuse Judge Banner was consistent with a proven pattern and practice of behavior engaged in by Birnbaum over many years and currently ongoing now in this court and in other federal courts.

10. Birnbaum has a track record and history of bickering and quarreling with judges that have ruled against him in litigation.

11. Birnbaum has a track record and history of filing lawsuits without merit against judges, attorneys, and other individuals in an attempt to gain tactical advantage in other ongoing litigation.

12. Prior to this hearing, Birnbaum filed in March 2004, new legal action in Federal District Court against Judge Paul Banner, G. David Westfall, Christina Westfall, and Stefani Podvin. This new Federal lawsuit attempts to re-litigate the same issues Birnbaum unsuccessfully raised in this lawsuit.

13. Prior to this hearing, Birnbaum has initiated a lawsuit against the attorney for the Sanctions Movants, Frank C. Fleming. Birnbaum admitted in open court that he has never had any dealings with Frank C. Fleming other than in connection with Mr. Fleming's representation of the Plaintiff and the counter-defendants in this cause of action. Birnbaum admitted in open court that the legal basis of his lawsuit against Mr. Fleming, civil RICO, is the same basis Birnbaum was previously sanctioned in this lawsuit for attempting to bring against Christina Westfall and Stefani Podvin.

14. The behavior of Birnbaum himself in prosecuting the Motion to recuse Judge Banner has been vindictive, unwarranted, mean-spirited, frivolous, and totally without substantiation on any legally viable theory for the recusal of Judge Banner.

15. The Motion itself to Recuse Judge Banner without any ounce of evidence to support it, was frivolous, vindictive, and brought for the purpose of harassment.

16. The conduct of Birnbaum giving rise to the award of exemplary and/or punitive damages was engaged in by Birnbaum willfully and maliciously with the intent to harm the Sanctions Movants, Judge Paul Banner, and the attorney for the Sanctions Movants, Mr. Fleming.

17. Prior to the hearing on the Motion to Recuse, the Court admonished Birnbaum that if his Motion to Recuse Judge Banner was not withdrawn, that if it became appropriate, the Court would hear the Motion for Sanctions. In response to this admonition, Birnbaum unequivocally elected to move forward with a hearing on his Motion in an attempt to have Judge Banner recused.

18. The type and dollar amount of the sanctions award is directly related to the harm done. The Court has not been presented with any evidence to believe that the amount of the sanctions award is excessive in relation to the net worth of Birnbaum.

19. The type and dollar amount of the sanctions award is appropriate in order to gain the relief which the Court seeks, which is to stop this litigant and others similarly situated from filing frivolous motions, frivolous lawsuits, frivolous defenses, frivolous counter-claims, and new lawsuits which attempt to re-litigate matters already litigated to a conclusion.

20. The amount of the exemplary and/or punitive damage award is an amount narrowly tailored to the amount of harm caused by the offensive conduct to be punished.

21. The Sanctions Movants have suffered damages as a result of Birnbaum's frivolous counter-claims and Birnbaum's motion to recuse. These damages include expenses (in addition to taxable court costs), attorney's fees, harassment, inconvenience, intimidation, and threats.

### **Conclusions of Law**

1. On the issue of the recusal of Judge Paul Banner, Birnbaum wholly failed to provide any credible evidence to substantiate any of his claims.

2. All of Birnbaum's claims were as a matter of law unproved and untenable on the evidence presented at the hearing.

3. The court concludes as a matter of law that Birnbaum's claim that Judge Paul Banner acted biased and with a lack of impartiality, was brought for the purpose of harassment. The Court makes

this conclusion based upon the fact that Birnbaum was not a credible witness, that other credible witnesses totally contradicted Birnbaum's version of the facts, and that evidence was presented establishing that Birnbaum has had a track record and history of harassment towards other opposing litigants, opposing counsels, and other judges before whom Birnbaum has appeared.

4. The Plaintiffs behavior in bringing and prosecuting this frivolous motion to recuse Judge Banner was a violation of one or more of the following: §§10.001, et seq., Tex. Civ. Prac. & Rem. Code, Rule 13, T.R.C.P., and/or the common law of Texas.

5. The Court has the power to award both actual and exemplary (and/or punitive) damages against Birnbaum for the filing and prosecution of a frivolous motion. This authority stems from one or more of the following: §§10.001, et seq., Tex. Civ. Prac. & Rem. Code, Rule 13, T.R.C.P., and/or the common law of Texas.

6. The behavior and attitude of Birnbaum in filing and prosecuting this Motion to Recuse claim against Judge Paul Banner calls out for the award of both actual and exemplary (and/or punitive) damages to be assessed against Birnbaum.

7. The appropriate award for actual damages as a result of the filing and prosecution of the frivolous Motion to Recuse, is an award of \$1,000.00 in attorney's fees. The Court makes this award under power granted to the Court by §§10.001, et seq., Tex. Civ. Prac. & Rem. Code, Rule 13, T.R.C.P., and/or the common law of Texas.

8. The appropriate exemplary and/or punitive sanction for the filing and full prosecution of the frivolous Motion to Recuse is an award of \$124,770.00 to be paid by Birnbaum to the Sanctions Movants.

9. The award of exemplary and/or punitive damages is directly related to the harm done.

10. The award of exemplary and/or punitive damages is not excessive.

11. The award of exemplary and/or punitive damages is an appropriate amount to seek to gain the relief sought by the Court which is to stop Birnbaum and others like him from filing similar frivolous motions and other frivolous lawsuits.

12. The amount of the exemplary and/or punitive damage award is narrowly tailored to the harm done.

13. The amount of the exemplary and/or punitive damages is narrowly tailored to exactly coincide with the amount (in total) assessed against Birnbaum to date in this litigation. This amount was selected by the Court deliberately and on purpose to send a clear message to Birnbaum. The message this award of damages is intended to relay to Mr. Birnbaum is that this litigation is over, final, and ended. The message is that further attempts to re-open, re-visit, and re-litigate matters which have already been decided in court, reduced to judgment, and affirmed on appeal will not be tolerated; and that further attempts by this litigant to engage in such activity will not be conducted without the imposition of very serious and substantial monetary sanctions imposed upon Mr. Birnbaum.

14. Authority for an exemplary and/or punitive damage award is derived from §§10.001, et seq., Tex. Civ. Prac. & Rem. Code, Rule 13, T.R.C.P., and/or the common law of Texas.

Any finding of fact herein which is later determined to be a conclusion of law, is to be deemed a conclusion of law regardless of its designation in this document as a finding of fact. Any conclusion of law herein which is later determined to be a finding of fact, is to be deemed a finding of fact regardless of its designation in this document as a conclusion of law.

THIS JUDGMENT RENDERED ON APRIL 1, 2004, AND SIGNED THIS

24 day of Oct, 2006.

  
\_\_\_\_\_  
JUDGE PRESIDING



A. Actual damages in the amount of \$15,817.60 plus pre-judgment interest up through the date of this Order which the Court finds to be \$2,156.15.

B. Attorney's fees in the amount of \$41,306.91.

C. An additional award of attorney's fees as follows:

1. \$20,000.00 in the event of an appeal to the Court of Appeals.

2. \$5,000.00 in the event of an application for writ of error is filed with the Supreme Court of Texas.

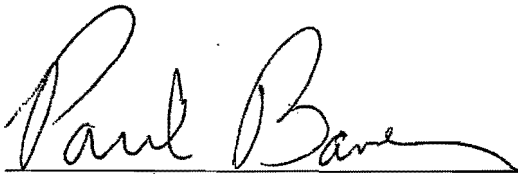
3. \$10,000.00 in the event of an application for writ of error is filed with the Supreme Court of Texas and the writ is granted.

D. Taxable Court costs in the amount of \$926.80.

**IT IS FURTHER ORDERED THAT** the judgment here rendered shall bear interest at the rate of ten percent (10%) from April 11, 2002 until paid.

All costs of court expended or incurred in this cause are adjudged against Udo Birnbaum, Defendant/ Counter-Plaintiff. All writs and process for the enforcement and collection of this judgment or the costs of court may issue as necessary. All other relief not expressly granted in this order is hereby denied.

THIS JUDGMENT RENDERED ON APRIL 11, 2002, AND SIGNED THIS 30  
day of July, 2002.

  
\_\_\_\_\_  
JUDGE PRESIDING



ORDERS OF COURT CONTINUED

Date of Orders  
Month Day Year

5 29 98

10:30 AM at 11:10 AM. This date. Verdict at 11:10 AM as reflected in its charge.

Jan 13 1998

9 28 98

10:00 AM had all requests for setting set for 9:00 AM

7 19 07

All parties and other present. At note re motion to because it is in the file. It has been informed that Judge John O'Neil, presiding judge of the 1st Administrative Region, has overruled a motion to remove Judge R. Chapman, due to the fact that said motion is insufficient as law and facts to properly request Judge Chapman removed, or, in the alternative, a denial on the merits due to a Burtman abuse of the judicial process by filing repeated frivolous motions to remove in this


Exhibit  
D

# CIVIL DOCKET

CASE NO. 95-63

HICS-Hutto, Texas

| NUMBER OF CASE |      | NAMES OF PARTIES | ATTORNEYS | KIND OF ACTION AND PARTY DEMANDING JURY | DATE OF THE MONTH | DAY | YEAR |
|----------------|------|------------------|-----------|-----------------------------------------|-------------------|-----|------|
| 95-63          |      | Wm. B. Jones     |           |                                         |                   |     |      |
|                |      |                  |           | PLTF.                                   |                   |     |      |
|                |      | VS               |           |                                         |                   |     |      |
| FEE BOOK       |      | Udo Birnbauer    |           | DEFT.                                   |                   |     |      |
| VOL.           | PAGE |                  |           |                                         |                   |     |      |

| DATE OF ORDERS |     |      | ORDERS OF COURT                                                                                                                                                                                                                                                                                                                                                                 | MINUTE BOOK |      | PROCESS |
|----------------|-----|------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|------|---------|
| MONTH          | DAY | YEAR |                                                                                                                                                                                                                                                                                                                                                                                 | VOL.        | PAGE |         |
| 7              | 19  | 04   | <p>(cont'd.)<br/>                     case and being twice fees, previously sanctioned by this court for such actions. Ct. notes it's request to abandon any claims for atty's fees. Ct finds that jury verdict rendered in May of 1998 requires a permanent injunction to be entered in this case. It to prepare written order for Ct's signature and provide a copy to D.</p> |             |      |         |
|                |     |      |  <p>I certify this to be a true exact copy of the original in the District Clerk's Office Van Zandt County, TX<br/>                     By <u>[Signature]</u><br/>                     DISTRICT CLERK</p>                                                                                  |             |      |         |
|                |     |      | <p>Judge Ron Chapman</p>                                                                                                                                                                                                                                                                                                                                                        |             |      |         |



# First Administrative Judicial Region

**JOHN OVARD**

*Presiding Judge*

133 N. Industrial Blvd., LB 50

Dallas, Texas 75207

*Administrative Assistant*

**SANDY HUGHES**

*Office Manager*

**GEORGE COWART**

FILED  
RECORD  
07 JAN 12 PM 12:01  
KAREN WILSON  
DIST. CLERK VAN ZANDT CO. TX  
Telephone (214) 653-2943  
Fax (214) 653-2957  
www.firstadmin.com

CAUSE NO. 95-00063

WILLIAM B. JONES  
Plaintiff

v.

UDO BIRNBAUM  
Defendant

)  
)  
)  
)  
)  
)  
)  
)

IN THE DISTRICT COURT

294<sup>th</sup> JUDICIAL DISTRICT

VAN ZANDT COUNTY, TEXAS

## ORDER

After due consideration of the allegations in the Motion to Recuse Judge Ron Chapman, it is determined by the Regional Presiding Judge that the Motion does not provide specific allegations necessary to warrant a hearing. Consequently, the Motion to Recuse is hereby DENIED.

IT IS SO ORDERED.

SIGNED this 12<sup>th</sup> day of January, 2007.

Judge John Ovard

FILED FOR RECORD

2009 MAR -3 PM 4:20

CAUSE NO. 95-63

WILLIAM B. JONES  
KAREN WILSON  
DISTRICT CLERK  
VAN ZANDT COUNTY, TEXAS

vs.

UDO BIRNBAUM

§  
§  
§  
§  
§

IN THE DISTRICT COURT

VAN ZANDT COUNTY, TEXAS

294<sup>TH</sup> JUDICIAL DISTRICT

See supposed signature date below. NOT signed till somewhere about here - AFTER all the 2009 furious letter exchanges!

Judge James B. Zimmermann was the TRIAL judge in 1998. But did NOT pronounce or sign any judgment - before recusing himself off case.

JUDGMENT

JUDGE CHAPMAN did not hear ANY of this - was NOT the TRIAL JUDGE - therefore CANNOT sign judgment - but did so ANYWAY. SHAME!

The above-entitled cause came on regularly for trial on May 27<sup>th</sup>, 1998. Plaintiff, WILLIAM B. JONES, appeared in person and by attorney. Defendant, UDO BIRNBAUM, appeared in person (pro se). A jury of twelve persons was duly accepted, impaneled, and sworn to try the action.

After hearing the evidence, arguments of counsel, and parties, and instructions of the Court, the special issues were submitted to the jury. On May 29<sup>th</sup>, 1998, the jury returned its special verdict. On the basis thereof the Court is of the opinion that, on the merits, judgment should be rendered in favor of Plaintiff.

What about the "opinion" of the JURY: Verdict ZERO damages. SHAME!

It is therefore adjudged that:

1. Plaintiff is granted a permanent injunction against Defendant, that Defendant be and is perpetually enjoined and prohibited from obstructing a creek (known as Steve's Creek) in the full and natural flow of water or permitting or causing the creek to be so obstructed and a perpetual mandatory injunction compelling the Defendant to remove any dam located on Steve's Creek which is situated upon the Defendant's land and to restore the flow of water in the creek (known as Steve's Creek) to its natural condition which would not allow the creek to overflow upon Plaintiff's adjoining property.
2. Cost of this suit be taxed against Defendant.

Did not submit the issue of INJUNCTION to the JURY - therefore NOT entitled to such. Fraud upon the Court - by the Court. SHAME ON YOU!

NOT winning party. FRAUD! SHAME!

SIGNED on this the 31<sup>st</sup> day of July, 2004.

FRAUD - signed in 2009 - AFTER frantic letters to Judge Ron Chapman and Judge Andrew Kupper.

*Ron Chapman*  
JUDGE RON CHAPMAN