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AFFIDAVIT - of yet another BRICK - NOT suitable for throwing thru Judge Chris Martin glass door

Sec. 31.03. **THEFT**, (a) A person commits an offense if he unlawfully appropriates property with intent to deprive the owner of property.
Sec. 31.01(4) **THEFT**. “Appropriate” means: (A) to bring about the transfer or purported transfer of title to or other nonpossessory interest in property, whether to the actor or another; [for you non-lawyers: like judgments, liens. Generally such as easements etc]

preface

THIS UNHOLY MESS started to go bat shit crazy - when in the pattern of “too much – and never enough” – phrase courtesy Mary Trump – the perpetrators did - “bring about” – “unlawful appropriation” – “of a non-possessory interest in property” – (i.e. unlawful judgment liens) – textbook penal Sec. 31.03 white collar THEFT – “appropriate” per Sec. 31.01(4) - **by FORGING themselves** not one – but TWO additional “judgments” – making for a total of **THREE - all in the same case!** There can of course only be ONE.

background

How did I come to so openly taunt – or rather have to taunt - our new District Judge, Hon. Chris Martin - with whom I had no personal or court proceeding conflict –

Who has not done me any wrong – but who has clearly come to see - as evidenced by our referenced AUDIOS – that “there is something rotten in the state of Denmark”. Such phrase of course from Hamlet – even two lowly palace guards recognizing that something is awry in the chambers of power – in that case – murder by the new king – of his brother, the old king.

“And between the two of us etc.” – as indicated by two AUDIOS - one at the county clerk’s counter – when I “accidentally on purpose” met Mr. Martin, when he was still our district attorney.

“And between the two of us etc.” – at our following other lengthy exchange – this one in the DA lobby - when on my way to our courthouse with my rusty wheelbarrow – for yet another – and more dramatic attempt “to be heard” – else arrested – see my **Why I need to get them to arrest me.**

“And between the two of us etc.” – at our second meeting - no one else in the lobby – Mr. Martin immediately coming out of his office and joining me on the bench – my wheelbarrow between the two of us – and me again plunking down THREE small digital voice recorders – this time onto the wheelbarrow – me acknowledging the recorders – with my “these things don’t always work” - -

With my earlier run-in with then DA Martin best summarized in my **criminal complaint upon DA Martin.** Same for my underlying **criminal complaint upon Judge Paul Banner.**

summary

“And between the two of us etc” – our Second AUDIO - no need to listen to it at this time – best just read these comments of mine upon it. Then listen later to the AUDIO. And again – and again – it WILL come through.

conclusions

To me, Mr. Martin came across as a totally honest and frank person – but still naïve of the evils of our courts – or rather how our courts can be – and are being misused by “bad people”.

As for “bad people” - see my civil RICO suit against Judges Banner and Chapman – all documents on my web – and my one hour or so audio before Judge John McCraw. Ignorance of civil RICO., the constitutional limits on civil sanctions – i.e. that such have to be “coercive, forward-looking, keys-to-own-release, forbidden for COMPLETED anything, etc. -

And for completeness, Mr. Martin got his law license about 2006, and garden variety crimes ever after.

As a pro se, however, I have been “at it” ever since that fraudulent beaver dam case against me in 1994 – and those obscene sanctions starting in 2002 – and TWICE all the way up - Dallas Court of Appeals - Texas Supreme Court - US Supreme Court). ALL documents on my web – even earlier once before all-the way up.

ALL upon due process and the limits on judicial immunity per the US Supreme Court.

To me, Mr. Martin seemed to be more concerned that I had been “so unfair” to then district judge Teresa Drum” – than he was concerned about that obscenely unlawful \$62,885 and \$125,770 punishment judge Paul Banner and judge Ron Chapman had put upon me – Mr. Martin almost childishly innocent of knowledge of evil in high places.

Take for example the at 6:24 excerpt out of our second meeting – Mr. Martin more trusting in Judge Paul Banner’s CYA lies onto a frapping piece of paper - than the official court transcript pronouncing me “well-intentioned” – and memorializing Judge Banner then-and-there PUNISHING me \$62,885 for HAVING made a counter-claim –a First Amendment Right !!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!

“Yes, he said it – but I am saying it doesn’t say that in the court documents – that he did it out of retaliation”.

“Childishly innocent of knowledge of evil in high places”.

And for completeness – there is the motion for sanctions – seeking punishment upon me – for in essence “**making a mockery of all lawyers and the entire judicial system**” – Judge Banner’s ruling of “**well-intentioned**” thereon as caught by the court reporter – Judge Banner’s Order on Motion for Sanctions devoid of any reason of WHY as required by Rule 13 – with the **forgery of “this judgment rendered”** – the fraudulent all-poison **Findings of Fact and Conclusions of Law** referred to at 6:24 – the 12 year later “revival” by writ of scire facias – of the **forged** now newly re-christened as “**sanction judgment**” - and the menagerie of the **three abstracts of judgments** - on the **three judgments** - the **three writs of executions**.

re the sin of omission

A man does not sin by commission only,
but often by omission. Marcus Aurelius. 121-180

Canon 3: Performing the Duties of Judicial Office Impartially and Diligently
D. Disciplinary Responsibilities.(1) A judge who receives information clearly establishing that another judge has committed a violation of this Code **should** take appropriate action. A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office **shall** inform the State Commission on Judicial Conduct or take other appropriate action.

PS: I am SURE – that there exists a suitable BRICK.

This the 13th day of September, 2020

UDO BIRNBAUM
540 VZ County Road 2916
Eustace, TX 75124
903 479-3929
BRNBM@AOL.COM
DamnCourthouseCriminals.com

LARGE ATTACH BELOW



G. David Westfall, as the only lawyer "in" Plaintiff The Law Offices of G. David Westfall, P.C., is of course INHERENTLY "implicated" - as is his office staff wife and daughter. "Law Offices" - is - Westfall, his wife, and his daughter.

instead to make this lawsuit into his own public forum to make a mockery of all lawyers and the entire legal system.

3. Defendant/Third Party Plaintiff tried unsuccessfully to intimidate and harass the Plaintiff into dropping this lawsuit by attempting to implicate the owner of the Plaintiff, G. David Westfall, as well as his wife and daughter in a totally frivolous claim of running an organized crime syndicate in the form of a law office.

4. The Defendant/Third Party Plaintiff has attempted to use the forum of this lawsuit to launch a full scale attack on the integrity and character of G. David Westfall, Christina Westfall, and Stephanie Podvin.

G. David Westfall was of course dead by this time - run over by his own giant tractor. Speaking from his grave?

5. If those attacks were not enough, the Defendant/Third Party Plaintiff broadened his attack in his pleadings and so called "Open Letters" to include casting aspersions at this Court, the visiting Judge, the Hon. Paul Banner, the Coordinator of the Court, the Court Reporter for the Court, and the Court of Appeals.

THIS IS THE MOTION FOR SANCTIONS UPON WHICH I WAS PUNISHED \$62,885 AND ULTIMATELY ANOTHER \$125,770
 $62,885 \times 2 = 155,770$

II.

Specifically, Movants file this request for sanctions against the Defendant/Third Party Plaintiff for the following actions of the Defendant/Third Party Plaintiff:

1. Filing a frivolous third party claim pleading without factual support or a valid legal basis in Defendant/Third Party Plaintiff's causes of action filed against either G. David Westfall, Christina Westfall, or Stefani Podvin. Movants contend that Defendant/Third Party Plaintiff filed these pleadings for the purpose of causing inconvenience and/or harassment for Stefani Podvin, Christina Westfall, G. David Westfall, P.C., and G. David Westfall, individually and not in support of any valid, legally factual, and legally supportable claims.

THIS IS THE MOTION FOR SANCTIONS
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2. Filing discovery requests and taking depositions for the purpose of harassment and inconvenience and not to support any valid claims or causes of actions against the Movants.
3. Filing a frivolous motion to recuse the Hon. Paul Banner for the purpose of causing inconvenience and/or harassment for Movants.
4. Filing frivolous and untimely motions to appeal the granting of the Movants' Motions for Summary Judgment granted by the trial court.

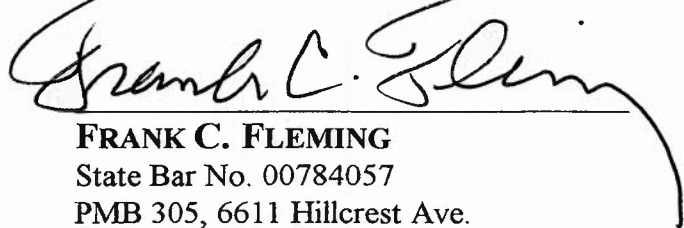
WHEREFORE, PREMISES CONSIDERED, Movants pray that a hearing be set on this motion, and following a hearing, the Court assess appropriate sanctions against the Defendant/Third Party Plaintiff for the violations of Rule 13 of the Texas Rules of Civil Procedure and/or the violations of §10.001 et seq. of the Tex. Rules of Civil Procedure. Specifically, Movants request damages be assessed against the Defendant/Third Party Plaintiff and awarded to the Movants for the following:

- a. Reimbursement of all Movants' reasonable and necessary attorney's fees expended by Movants in defense of the allegations made by the Defendant/Third Party Plaintiff in this lawsuit to the extent such attorney's fees have not yet been awarded in any prior rulings of this Court.
- b. Reimbursement of all Movants' reasonable and necessary attorney's fees expended by Movants in pursuit of this Motion for Sanctions.
- c. Monetary damages to reimburse Movants for the inconvenience and harassment suffered by the Movants as a direct result of the improper actions taken by the Defendant/Third Party Plaintiff against the Movants in connection with this lawsuit.

Any penalty paid to the Court - makes such "criminal in nature" - requiring full criminal process.

- d. Punitive damages to be assessed against the Defendant/Third Party Plaintiff and awarded to the Movants in order to prevent the reoccurrence of such behavior again in the future by the Defendant/Third Party Plaintiff.
- e. Damages assessed against the Defendant/Third Party Plaintiff and awarded to the Court to reimburse the Court for its expenses and inconvenience suffered as a direct result of frivolous pleadings filed on behalf of the Defendant/Third Party Plaintiff. "Inconvenience suffered" - by the Court - come on.
- f. And for such other and further relief, both general and special, to which Movants may be justly entitled, both at law and equity.

Respectfully submitted,
LAW OFFICE OF FRANK C. FLEMING



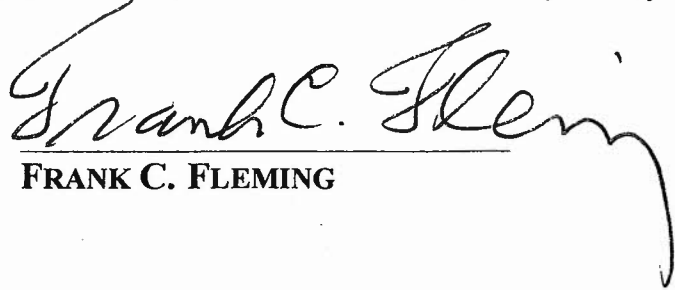
FRANK C. FLEMING
State Bar No. 00784057
PMB 305, 6611 Hillcrest Ave.
Dallas, Texas 75205-1301
(214) 373-1234
(fax) 373-3232

ATTORNEY FOR MOVANTS

*
THIS IS THE MOTION FOR SANCTIONS
UPON WHICH I WAS PUNISHED \$62,885
AND ULTIMATELY ANOTHER \$125,770
62,885 X 2 = 155,770
*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above document has this day been delivered to Udo Birnbaum, by facsimile transmission to 903/479-3929, on this 9th day of May 2002.


FRANK C. FLEMING

FIAT

Please take note that this motion is set for hearing at ____ : ____ AM/PM on the ____ day of _____, 2000.

District Judge Presiding

*

THIS IS THE MOTION FOR SANCTIONS
UPON WHICH I WAS PUNISHED \$62,885
AND ULTIMATELY ANOTHER \$125,770
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7-30-2002 "Sanction Hearing". Compare the "well-intentioned" here, with all the POISON WORDS in the ONE YEAR LATER "Finding of Fact" ! HINT: The "Finding" was a CYA - for all this done WITHOUT THE JURY.

1 damages, \$5,000.00 in punitive and the joint and several
2 \$50,085.00 in attorneys' fees. Mr. Birnbaum's sanctions as
3 against Mr. Fleming or against the P.C. is denied and nothing
4 is ordered.

well-intentioned

was a JURY trial. Why is HE weighing the evidence?

5 In assessing the sanctions, the Court has
6 taken into consideration that although Mr. Birnbaum may be
7 well-intentioned and may believe that he had some kind of
8 real claim as far as RICO there was nothing presented to the
9 court in any of the proceedings since I've been involved that
10 suggest he had any basis in law or in fact to support his
11 suits against the individuals, and I think -- can find that
12 such sanctions as I've determined are appropriate. And if
13 you will provide me with an appropriate sanctions order, I
14 will reflect it.

HEREIN lies the real reason! "civil RICO"

\$62,885 Sanction - for a "well-intentioned" COUNTER-CLAIM - a First Amendment Right ! Official Oppression

15 Now, as far as relief for sanctions on behalf
16 of Mr. Westfall, individually, that is specifically denied.

17 Any relief sought by any party by way of
18 sanctions which have not been specifically addressed either
19 by the granting or the denial of same -- such is denied.

20 Okay. How soon can I expect an order because
21 I gather this matter will go up to whatever appropriate
22 appeals court for review?

"Oh HORROR of HORRORS - a Pro Se - with a CIVIL RACKETEERING counter-claim!"

23 MR. FLEMING: I will give Mr. Birnbaum the
24 statutory three days. I'll submit it to him. And if I don't
25 hear back from him, I'll submit it to you after.

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Never a "plaintiff-type". Never made a pleading against me. Also out by summary judgment long ago.

Also FRAUD - in "finagling" a mere and untimely motion for sanctions - into a "pleading" in the cause

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

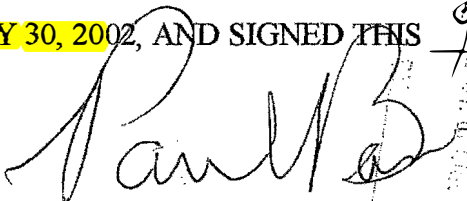
- A. **Christina Westfall and Stefani Podvin** are **awarded** jointly and severally the amount of \$50,085.00 as reimbursement for their joint attorney's fees.
- B. Christina Westfall is **awarded** actual damages for her personal inconvenience in the amount of \$1,000.00, and she is further awarded punitive damages for the harassment caused to her in the amount of \$5,000.00.
- C. Stefani Podvin is **awarded** actual damages for her personal inconvenience in the amount of \$1,800.00, and she is further awarded punitive damages for the harassment caused to her in the amount of \$5,000.00.
- D. The Court denies the request for a finding of any sanctions to be awarded in favor of G. David Westfall, individually.
- E. The Court denies the request for a finding of any sanctions to be awarded in favor of Udo Birnbaum.

Nothing ADJUDICATED. This ORDER - is NOT a judgment

IT IS FURTHER ORDERED THAT the judgment here rendered shall bear interest at the rate of ten percent (10%) from July 30, 2002, until paid.

All other relief regarding any motions for sanctions on file in this matter not expressly granted in this order is hereby denied.

THIS **JUDGMENT** RENDERED ON **JULY 30, 2002**, AND SIGNED THIS 9 day of August, 2002.



JUDGE PRESIDING

This document is a FRAUD. This was a HEARING - not a TRIAL. There were no "pleadings" - they never were "plaintiff-types", nothing was ADJUDICATED. A PURE OUTRIGHT FRAUD. Also JURY cause - no jury here

156/835

02/08/21 11:09:59
FILED ELECTRONIC

in response to a request from the Defendant/Counter-Plaintiff, the Court makes its findings of fact and conclusions of law as follows:

Findings of Fact

1. The Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy claims against Christina Westfall and Stefani Podvin (the wife and daughter of the Defendant/Counter-Plaintiff's former attorney, David Westfall) were **groundless and totally unsupported** by any credible evidence whatsoever.

Always remember - the court reporter found him saying - that Mr. Birnbaum was "well intentioned". Suddenly all this stuff.

2. The Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy claims against Christina Westfall and Stefani Podvin were without merit and brought for the purpose of harassment, delay, and to seek advantage in a collateral matter by attempting to cause the original **Plaintiff**, David Westfall to drop his claim for un-reimbursed legal services provided to the Defendant.

"David Westfall" was NOT the plaintiff! Plaintiff was "The Law Offices" - fraudulently claiming existence of an OPEN ACCOUNT. FRAUD.

3. The Defendant/Counter-Plaintiff was afforded numerous opportunities to marshal his evidence and present any facts to support his allegations concerning RICO civil conspiracy claims against the wife and daughter of the Defendant/Counter-Plaintiff's attorney, David Westfall. The Defendant/Counter-**Plaintiff** wholly failed to provide any such credible evidence at either the summary judgment phase of the lawsuit or at the hearing on the motion for sanctions.

NEVER was a counter PLAINTIFF

4. The attempt to provide testimony by the Defendant/Counter-Plaintiff concerning RICO civil conspiracy claims were his own opinions and **totally uncorroborated** by any other evidence.

5. The Defendant/Counter-Plaintiff never established that he had suffered any economic damages as a result of an alleged conspiracy. The Defendant/Counter-Plaintiff was sued by his former counsel to collect money for **legal work** which had been performed for the Defendant/Counter-Plaintiff for which the Defendant/Counter-Plaintiff had not paid his attorney in

Judge Paul Banner did NOT submit ANY of this to the jury! He INSTRUCTED THEM that Mr. Birnbaum had "FAILED TO ABIDE"!

full. The jury found that the work had been performed by the attorney, the amount charged to the client was reasonable, and that there was an amount owed by the Defendant/Counter-Plaintiff to the Plaintiff. The Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy claims had no bearing on whether or not the Defendant/Counter-Plaintiff received the legal services and owed the balance of the outstanding attorney's fees.

Did NOT sue for "outstanding attorney's fees, but for UNPAID OPEN ACCOUNT

6. The filing of the Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy was a blatant and obvious attempt to influence the outcome of the Plaintiff's legitimate lawsuit against the Defendant/Counter-Plaintiff and to cause harassment to the Plaintiff and his family members.

7. The behavior of the Defendant/Counter-Plaintiff in filing claims concerning RICO civil conspiracy in this lawsuit have been totally without substantiation on any cause of action pled.

8. The conduct of the Defendant/Counter-Plaintiff giving rise to the award of punitive damages was engaged in willfully and maliciously by the Defendant/Counter-Plaintiff with the intent to harm the Plaintiff and the Counter-Defendants.

How about "well intentioned"? Remember?

9. The amount of actual damages, attorney's fees, suffered by the Counter-Defendant was proven to be reasonable and necessary by a preponderance of the evidence and not challenged by the Defendant/Counter-Plaintiff at the hearing on sanctions. The amount of actual damages awarded was in an amount that was proven at the hearing.

Was a JURY case. No jury at this hearing.

10. The amount of damages for inconvenience awarded by the court was proven at the hearing by a preponderance of the evidence and not challenged by the Defendant/Counter-Plaintiff at the hearing on sanctions. The court awarded damages for inconvenience in an amount the Court found to be reasonable and necessary, supported by evidence, and appropriate considering the circumstances.

B.S.

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Can't do PUNITIVE by CIVIL process! Only "forward looking" COERCIVE!

11. The amount of **punitive** damages awarded by the Court were found to be supported by the evidence and necessary under the circumstances to attempt to **prevent similar future action** on the part of the Defendant/Counter-Plaintiff.

Can't do this in a CIVIL proceeding. Takes FULL CRIMINAL PROCESS.

12. The sanctions award is directly related to the harm done.

13. The sanctions award is not excessive in relation to the harm done and the **net worth of the Defendant/Counter-Plaintiff**.

No evidence to any of this B.S. ever!

14. The sanctions award is an appropriate amount in order to gain the **relief which the Court seeks**, which is to stop the Defendant/Counter-Plaintiff and **others similarly situated** from filing **frivolous lawsuits**.

"relief which the COURT seeks" - to keep from filing lawsuits - a First Amendment Right. OFFICIAL OPPRESSION PER SE.

15. The amount of the **punitive** damage award is an amount narrowly tailored to the amount of harm caused by the offensive conduct to be **punished**.

16. The Counter-Defendants suffered both economic and emotional damages as a result of the Defendant/Counter-Plaintiff's lawsuit and specifically the frivolous nature of the lawsuit caused damages which included expenses (in addition to taxable court costs), attorney's fees, harassment, inconvenience, intimidation, and **threats**.

No evidence to all this B.S. Remember "well intentioned"?

17. The Counter-Defendants established a prima facie case that this lawsuit was filed by the Defendant/Counter-Plaintiff without merit and for the purpose of **harassment**. The prima facie case was made by the testimony and documents introduced as evidence by the Counter-Defendants at the summary judgment proceedings as well as at the hearing on sanctions on July 30, 2002.

18. After the Counter-Defendants established their prima facie case, the Defendant/Counter-Plaintiff failed wholly to provide any credible evidence to support the **legal theories** of the Defendant/Counter-Plaintiff.

Cannot sanction for the "merit of a case"

Conclusions of Law

1. The Defendant/Counter-Plaintiff wholly failed to provide any credible evidence to substantiate any of his claims concerning a RICO civil conspiracy claim.
2. An essential element of each of Defendant/Counter-Plaintiff's claim was damages.
3. The Defendant/Counter-Plaintiff failed to prove any damage as a direct result of any action or inaction caused by the Plaintiff or the Counter-Defendants.
4. All of Defendant/Counter-Plaintiff's claims were as a matter of law unproved and untenable on the evidence presented to the Court. How about "evidence to the JURY"?
5. Based upon the facts presented to support Defendant/Counter-Plaintiff's claim concerning RICO civil conspiracy charges, the Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy were completely untenable.
6. The Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy charges were not based upon the law, were not a good faith extension of existing law, and were brought and continued to be urged for the purpose of harassment. was "civil RICO" - not the mumbo-jumbo above
7. The court concludes as a matter of law that Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy were brought for the purpose of harassment. Matter of "law"?
8. The Defendant/Counter-Plaintiff's behavior in bringing and prosecuting this frivolous lawsuit was a violation of one or more of the following: §9.000 et seq. Civ. Prac. & Rem. Code, §10.000 et seq. Civ. Prac. & Rem. Code, and/or Rule 13, T.R.C.P. what about "well intentioned"?
9. The Court has the power to award both actual and punitive damages against the Defendant/Counter-Plaintiff for the filing and prosecution of a frivolous lawsuit. This authority stems from one or more of the following: §9.000 et seq. Civ. Prac. & Rem. Code, §10.000 et seq. Civ. Prac. & Rem. Code, Rule 13, T.R.C.P., and/or the common law of Texas. NO, it does NOT!

Findings of Fact and Conclusions of Law

PAGE 5 of 7

Official Oppression per se

10. The behavior and attitude of the Defendant/Counter-Plaintiff in filing and prosecuting this claim against the Counter-Defendants calls out for the award of both actual and **punitive** damages to be assessed against the Defendant/Counter-Plaintiff.

11. The Counter-Defendants were successful in presenting a prima facie case to the Court on the issue of sanctions. After the prima facie case was made, the burden of proof shifted to the Defendant/Counter-Plaintiff and the Defendant/Counter-Plaintiff failed in its effort to prove good faith in the filing of the RICO civil conspiracy claims.

12. The appropriate award for actual damages as a result of the filing and full prosecution of this frivolous lawsuit is an award of **\$50,085.00 in attorney's fees**. The Court makes this award under power granted to the Court by §9.000 et seq. Civ. Prac. & Rem. Code, §10.000 et seq. Civ. Prac. & Rem. Code, Rule 13, T.R.C.P., and/or the common law of Texas.

13. The appropriate sanction for the inconvenience suffered by the Counter-Defendants for the filing and full prosecution of this frivolous lawsuit is an award of **\$1,000.00** to Christina Westfall and **\$1,800.00** to Stefani Podvin, to be paid by the Defendant/Counter-Plaintiff to the Counter-Defendants.

14. The appropriate punitive sanction for the filing and full prosecution of this frivolous lawsuit is an award of **\$5,000.00** to Christina Westfall and an award of **\$5,000.00** to Stefani Podvin, to be paid by the Defendant/Counter-Plaintiff to the Counter-Defendants.

15. The award of **punitive** damages is directly related to the harm done.

16. The award of **punitive** damages is not excessive.

17. The award of **punitive** damages is an appropriate amount to seek to gain the relief sought which is to stop this Defendant/Counter-Plaintiff, and **others like him**, from **filing** similar frivolous lawsuits.

OFFICIAL OPPRESSION per se. Can not do "punitive" in a CIVIL proceeding. Only "coercive". Requires "keys to own release"!

Findings of Fact and Conclusions of Law

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westfall\udo\judgment\findings of facts2

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18. The amount of the **punitive** damage award is narrowly tailored to the harm done.

19. Authority for the **punitive** damage award is derived from §10.000 et seq. 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.

SIGNED THIS 30 day of September, 2003.



JUDGE PRESIDING

Careful study of this document shows that all this B.S. is to C.Y.A. for having "awarded damages" WITHOUT A JURY - in a jury cause - and trying to CONCEAL that this is exactly what Judge Paul Banner had done.
--
It also is a window on his mindset during the JURY TRIAL of April 8-11, 2002, his hatred of Pro Se parties.
--
JUST READ ALL THIS VENOM IN THIS DOCUMENT. Remember, "although Mr. Birnbaum may be well intentioned --- etc. I (Mr. Banner) did not see the evidence as showing etc " - or something like that.
--
Was of course a JURY TRIAL - so why was Mr. Banner "weighing" the evidence?

64

7-30-2002 "Sanction Hearing". Compare the "well-intentioned" here, with all the POISON WORDS in the ONE YEAR LATER "Finding of Fact" ! HINT: The "Finding" was a CYA - for all this done WITHOUT THE JURY.

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23 MR. FLEMING: I will give Mr. Birnbaum the
24 statutory three days. I'll submit it to him. And if I don't
25 hear back from him, I'll submit it to you after.

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Application should be granted and that the Sanctions Judgment revived for the period of time proscribed by law.

IT IS HEREBY, ORDERED, ADJUDGED, AND DECREED, that the Sanctions Judgment (a true and exact copy of which is attached hereto as Exhibit 1 and made a part of this Order as if fully set forth at length) rendered in the above-entitled and numbered cause on July 30, 2002 and signed on August 9, 2002, is hereby revived in all respects against defendant/counter-plaintiff Udo Birnbaum;

IT IS FURTHERED ORDERED that execution on the revived Sanctions Judgment may immediately issue; and

IT IS FURTHER ORDERED that all costs are taxed against the Defendant, Udo Birnbaum.

All relief requested, not granted herein, is expressly denied.

SIGNED this 14 day of November, 2014

Paul B.
JUDGE PAUL BANNER, PRESIDING

ALL FRAUD!
In a JURY case - "judgment" was done WITHOUT A JURY!
And "awarded" to someone who had been "out" by summary judgment long ago - and NEVER WAS A PLAINTIFF!
Also plum UNLAWFUL punishment for exercising a First Amendment Right to make a COUNTER-CLAIM! (see "Findings")
Official Oppression per se!

PAUL BANNER
Senior Judge Presiding by
Assignment

It was a JURY case - and ONLY the jury can award "damages". There was NO JURY making this AWARD!

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

A. Christina Westfall and Stefani Podvin are **awarded** jointly and severally the amount of **\$50,085.00** as reimbursement for their joint attorney's fees.

Got to be a PLAINTIFF to get JUDGMENT!

B. Christina Westfall is **awarded** actual damages for her personal inconvenience in the amount of **\$1,000.00**, and she is further **awarded** punitive damages for the harassment caused to her in the amount of **\$5,000.00**.

Got to be a PLAINTIFF to get JUDGMENT!

C. Stefani Podvin is **awarded** actual damages for her personal inconvenience in the amount of **\$1,800.00**, and she is further **awarded** punitive damages for the harassment caused to her in the amount of **\$5,000.00**.

Got to be a PLAINTIFF!

Got to be a PLAINTIFF!

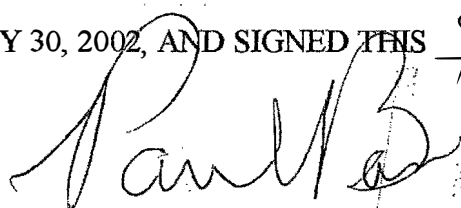
D. The Court denies the request for a finding of any sanctions to be awarded in favor of G. David Westfall, individually.

E. The Court denies the request for a finding of any sanctions to be awarded in favor of Udo Birnbaum.

IT IS FURTHER ORDERED THAT the judgment here rendered shall bear interest at the rate of **ten percent (10%)** from July 30, 2002, until paid.

All other relief regarding any motions for sanctions on file in this matter not expressly granted in this order is hereby denied.

THIS JUDGMENT RENDERED ON JULY 30, 2002, AND SIGNED THIS 9 day of August, 2002.



JUDGE PRESIDING

FILED
02/08/21 11:09 AM
WESTFALL/UDO/PLEADINGS/ORDER ON SANCTIONS

156/835

THANK YOU, JUDGE CHAPMAN - for putting this stuff down on paper - so the whole world can see - in official documents - just how EVIL or CRAZY you are.

No. 00-00619

2006 OCT 25 11:51 AM

THE LAW OFFICES OF
G. DAVID WESTFALL, P.C.

Plaintiff

v.

UDO BIRNBAUM

Defendant/Counter-Plaintiff

G. DAVID WESTFALL, CHRISTINA
WESTFALL, and STEFANI PODVIN,

Counter-Defendants

IN THE DISTRICT COURT

"inconsistent with DUE PROCESS" -- just read this stuff - - Ravings of a madman. Markups throughout this document.

294th JUDICIAL DISTRICT

Trial before a JURY was April 8-11, 2002. Why is he sitting on the bench on April Fools Day in 2004? And not sign till 2006? Where did Judge Chapman come up with all this "stuff" - he was NOT the trial judge!

VAN ZANDT COUNTY, TEXAS

ORDER ON MOTIONS FOR SANCTIONS

On April 1, 2004, came on to be heard, defendant, Udo Birnbaum's ("Birnbaum") Motion for Recusal of Judge Paul Banner. Prior to the hearing, the Court and Mr. Birnbaum were each served with notice of a Motion for Sanctions filed by G. David Westfall, P.C., Christina Westfall, and Stefani Podvin (referred to herein collectively as the "Sanctions Movants") and that Motion for Sanctions was also heard. The Sanctions Movants appeared by their attorney of record. Birnbaum, appeared in person, pro se. All parties announced ready for the hearing.

Based upon the pleadings of the parties, the evidence presented at the motion hearing, and the arguments of counsel and the arguments of the pro se defendant, the Court is of the opinion that Birnbaum's Motion to Recuse Judge Paul Banner should be in all things be denied.

At this point he should have gone HOME. Period.

Based upon the pleadings of the parties, the evidence presented at the motion hearing, and the arguments of counsel and the arguments of the pro se defendant, the Court is of the opinion that the Sanctions Movants are entitled to prevail on their claim for sanctions against the Defendant, Udo Birnbaum.

Exhibit
14

It is therefore, **ORDERED, ADJUDGED, and DECREED** that the motion by the defendant, Udo Birbaum, 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 Birbaum, 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 Birbaum'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 Birbaum 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.**

Go diagnose yourself, you idiot

Where did you get all this stuff from? You were NOT the trial judge. We hardly met. Is everybody talking about me? Seems like it.

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.

Judge Ron Chapman -- you were assigned to hear a Motion for Recusal, rule, then go HOME. Why are you all tight up? Where did you get all this stuff?

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.

YES - out in the halls - around the coffee pot - around the table in the jury room - ALL WITHOUT A COURT REPORTER - yes you threatened me. YES - this was ALL BEFORE we went into the courtroom - and before a COURT REPORTER.

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. a truly AMAZING "Finding of Fact". lol

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. Official Oppression per se.

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. UNLAWFUL by CIVIL process

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

Order on Sanctions

PAGE 5 of 8

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.

GOOD SHOPPING LIST. Well - exactly which one - and HOW?

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.

AGAIN - sort of lacking specificity. But, at least no violation of MOTHERHOOD and APPLE PIE?

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.

AGAIN - can't do "punitive" in CIVIL process. Requires "keys to own release"

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.

???"and/or" sort of like "maybe"

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.

\$124,770.00 - Judge Ron Chapman. One might overlook this if you had been DRUNK - but to put this stuff on paper - and actually SIGN IT? CRAZY.

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.

PLUM CRAZY

Order on Sanctions

PAGE 6 of 8

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.

OFFICIAL OPPRESSION - retaliation for exercising a First Amendment Right. CRAZY

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.

THANK YOU, JUDGE CHAPMAN - for putting this stuff down on paper - so the whole world can see - in official documents - just how EVIL or CRAZY you are.

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.

24 day of Oct, 2006.


JUDGE PRESIDING

-
WOULD YOU BELIEVE - "The Westfalls" actually got the 294th District Clerk to issue an "Abstract of Judgment" on this ORDER - for close to \$250,000 with interest.
--
Filed it with the County Records, to put liens on all my property, did a "writ of execution" to send the sheriff out to seize my property.
--
While at the SAME TIME doing a "scire facias" to revive the FIRST judgment in the case (2002) which had gone "dormant" after TEN YEARS. (There can be only ONE judgment - this mess has THREE - over a period of SIX years or so!)
--
Lots more detail - at "home" - www.OpenJustice.US

Attached in below pages is:
*
1. MOTION FOR RECUSAL OF JUDGE BANNER - clearly indicating that my MOTION was to STOP Judge Banner from "ex parte" concocting a "Finding" - diametrically opposite of his extemporaneous finding of "well-intentioned" - and while Banner had NO JURISDICTION.
*
2. ASSIGNMENT OF JUDGE CHAPMAN - for Chapman solely to "do" a RECUSAL HEARING - a purely ADMINISTRATIVE assignment, i.e. NO jurisdiction to DO anything "in" the case. (There was of course no case left - case was OVER)
*
3. LETTER TO JUDGE CHAPMAN - that there be no "surprises" - i.e. me telling Chapman exactly why I had made my Motion for Recusal of Banner - i.e. that my Motion - was a "whistle blow", a CRY FOR HELP - and a complaint of CRIMES.

No. 00-619

The Law Offices of G. David Westfall, P.C
v. Udo Birnbaum
v. The Three Westfalls

)(
(
(

FILED FOR RECORD
In the 294th District Court.
Of Van Zandt County AM 7:56
03 SEP 30

Motion for Recusal of Judge Banner

This motion is by reason of Judge Banner **communicating ex-parte** with opposing counsel to plot a **vituperative finding** against Birnbaum's **conduct**, such finding diametrically opposite his prior finding of Birnbaum being **WELL-INTENTIONED**, such prior finding made **extemporaneously** and **in the heat of battle** and caught by the court reporter at the close of the Sanction Hearing on July 30, 2002.

Also by reason of Judge Banner having **previously retaliated** with a \$62,000 sanction against Birnbaum for having exercised his statutory and Constitutional Right to make a **civil RICO** pleading, i.e. protected activity. Judge Banner's words that he imposed such sanction because Birnbaum had made a civil RICO pleading were also caught by the court reporter at the same hearing.

Also by having demonstrated that he **cannot or will not** abide by statutory law, the Rules of Procedure, or the mandates of the Supreme Court of the United States. Details are in my prior Motion for Recusal (denied) and in my prior petition for writ of mandamus (denied) to make him go by the law.

Also for now trying to "undo" his finding of my [Birnbaum] being **well-intentioned**, and with opposing counsel paint me as some sort of monster to the judicial system, all while the cause is **on appeal** in the Dallas Fifth, and **while he has NO JURISDICTION**.

Details to follow shortly.

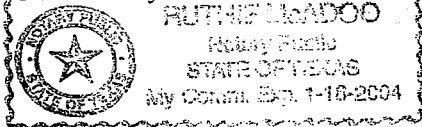
Udo Birnbaum
UDO BIRNBAUM, Pro Se
540 VZ CR 2916
Eustace, TX 75124
(903) 479-3929

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 his Motion for Recusal of Hon. Paul Banner are true and correct.

Udo Birnbaum
Udo Birnbaum

Given under my hand and seal of office this 30 day of September, 2003



Ruthe McAdoo
Notary in and for The State of Texas

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this document has been served via Reg. Mail on this the 30 day of September, 2003 upon Frank C. Fleming, 6611 Hillcrest, Suite 305, Dallas, Texas 75205-1301.

Udo Birnbaum
UDO BIRNBAUM

46

FILED FOR RECORD
03 SEP 30 AM 7:56

7-30-2002 "Sanction Hearing". Compare the "well-intentioned" here, with all the POISON WORDS in the ONE YEAR LATER "Finding of Fact" ! HINT: The "Finding" was a CYA - for all this done WITHOUT THE JURY.

7

1 damages, \$5,000.00 in punitive and the joint and several
2 \$50,085.00 in attorneys' fees. Mr. Birnbaum's sanctions as
3 against Mr. Fleming or against the P.C. is denied and nothing
4 is ordered.

well-intentioned

was a JURY trial. Why is HE weighing the evidence?

5 In assessing the sanctions, the Court has
6 taken into consideration that although Mr. Birnbaum may be
7 well-intentioned and may believe that he had some kind of
8 real claim as far as RICO there was nothing presented to the
9 court in any of the proceedings since I've been involved that
10 suggest he had any basis in law or in fact to support his
11 suits against the individuals, and I think -- can find that
12 such sanctions as I've determined are appropriate. And if
13 you will provide me with an appropriate sanctions order, I
14 will reflect it.

HEREIN lies the real reason! "civil RICO"

\$62,885 Sanction - for a "well-intentioned" COUNTER-CLAIM - a First Amendment Right ! Official Oppression

15 Now, as far as relief for sanctions on behalf
16 of Mr. Westfall, individually, that is specifically denied.

17 Any relief sought by any party by way of
18 sanctions which have not been specifically addressed either
19 by the granting or the denial of same -- such is denied.

20 Okay. How soon can I expect an order because
21 I gather this matter will go up to whatever appropriate
22 appeals court for review?

"Oh HORROR of HORRORS - a Pro Se - with a CIVIL RACKETEERING counter-claim!"

23 MR. FLEMING: I will give Mr. Birnbaum the
24 statutory three days. I'll submit it to him. And if I don't
25 hear back from him, I'll submit it to you after.

www.OpenJustice.US

**THE STATE OF TEXAS
FIRST ADMINISTRATIVE JUDICIAL REGION
ORDER OF ASSIGNMENT BY THE PRESIDING JUDGE**

Persuant to Rule 18a, Texas Rules of Civil Procedure, I hereby assign the:

Honorable Ron Chapman ,

Senior Judge of The 5th Court Of Appeals

To The 294th District Court of Van Zandt County, Texas.

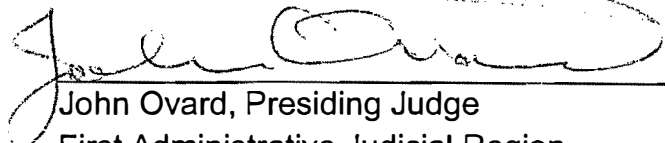
This assignment is for the purpose of the assigned judge hearing a **Motion to Recuse** as stated in the Conditions of Assignment. This assignment is effective immediately and shall continue **for such time as may be necessary for the assigned judge to hear and pass on such motion.**

CONDITION(S) OF ASSIGNMENT:

Cause No. 00-00619; Westfall vs. Birnbaum.

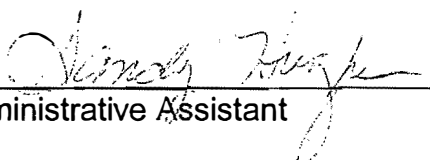
The Clerk is directed to post a copy of this assignment on the notice board so that attorneys and parties may be advised of this assignment, in accordance with the law.

ORDERED this 8th day of Oct, 2003



John Ovard, Presiding Judge
First Administrative Judicial Region

ATTEST:



Administrative Assistant

Assgn#

14797

(65)

February 17, 2004

TO: Judge Ron Chapman, sitting by assignment
COPY: 294th District Judge

Re: Motion to Recuse Judge Banner, No. 00-619, 294th District Court

Judge Chapman,

The purpose of this letter is **that there be no surprise** at your March 26, 2004 setting to hear my Sept. 30, 2003 *Motion to Recuse*.

To refresh your memory, I presented you with an earlier motion to recuse Judge Paul Banner, for not abiding by the rules of procedure, statutory law, nor the mandates of the U.S. Supreme Court. You heard that motion on Oct. 1, 2001, and let Judge Banner stay.

I filed THIS motion, **even though the case had been at appeal for nearly one (1) year**, when it became clear about Sept. 30, 2003, that Judge Banner and opposing counsel **were ex-parte in the process** of constructing *Findings* to prop up a \$62,000 fine ("Sanction Order", Aug. 9, 2002) against me that had stated NO particulars at all, NONE. RCP Rule 13 of course states that NO sanctions may be imposed without stating particulars.

Judge Banner was prohibited from making any more findings after my *Motion for Recusal*, but he **did it anyway**. Furthermore, his *Findings* have NO support in the record, and are diametrically opposite **his true reason for punishing me**, as caught by the court reporter at the July 30, 2002 sanctions hearing, where he found me "**well-intentioned**", just that he [Judge Banner] did not see the evidence as showing a **civil RICO** case. I had of course asked for weighing of the evidence by a **jury**.

Filing a lawsuit is of course **constitutionally protected conduct**, and Judge Banner himself said that he unconditionally punished ("sanctioned") me for having made my civil RICO claim:

*"In assessing the sanctions, the Court has taken into consideration that although 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 suits against the individuals, and I think — can find that such sanctions as I've determined are appropriate."
(Transcript, **sanctions hearing**, July 30, 2002)*

Judge Banner's \$62,000 Sanction against me for making my civil RICO claim (when I was sued) is nothing less than retaliation and official oppression. As for the law:

A **retaliation claim** essentially entail three elements: 1) the plaintiff engaged in protected conduct; (2) an adverse action was taken against the plaintiff that would deter a person of ordinary firmness from continuing to engage in that conduct; and (3) there is a causal connection between elements one and two -- that is, the adverse action was motivated at least in part by the plaintiff's protected conduct. See Bloch v. Riber, 156 F.3d 673 (6th Cir. 1998)

Texas Penal Code, Sec. 39.03. OFFICIAL OPPRESSION:

- (a) A public servant acting under color of his office or employment commits an offense if he:
- (1) intentionally subjects another to mistreatment or to arrest, detention, search, seizure, dispossession, assessment, or lien that he knows is unlawful;
 - (2) intentionally denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing his conduct is unlawful; or
 - (3) intentionally subjects another to sexual harassment.
- (b) For purposes of this section, a public servant acts under color of his office or employment if he acts or purports to act in an official capacity or takes advantage of such actual or purported capacity.
- (c) In this section, "sexual harassment" means ... etc

Summary

Judge Paul Banner has again shown that he will not abide by the rules of procedure, statutory law, nor the mandates of the U.S. Supreme Court.

Justice requires that Judge Banner be immediately removed from this case. This man appears not to want to abide by the bounds of his authority, nor the constitutional rights of those before him. Justice also requires that Judge Banner's latest Findings, made in the absence of jurisdiction, be officially declared NULL and VOID.

For details, I am attaching my Oct. 21, 2003 inquiry letter to Judge Banner ("WHAT IS GOING ON?"), a document I previously copied to you at that time, as you had already been assigned on Oct. 8, 2003 to hear THIS recusal.

Everything else about this case is fraud too. OVER MY OBJECTIONS, Judge Banner submitted WRONG JURY ISSUES. Plaintiff pleaded unpaid OPEN ACCOUNT for "legal services", but jury questions sounded in breach of contract, and even for that, Judge Banner

would not let the jury determine on ALL the elements. There of course was no "sale" and "delivery", nor question nor instruction thereto to the jury. Fraud, fraud, and more fraud.

Prayer

This whole mess upon me started in 1995, with a suit against me over a BEAVER dam! Except for that frivolous suit (No. 95-63, still active), neither you nor I would be involved in this today. **Judge Chapman, PLEASE, resolve this matter, ONCE and FOR ALL.**

Sincerely,



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

Attachment: "WHAT IS GOING ON?" To Judge Banner, Oct. 21, 2003
Copied to Judge Chapman and Judge Ovard at that time

Copy (less attachment):

Hon. John Ovard
Presiding Judge, First Administrative Judicial Region
133 N. Industrial LB50, Dallas, Texas 75207

Hon. Judge Paul Banner (No. 00-619)
24599 CR 3107, Gladewater, TX 75647

Frank C. Fleming (No. 00-619, No. 03-0082) 214 373-1234 265-1979?
6611 Hillcrest, PMB 305, Dallas, TX 75205-1301 214 373-3232 fax

Richard Ray (No. 95-63) 903 567-2051
300 S. Trade Days Blvd., Canton, TX 75103 903 567-6998 fax

Joel C. Elliott (No. 03-00460) 903 567-2051
300 S. Trade Days Blvd., Canton, TX 75103 903 567-6998 fax

File 95-~~93~~⁶³ *William B. Jones v. Udo Birnbaum*
File 00-619 *The Law Offices of G. David Westfall, P.C. v. Udo Birnbaum*
File 03-0082 *Udo Birnbaum v. Frank C. Fleming*
File 03-00460 *Udo Birnbaum v. Richard L. Ray*

**Complaint and Affidavit of Official Oppression and
Abuse of Official Capacity upon Udo Birnbaum**

SEC. 39.03, 39.02, SECOND DEGREE FELONY

synopsis

My name is UDO BIRNBAUM. I am 78 years old, reside in Van Zandt County, Texas, and am competent to make this affidavit.

This complaint arises out of a \$67,885 unconditional punishment upon me, by a Judge PAUL BANNER, by civil process, titled Order on Motion for Sanctions, for having made a cross-claim in a court of law, a First Amendment Right:

(HINT: civil process cannot unconditionally punish for past conduct – can only “coerce” into compliance – with some Order. Has to provide “keys to own release”)

*“In assessing the **sanctions**, the Court has taken into consideration that although 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 **suits** against the individuals, **and I think** – can find that such **sanctions** as I’ve determined are appropriate”. (Judge Paul Banner, Transcript, Sanction hearing)*

details

On or about the 14th day of November, 2014, Senior “visiting” Judge PAUL BANNER, in Van Zandt County, Texas, did then and there, under color of the 294th District Court of Van Zandt County, and after having been made fully aware by said UDO BIRNBAUM at such proceeding, that his action was unlawful, on or about such 14th day of November, 2014, did Official Oppression and Abuse of Official Capacity upon said UDO BIRNBAUM.

Such Official Oppression and Abuse of Official Capacity – by said Judge PAUL BANNER - in a non-adjudicative setting - on such 14th day of November, 2014 – by magisterially breathing life anew – and color of legitimacy - onto Order on Motion for Sanctions – as it was up that day for “revival” by Application for Writ of Scire Facias to Revive Judgment. (HINT: An Order in need of “revival”? – something STINKS)

Such fresh life by on such 14th day of November, 2014, “visiting” Judge Paul Banner magisterially signing into the records of the 294th District Court of Van Zandt County, a document titled Order Reviving Judgment - upon the July 30, 2002 \$67,885 Order on Motion for Sanctions - as he had unlawfully oppressed upon same UDO BIRNBAUM in 2002.

Again, such Official Oppression and \$67,885 Abuse of Official Capacity by said Judge PAUL BANNER upon said UDO BIRNBAUM – as punishment - for having dared to exercise a First Amendment Right – to make a counter-claim – in said 294th District Court – when said UDO BIRNBAUM was sued:

“In assessing the sanctions, the Court has taken into consideration that although 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 suits against the individuals, and I think – can find that such sanctions as I’ve determined are appropriate”. (Judge Paul Banner, Transcript, Sanction hearing July 30, 2002)

The attached documents speak for themselves:

- Transcript Sanction Hearing - 2002 – finding of “well-intentioned”
- Order on Motion for Sanctions - 2002 – [\$67,885] “no-mention-anything”
- Findings of Fact and Conclusions of Law - 2003 – re his \$67,885 Order on Motion for Sanction – suddenly “all-venom” - no more “well-intentioned”
- Order Reviving Judgment - 2014 – fresh life upon unlawful [\$67,885] Order on Motion for Sanctions – and conceal as “Sanction Judgment”

(details at www.OpenJustice.US)

summary

(all “venom” - no more “well-intentioned”)

Here, a few quotes from Judge Paul Banner’s Findings of Fact and Conclusions of Law as go with his [\$67,885] Order on Motion for Sanctions – which Order he re-executed on Nov. 14, 2014, by reviving same that day.

THINK – why would any judge want or have to make a FINDING on his own ORDER in the first place – and “revive” such own 2002 Order - in 2014? Something really STINKS.

Was of course a **JURY** cause. Findings had to be by **JURY**, but

11. ... **punitive** damages awarded **by the Court** prevent similar **future** action p3
14. ... the relief **which the Court seeks** **and others** similarly situated from **filing** lawsuits. p3
15. ... **punitive** damage conduct to be **punished** p3
4. ... on the evidence **presented to the Court** p5
9. ... **punitive** damages for the **filing** **lawsuit** p5
10. ... [for] **filing** this claim **calls out** for ... **punitive** damages p6
15. ... The award of **punitive** damages harm done p6
16. ... The award of **punitive** damages is not excessive. p5
- 17.... **Punitive** damages gain the **relief sought** which is to stop **and others like him**, from **filing** **lawsuits**. p6
18. ... **punitive** damage award to the harm done. p7
19. ... Authority for the **punitive** damage award etc. common law of Texas. p7

Totally “inconsistent with due process”. Filing a lawsuit (I did NOT – only made a counter and cross-claim) is a First Amendment Right. **ANY** adverse action – by a public official – for exercising a Right (and Judge Banner says that is why he did it) **is** official oppression. He also cannot impose **punitive** sanction by **civil** process – only “coercive” – where one has the “keys to one’s own release” – i.e. by complying with some Order – of which there was none – to purge a contempt!

And all these poison words? At his **very sanction hearing**, he found me “**well-intentioned**”, only that HE did not see my **evidence** as showing my **counter-claim**. Weighing the evidence is of course for the jury. And he even states – that he is **punishing** (“*sanctions*”) me – for **having** made a counter-claim – a **First Amendment Right!** Civil contempt cannot punish for past conduct. Period. US Supreme Court. Plum mad. So, once again:

"In assessing the sanctions, the Court has taken into consideration that although 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 suits against the individuals, and I think – can find that such sanctions as I've determined are appropriate". (Judge Paul Banner, Transcript, Sanction hearing)

Indicated real reason: - to stop this defendant "and others like him" (Judge Paul Banner Findings) - from going Pro Se with civil RACKETEERING counter-claims – against fraudulent suits – by lawyers - for that holiest-of-holies - LEGAL FEES!

summary

So, what happened to "well-intentioned"? ANSWER: All one big cover-up – and the Order Reviving Judgment of November 14, 2014 – of the \$67,885 sanction – is nothing less than a fresh re-execution – on November 14, 2014, of Official Oppression and Abuse of Official Capacity.

All statements upon personal knowledge, all attached documents true copies of the originals, except for obvious markups all by me, all of which also upon personal knowledge. Lots more "stuff" at www.OpenJustice.US

Attached: See page 2 for list

UDO Birnbaum
UDO BIRNBAUM
540 Van Zandt CR 2916
Eustace, TX 75124
(903) 479-3929
brnbn@aol.com

SIGNED this 31 day of Aug, 2015

UDO Birnbaum
UDO BIRNBAUM

SUBSCRIBED AND SWORN TO BEFORE ME on this 31st day of August, 2015



Brenda Harmison
Notary Public, State of Texas

7-30-2002 "Sanction Hearing". Compare the "well-intentioned" here, with all the POISON WORDS in the ONE YEAR LATER "Finding of Fact" ! HINT: The "Finding" was a CYA - for all this done WITHOUT THE JURY.

1 damages, \$5,000.00 in punitive and the joint and several
2 \$50,085.00 in attorneys' fees. Mr. Birnbaum's sanctions as
3 against Mr. Fleming or against the P.C. is denied and nothing
4 is ordered.

well-intentioned

was a JURY trial. Why is HE weighing the evidence?

5 In assessing the sanctions, the Court has
6 taken into consideration that although Mr. Birnbaum may be
7 well-intentioned and may believe that he had some kind of
8 real claim as far as RICO there was nothing presented to the
9 court in any of the proceedings since I've been involved that
10 suggest he had any basis in law or in fact to support his
11 suits against the individuals, and I think -- can find that
12 such sanctions as I've determined are appropriate. And if
13 you will provide me with an appropriate sanctions order, I
14 will reflect it.

\$67,000 Sanction - for a "well-intentioned" COUNTER-CLAIM - a First Amendment Right ! Official Oppression

15 Now, as far as relief for sanctions on behalf
16 of Mr. Westfall, individually, that is specifically denied.

17 Any relief sought by any party by way of
18 sanctions which have not been specifically addressed either
19 by the granting or the denial of same -- such is denied.

20 Okay. How soon can I expect an order because
21 I gather this matter will go up to whatever appropriate
22 appeals court for review?

23 MR. FLEMING: I will give Mr. Birnbaum the
24 statutory three days. I'll submit it to him. And if I don't
25 hear back from him, I'll submit it to you after.

www.OpenJustice.US

It was a JURY case - and ONLY the jury can award "damages". There was NO JURY making this AWARD!

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

A. Christina Westfall and Stefani Podvin are awarded jointly and severally the amount of **\$50,085.00** as reimbursement for their joint attorney's fees.

B. Christina Westfall is awarded actual damages for her personal inconvenience in the amount of **\$1,000.00**, and she is further awarded punitive damages for the harassment caused to her in the amount of **\$5,000.00**.

C. Stefani Podvin is awarded actual damages for her personal inconvenience in the amount of **\$1,800.00**, and she is further awarded punitive damages for the harassment caused to her in the amount of **\$5,000.00**.

D. The Court denies the request for a finding of any sanctions to be awarded in favor of G. David Westfall, individually.

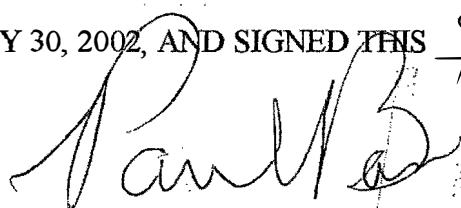
E. The Court denies the request for a finding of any sanctions to be awarded in favor of Udo Birnbaum.

Cannot award "judgment" - to someone who is NOT A PLAINTIFF !

IT IS FURTHER ORDERED THAT the judgment here rendered shall bear interest at the rate of **ten percent (10%)** from July 30, 2002, until paid.

All other relief regarding any motions for sanctions on file in this matter not expressly granted in this order is hereby denied.

THIS JUDGMENT RENDERED ON JULY 30, 2002, AND SIGNED THIS 9 day of August, 2002.



JUDGE PRESIDING

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WESTFALL/UDO/PLEADINGS/ORDER ON SANCTIONS

156/835

in response to a request from the Defendant/Counter-Plaintiff, the Court makes its findings of fact and conclusions of law as follows:

Findings of Fact

1. The Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy claims against Christina Westfall and Stefani Podvin (the wife and daughter of the Defendant/Counter-Plaintiff's former attorney, David Westfall) were **groundless and totally unsupported** by any credible evidence whatsoever.

Always remember - the court reporter found him saying - that Mr. Birnbaum was "well intentioned". Suddenly all this stuff.

2. The Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy claims against Christina Westfall and Stefani Podvin were without merit and brought for the purpose of harassment, delay, and to seek advantage in a collateral matter by attempting to cause the original **Plaintiff**, David Westfall to drop his claim for un-reimbursed legal services provided to the Defendant.

3. The Defendant/Counter-Plaintiff was afforded numerous opportunities to marshal his evidence and present any facts to support his allegations concerning RICO civil conspiracy claims against the wife and daughter of the Defendant/Counter-Plaintiff's attorney, David Westfall. The Defendant/Counter-Plaintiff wholly failed to provide any such credible evidence at either the summary judgment phase of the lawsuit or at the hearing on the motion for sanctions.

4. The attempt to provide testimony by the Defendant/Counter-Plaintiff concerning RICO civil conspiracy claims were his own opinions and **totally uncorroborated** by any other evidence.

5. The Defendant/Counter-Plaintiff never established that he had suffered any economic damages as a result of an alleged conspiracy. The Defendant/Counter-Plaintiff was sued by his former counsel to collect money for **legal work** which had been performed for the Defendant/Counter-Plaintiff for which the Defendant/Counter-Plaintiff had not paid his attorney in

Judge Paul Banner did NOT submit ANY of this to the jury! He INSTRUCTED THEM that Mr. Birnbaum had "FAILED TO ABIDE"!

full. The jury found that the work had been performed by the attorney, the amount charged to the client was reasonable, and that there was an amount owed by the Defendant/Counter-Plaintiff to the Plaintiff. The Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy claims had no bearing on whether or not the Defendant/Counter-Plaintiff received the legal services and owed the balance of the outstanding attorney's fees.

6. The filing of the Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy was a blatant and obvious attempt to influence the outcome of the Plaintiff's legitimate lawsuit against the Defendant/Counter-Plaintiff and to cause harassment to the Plaintiff and his family members.

7. The behavior of the Defendant/Counter-Plaintiff in filing claims concerning RICO civil conspiracy in this lawsuit have been totally without substantiation on any cause of action pled.

8. The conduct of the Defendant/Counter-Plaintiff giving rise to the award of punitive damages was engaged in willfully and maliciously by the Defendant/Counter-Plaintiff with the intent to harm the Plaintiff and the Counter-Defendants.

How about "well intentioned"? Remember?

9. The amount of actual damages, attorney's fees, suffered by the Counter-Defendant was proven to be reasonable and necessary by a preponderance of the evidence and not challenged by the Defendant/Counter-Plaintiff at the hearing on sanctions. The amount of actual damages awarded was in an amount that was proven at the hearing.

Was a JURY case. No jury at this hearing.

10. The amount of damages for inconvenience awarded by the court was proven at the hearing by a preponderance of the evidence and not challenged by the Defendant/Counter-Plaintiff at the hearing on sanctions. The court awarded damages for inconvenience in an amount the Court found to be reasonable and necessary, supported by evidence, and appropriate considering the circumstances.

B.S.

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11. The amount of **punitive** damages awarded by the Court were found to be supported by the evidence and necessary under the circumstances to attempt to **prevent similar future action** on the part of the Defendant/Counter-Plaintiff.

Can't do this in a CIVIL proceeding. Takes FULL CRIMINAL PROCESS.

12. The sanctions award is directly related to the harm done.

13. The sanctions award is not excessive in relation to the harm done and the **net worth of the Defendant/Counter-Plaintiff**.

No evidence to any of this B.S. ever!

14. The sanctions award is an appropriate amount in order to gain the **relief which the Court seeks**, which is to stop the Defendant/Counter-Plaintiff and **others similarly situated** from filing **frivolous lawsuits**.

"relief which the Court seeks" - to keep from filing lawsuits - a First Amendment Right. OFFICIAL OPPRESSION PER SE.

15. The amount of the **punitive** damage award is an amount narrowly tailored to the amount of harm caused by the offensive conduct to be **punished**.

16. The Counter-Defendants suffered both economic and emotional damages as a result of the Defendant/Counter-Plaintiff's lawsuit and specifically the frivolous nature of the lawsuit caused damages which included expenses (in addition to taxable court costs), attorney's fees, harassment, inconvenience, intimidation, and **threats**.

No evidence to all this B.S. Remember "well intentioned"?

17. The Counter-Defendants established a prima facie case that this lawsuit was filed by the Defendant/Counter-Plaintiff without merit and for the purpose of **harassment**. The prima facie case was made by the testimony and documents introduced as evidence by the Counter-Defendants at the summary judgment proceedings as well as at the hearing on sanctions on July 30, 2002.

18. After the Counter-Defendants established their prima facie case, the Defendant/Counter-Plaintiff failed wholly to provide any credible evidence to support the legal theories of the Defendant/Counter-Plaintiff.

Conclusions of Law

1. The Defendant/Counter-Plaintiff wholly failed to provide any credible evidence to substantiate any of his claims concerning a RICO civil conspiracy claim.

2. An essential element of each of Defendant/Counter-Plaintiff's claim was damages.

3. The Defendant/Counter-Plaintiff failed to prove any damage as a direct result of any action or inaction caused by the Plaintiff or the Counter-Defendants.

4. All of Defendant/Counter-Plaintiff's claims were as a matter of law unproved and untenable on the evidence presented to the Court. How about "evidence to the JURY"?

5. Based upon the facts presented to support Defendant/Counter-Plaintiff's claim concerning RICO civil conspiracy charges, the Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy were completely untenable.

6. The Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy charges were not based upon the law, were not a good faith extension of existing law, and were brought and continued to be urged for the purpose of harassment. was "civil RICO" - not the mumbo-jumbo above

7. The court concludes as a matter of law that Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy were brought for the purpose of harassment.

8. The Defendant/Counter-Plaintiff's behavior in bringing and prosecuting this frivolous lawsuit was a violation of one or more of the following: §9.000 et seq. Civ. Prac. & Rem. Code, §10.000 et seq. Civ. Prac. & Rem. Code, and/or Rule 13, T.R.C.P. what about "well intentioned"?

9. The Court has the power to award both actual and punitive damages against the Defendant/Counter-Plaintiff for the filing and prosecution of a frivolous lawsuit. This authority stems from one or more of the following: §9.000 et seq. Civ. Prac. & Rem. Code, §10.000 et seq. Civ. Prac. & Rem. Code, Rule 13, T.R.C.P., and/or the common law of Texas.

Findings of Fact and Conclusions of Law

PAGE 5 of 7

Official Oppression per se

10. The behavior and attitude of the Defendant/Counter-Plaintiff in filing and prosecuting this claim against the Counter-Defendants calls out for the award of both actual and **punitive** damages to be assessed against the Defendant/Counter-Plaintiff.

11. The Counter-Defendants were successful in presenting a prima facie case to the Court on the issue of sanctions. After the prima facie case was made, the burden of proof shifted to the Defendant/Counter-Plaintiff and the Defendant/Counter-Plaintiff failed in its effort to prove good faith in the filing of the RICO civil conspiracy claims.

12. The appropriate award for actual damages as a result of the filing and full prosecution of this frivolous lawsuit is an award of **\$50,085.00 in attorney's fees**. The Court makes this award under power granted to the Court by §9.000 et seq. Civ. Prac. & Rem. Code, §10.000 et seq. Civ. Prac. & Rem. Code, Rule 13, T.R.C.P., and/or the common law of Texas.

13. The appropriate sanction for the inconvenience suffered by the Counter-Defendants for the filing and full prosecution of this frivolous lawsuit is an award of **\$1,000.00** to Christina Westfall and **\$1,800.00** to Stefani Podvin, to be paid by the Defendant/Counter-Plaintiff to the Counter-Defendants.

14. The appropriate punitive sanction for the filing and full prosecution of this frivolous lawsuit is an award of **\$5,000.00** to Christina Westfall and an award of **\$5,000.00** to Stefani Podvin, to be paid by the Defendant/Counter-Plaintiff to the Counter-Defendants.

15. The award of **punitive** damages is directly related to the harm done.

16. The award of **punitive** damages is not excessive.

17. The award of **punitive** damages is an appropriate amount to seek to gain the relief sought which is to stop this Defendant/Counter-Plaintiff, and **others like him**, from **filing** similar frivolous

lawsuits.

OFFICIAL OPPRESSION per se. Can't do "punitive" in a CIVIL proceeding. Only "coercive". Requires "keys to own release"!

Findings of Fact and Conclusions of Law

PAGE 6 of 7

westfall\udo\judgment\findings of facts2

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18. The amount of the **punitive** damage award is narrowly tailored to the harm done.

19. Authority for the **punitive** damage award is derived from §10.000 et seq. 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.

SIGNED THIS 30 day of September, 2003.



JUDGE PRESIDING

Careful study of this document shows that all this B.S. is to C.Y.A. for having "awarded damages" WITHOUT A JURY - in a jury cause - and trying to CONCEAL that this is exactly what Judge Paul Banner had done.
--
It also is a window on his mindset during the JURY TRIAL of April 8-11, 2002, his hatred of Pro Se parties.
--
JUST READ ALL THIS VENOM IN THIS DOCUMENT. Remember, "although Mr. Birnbaum may be well intentioned --- etc. I (Mr. Banner) did not see the evidence as showing etc " - or something like that.
--
Was of course a JURY TRIAL - so why was Mr. Banner "weighing" the evidence?

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Application should be granted and that the Sanctions Judgment revived for the period of time proscribed by law.

IT IS HEREBY, ORDERED, ADJUDGED, AND DECREED, that the Sanctions Judgment (a true and exact copy of which is attached hereto as Exhibit 1 and made a part of this Order as if fully set forth at length) rendered in the above-entitled and numbered cause on July 30, 2002 and signed on August 9, 2002, is hereby revived in all respects against defendant/counter-plaintiff Udo Birnbaum;

IT IS FURTHERED ORDERED that execution on the revived Sanctions Judgment may immediately issue; and

IT IS FURTHER ORDERED that all costs are taxed against the Defendant, Udo Birnbaum.

All relief requested, not granted herein, is expressly denied.

SIGNED this 14 day of November, 2014


JUDGE PAUL BANNER, PRESIDING

ALL FRAUD!
In a JURY case - "judgment" was done
WITHOUT A JURY!
And "awarded" to someone who had been
"out" by summary judgment long ago - and
NEVER WAS A PLAINTIFF!
Also plum UNLAWFUL punishment for
exercising a First Amendment Right to make
a COUNTER-CLAIM! (see "Findings")
Official Oppression per se!

3. The "enterprise" is distinct from the RICO "persons". The "enterprise" is distinct from the "pattern of racketeering". Injury was "by reason of the RICO violation" and "flows from the pattern of racketeering". All the legal requirements have been met including the element of continuity plus relationship and the threat of such conduct extending into the indefinite future.

4. The "enterprise", the "pattern of racketeering", and the "conducting of the affairs of the enterprise" is clearly visible in the testimony of G. David Westfall and his accountant Richard Alderson, as shown in the transcript of the September 20, 2000 bankruptcy proceedings against G. David Westfall (No 300-34287-HCA-7, Exhibit 8).

5. This Court has jurisdiction to hear this RICO claim.

INTRODUCTION

6. Having diligently investigated both the facts and the law, Birnbaum has found that the matters he previously complained of were not isolated garden variety wrongs, but that the evidence shows he is the victim of conduct proscribed by 18 U.S.C. § 1961 *et seq* ("RICO"), i.e. that certain "persons" established, conducted and participated in an enterprise which engaged in a pattern of racketeering activity and affected interstate commerce, etc. and that he was injured by reason of such violation.

7. Birnbaum has also found, and comes to show, **that he is not the only victim** of the enterprise, i.e. that the enterprise and its scheme was and is ongoing **upon others**, and constitutes a menace projecting into the indefinite future.

8. Birnbaum, in asserting this supplementary Civil RICO claim, is in conformance with the Congressional intent of Civil RICO as established by the Supreme Court of the United States in *Rotella v. Wood et al. (2000)*, i.e. a "**congressional objective [in enacting Civil RICO] of encouraging civil litigation not merely to compensate victims but also to turn them into private attorneys general, supplementing Government efforts by undertaking litigation in the public good**".

9. State courts have concurrent jurisdiction to consider civil claims arising under RICO. *Tafflin v. Levitt, 493 U.S. 455 (1990)*. And, to the extent that Congress intended RICO to serve broad remedial purposes, concurrent jurisdiction will advance rather than jeopardize federal policies underlying the statute. *Id.*

10. Birnbaum was solicited by G. David Westfall upon the matter of the beheaded calves described in the Affidavit of Udo Birnbaum dated August 16, 2000, already previously supplied as Exhibit 1. Birnbaum was at that time a victim of the filing of a fraudulent suit in the Texas 294th District Court in Canton, Texas which had become the feature article in a newsletter about corrupt lawyers a certain Michael Collins had mailed to 15,000 residents in Van Zandt County. (Exhibit 5). Shortly thereafter three beheaded calves appeared upon Birnbaum and Collins as reported by several newspapers. (Exhibit 6, 7).

11. The scheme upon Birnbaum in the Texas 294th District Court is fully shown in the complaint of extortion which G. David Westfall himself as Birnbaum's lawyer filed in the Federal Court in Dallas, Texas, including 104 attached exhibits, and by reference made a part of this Claim. G. David Westfall was and is well aware of the corruption that can be practiced in this state court.

12. Birnbaum paid G. David Westfall \$20,000 up front. Evidence that G. David Westfall had darker reasons than the \$20,000, i.e. active obstruction of Birnbaum's (3:99cv0696) and Michael Collins' (3:99cv0641) civil RICO cause in the Dallas Court for the purpose of ingratiating himself with certain Texas district judges is contained in another Affidavit of Udo Birnbaum, dated September 15, 2000, already previously supplied as Exhibit 2. Schemes such as this for the purpose of defrauding of the honest services of public officials have been held to violate RICO. *United States v. Brumley*, 116 F.3d 728 (5th Cir. 1997) en banc.

THE ENTERPRISE

13. Birnbaum incorporates as though fully set forth herein, each and every allegation contained in DEFENDANT'S ANSWER, COUNTERCLAIM, AND CROSS-COMPLAINT and in the preceding paragraphs.

14. The alleged RICO enterprise is the association in fact between "The Law Offices of G. David Westfall, P.C." ("The Law Office"), and "G. David Westfall Family Limited Partnership" ("The Farm"). The enterprise has both a legal and hierarchical elements. The enterprise affects interstate and/or foreign commerce.

15. The named enterprise is distinct from the three above named RICO defendants. The defendants are associated with this enterprise and control and conduct the affairs of this enterprise in a manner violative of RICO, and their proscribed conduct projects into the indefinite future.

16. The "enterprise" is evident from the transcript of the September 20, 2000 bankruptcy proceedings against G. David Westfall (Exhibit 8):

- Mr. Alderson, the accountant for everybody, including "The Law Office", "Westfall Farms", Mr. Westfall, Mrs. Westfall for ten (10) years does not "know" if Mr. Westfall is a shareholder of "The Law Office of G. Westfall, P.C." page 33 starting line 9.
- Mr. Alderson's testimony that funds are co-mingled among the "enterprise". page 40 starting line 12 and going on for pages.
- The Court reprimanding Mr. Alderson: *"I don't understand how you can put your name on a tax return if you haven't looked to at least spot check checks."* And *"Aren't you sticking your neck out when you put your name on a return like that?"* page 52 starting line 15.
- David Westfall funding the whole bunch out of a single account. Starting page 64.
- Neither David Westfall nor Christina Westfall have personal checking accounts. Everything comes out of the slush fund "Law Office" account. Starting at page 77
- David Westfall hiding that his daughter Stefani Podvin is the real owner of "The Law Offices of G. David Westfall". page 87 line 16.
- When Westfall shuffled assets and the old Westfall Farms became a "dormant corporation". In there somewhere.
- David Westfall trying to make himself bullet proof from a pending \$500,000 King Ranch judgment. In there somewhere
- Etc

THE PURPOSE OF THE SCHEME

17. The purpose of the scheme is to illicitly enrich the named RICO persons at the expense of victims such as Birnbaum. As used in this Claim, the term "enrich" includes maintaining or securing employment, status, influence, personal power, and/or assurances of each other's present and future support. A further purpose of the scheme is to ingratiate the defendants with public servants by creating what could be termed "YOM" ("you owe me") chips, constituting future enrichment, and to pay on "IOU" ("I owe you") chips.

18. A further purpose of the scheme, i.e. the establishment and maintenance of the total "enterprise" is to make G. David Westfall "bullet-proof" as he has used that term by shuffling

proceeds of the pattern of racketeering activity into "G. David Westfall Family Limited Partnership", allowing him to continue the ongoing pattern of racketeering.

THE SCHEME

19. Although the exact details of the alleged extortion scheme and the scheme to defraud of honest service are not known and await discovery, the scheme evinced from the pattern of racketeering activity is as follows:

20. G. David selects a victim based not only on the financial assets as he has come to know such person has, but also on the future "usefulness" of such person such as "free" labor he can extract in behalf of "The Farm", their future "usefulness" as solicitor for "The Law Office", or as a bargaining chip, source of privileged information, or as a "toy".

21. G. David Westfall, as a public citizen, and in the glow of the law license entrusted him by the Texas State Bar, slowly and carefully "buddies" up to the victim and obtains their complete trust. He may or may not have them sign a retainer agreement, but downplays the legal implications of such document in the name of "The Law Offices of G. David Westfall, P.C." by not providing timely account statements and telling them not to worry about the bill.

22. G. David Westfall, as a RICO person, at the same time schemes as how to get the most out of the situation, going even so far as conspiring to get his victim "client" to drop defendants to ingratiate himself with those same defendants (Birnbaum and Collins case).

23. G. David Westfall, as a RICO person, begins to create an alternate version of the facts, i.e. planting untruths that somebody is "mean" (Collins), or "has not told the truth" (Collins), or is "weird" (Birnbaum), all the time still working on building the trust of his victims, and of course not telling them that he is spreading lies, and still not providing statements.

24. When such victim has discovered G. David Westfall's scheme, i.e. how much Westfall is benefitting, and how little service he (Westfall) has provided, and all the lies he has told them, or at such time as G. David Westfall believes they have discovered such, he strikes, and as a public citizen, and under power of his law license proceeds to take under force or perceived force that which he wants.

25. When such victim begins to assert his rights as would expose G. David Westfall's scheme, G. David Westfall calls in his "bargaining chips" to "do in" and/or silence such victim by whatever means are available.

PATTERN OF RACKETEERING ACTIVITIES

The pattern upon Udo Birnbaum:

26. Westfall solicited Udo Birnbaum to obstruct his civil RICO cause 3:99cv0696 in the Dallas Federal Court for the purpose of ingratiating himself with certain rogue judges. Westfall gets paid \$20,000 up front. Evidence is in the documents Westfall thereto created and the total court file hereby made a part of this claim by reference. Evidence is also in the previously provided exhibits.(Exhibits 1-4)

27. Westfall obstructed in the administration of justice in the Dallas Federal Court in cause 3:99cv0696. Evidence is in the documents Westfall thereto created and in the total court file hereby made a part of this claim by reference.

28. Westfall pushes Udo Birnbaum to drop certain judge defendants from his suit, but does not succeed.

29. As a public citizen Westfall defrauded Udo Birnbaum of the "intangible right of honest service".

30. Westfall begins to discredit Udo Birnbaum's by telling others that Udo Birnbaum is "weird". Westfall never sends accounting statements.

31. Westfall suddenly created fraudulent accounts at "The Law Offices of G. Westfall P.C.", i.e. "the bill".

32. Westfall attempt to extort \$18, 121.10 ("the bill") by filing fraudulent suit in the very same Texas 294th District Court as Westfall knows is a "pocket of corruption" as shown by his own document and 104 attached Exhibits!

33. Westfall is trying to pull a "sneaky Pete" attempting to extort not only an additional \$18,121.10 in "legal fees", but to defraud Birnbaum of his right to be heard upon the fraud in the entire "bill" and the entire scheme.

The pattern upon Michael Collins:

34. Solicited Michael Collins to obstruct his civil RICO cause 3:99cv0641 in the Dallas Federal Court for the purpose of ingratiating himself with certain rogue judges. Evidence in the

previously provided exhibits. Gets paid only \$3000. Never sends Collins any bill or accounting statement.

35. Pushes Collins into working out of Westfall's "Law Office" and even live there a week.

36. Pushes Collins into dropping such certain judge defendants from Collins' suit, stating that Collins would have a "better case" that way. Westfall succeeds.

37. Pushes Collins into working at "Westfall Farms" and tries to get him to move out there. Westfall provides Collins with a list of tasks to be performed. Collins sees through the scheme.

37. Pushes Collins to obtain rights to "My Playhouse", a cardboard construction project Collins was marketing. Collins sees through the scheme.

38. Pushes to obtain rights to a book Collins was writing. Collins sees through the scheme.

39. Behind Michael Collins' back tells others Michael Collins is "mean" and a "liar".

40. Obstructed in the administration of justice in the Dallas Federal Court in cause 3:99cv0641.

41. As a public citizen defrauded Michael Collins of the "intangible right of honest service".

42. Created fraudulent "bill" at "The Law Offices" in Collins' Walmart suit. Never previously sent accounting statement. Refused to return Collins' Walmart file. Never provided a "bill" in Collins' federal Civil RICO suit.

The pattern upon Kathy Young:

43. "Saves" Kathy Young from trumped up criminal charges in the Texas 294th District Court. Ultimately also becomes her lawyer in her divorce matter in 1998.

44. Pushes Young to turn over spousal support payments. Never straightens out divorce and keeps collecting \$700 per month for two years. Never provides accounting statement.

45. Pushes Young to work at "Westfall Farms" and ultimately live there. Young feeds and waters the animals, moves hay, and looks after the calves and the place in general.

46. Pushes Young to solicit Michael Collins and Udo Birnbaum.

47. Becomes Young's mothers' lawyer telling Young her mother has a "good case". Never provides accounting statement. Does not provide "honest service". Finally tells Young her mother never had a "good case." Refuses to return file.

48. When Young comes to realize how she got duped by Westfall, Westfall turns on her, and tries to have her arrested in another matter he "did not clean up".

49. Labor was extorted under threat of "legal fees" for the benefit of "Westfall Farms".

The pattern upon Jeryl Cockerham

50. Westfall gets Kathy Young to bring Cockerham to Westfall. Cockerham, former Sheriff of Van Zandt County, had been run through the mill in the same pocket of corruption in the Texas 294th District Court. Westfall had it right, when he stated to Birnbaum and Collins that *"It[Van Zandt County] is truly a RICO enterprise."*

51. When Cockerham told Westfall he could not afford him, Westfall kept telling him "not to worry" about the bill, all the time discrediting Cockerham before others by claiming Cockerham was avoiding him and not paying his bill.

52. Westfall finally sent Cockerham a bill totaling \$13,861.90 for work supposedly done between July and December of 1998. Cockerham paid a total of \$4,500. Westfall pushed Cockerham to work at "Westfall farms".

53. The first charge on Cockerham's "bill", is a charge for a teleconference between Kathy Young, Westfall's solicitor, and G. David Westfall. This fits the pattern of Birnbaum's "bill", which likewise has a charge for a teleconference with Kathy Young, his solicitor, as the first entry.

54. Labor was extorted under threat of "legal fees" for the benefit of "Westfall Farms".

The pattern upon Mathew Chitty:

55. Mathew Chitty was charged with a bogus criminal charge in the Texas 294th District Court. G. David Westfall became Chitty's lawyer and told Chitty that he had taken care of the matter, but he had not.

56. G. David Westfall ran up a bill of about \$9,000 and Mathew Chitty likewise wound up on "Westfall Farms", where he lived in the barn.

57. Mathew Chitty fed and watered the animals, moved hay, worked on the road, and was to be paid \$150 per week and money to be taken off the "bill".

58. Mathew Chitty ultimately fired G. David Westfall for lying to him and moved. G. David Westfall thereupon tried to have him arrested upon the criminal matter he had left "unfinished".

59. Labor and liberty was extorted under threat of "legal fees" for the benefit of "Westfall Farms".

The pattern upon Glen Cox:

60. Glen Cox was charged with a bogus criminal matter and David Westfall became his lawyer.

61. G. David Westfall did not "do as good a job of handling Glen's legal matters as he could have" to enable him to maintain a substantial leverage position over him. Glen Cox wound up working on "Westfall Farms", but Westfall did not pay him as agreed and Cox fired Westfall and left.

62. Westfall tried to have Cox arrested for stealing a trailer which he (Westfall) had in fact loaned to him. When that failed, he called Glen's bondsman to tell him that Glen no longer had a lawyer, and "needed to be picked up."

63. Tried to get Kathy Young to make a fraudulent affidavit that Westfall had not loaned the trailer to Cox.

64. Labor and liberty was extorted under threat of "legal fees" for the benefit of "Westfall Farms".

The pattern upon Margie Phelps:

65. G. David Westfall became her lawyer and got her to turn her file and research over to him. Westfall intentionally ran her past the statute of limitations and then would not return her file.

66. Phelps worked for Westfall without pay and Westfall tried to get her to solicit for him.

Summary of the Pattern of Racketeering

67. A Horror story of a pattern of defrauding of honest service and obstruction in the administration of justice.

COUNT ONE--RICO
For violation of 18 U.S.C. §1962(c)
(participating through a pattern of racketeering activity)
G. David Westfall, Christina Westfall, and Stefani Podvin

68. At all relevant times, Birnbaum was a "person" within the meaning of RICO, 18 U.S.C. §§ 1961(3) and 1964(c).

69. At all relevant times, the above-named were "persons" within the meaning of RICO, 18 U.S.C. §§ 1961(3) and 1962(c).

70. At all relevant times, the "enterprise" was engaged in, and its activities affected, interstate and foreign commerce, within the meaning of RICO, 18 U.S.C. § 1962(c).

71. At all relevant times the above-named associated with this enterprise conducted or participated, directly or indirectly, in the conduct of the enterprise's affairs through a "pattern of racketeering activity" within the meaning of RICO, 18 U.S.C. § 1961(5), in violation of RICO, 18 U.S.C. § 1962(c).

72. Specifically, at all relevant times, the above-named engaged in "racketeering activity" within the meaning of 18 U.S.C. § 1961(1) by engaging in the acts set forth above. The acts set forth above constitute a violation of one or more of the following statutes: 18 U.S.C. § 1341 (mail fraud); 18 U.S.C. § 1503 (obstruction of justice). Each of the above-named committed and/or aided and abetted the commission of two or more of these acts of racketeering activity.

73. The acts of racketeering activity referred to in the previous paragraph constituted a "pattern of racketeering activity" within the meaning of 18 U.S.C. § 1961(5). The acts alleged were related to each other by virtue of common participants, a common method of commission, and the common purpose and common result of defrauding while enriching the above and concealing their fraudulent activities. The fraudulent scheme threatens to continue into the indefinite future.

74. As a result of the violation of 18 U.S.C. § 1962(c), Birnbaum was injured by the \$20,000 retainer fee paid, other direct costs, and loss of earnings.

75. As a result of their misconduct, the above-named are liable to Birnbaum for his injury in an amount to be determined at trial.

76. Pursuant to RICO, 18 U.S.C. § 1964(c), Birnbaum is entitled to recover threefold his damages plus costs and attorney's fees.

COUNT TWO—RICO

For violation of 18 U.S.C. §1962(a)

(operating enterprise with income derived from a pattern of racketeering activity)

G. David Westfall, Christina Westfall, and Stefani Podvin

77. At all relevant times, Birnbaum was a "person" within the meaning of RICO, 18 U.S.C. §§ 1961(3) and 1964(c).
78. At all relevant times, the above-named were "persons" within the meaning of RICO, 18 U.S.C. §§ 1961(3) and 1962(c).
79. The above-named operated an "enterprise" within the meaning of RICO, 18 U.S.C. § 1961(4).
80. At all relevant times, this "enterprise" was engaged in, and its activities affected, interstate and foreign commerce, within the meaning of RICO, 18 U.S.C. § 1962(c).
81. At all relevant times, the above-named derived income derived from a "pattern of racketeering activity" within the meaning of RICO, 18 U.S.C. § 1961(5).
82. At all relevant times the above-named used part of that income in acquiring an interest in or operating the "enterprise".
83. As a result of the violation of 18 U.S.C. § 1962(a), Birnbaum was injured by the \$20,000 retainer fee paid, other direct costs, and loss of earnings.
84. As a result of their misconduct, the above-named are liable to Birnbaum for his injury in an amount to be determined at trial.
85. Pursuant to RICO, 18 U.S.C. § 1964(c), Birnbaum is entitled to recover threefold his damages plus costs and attorney's fees.

COUNT THREE--VIOLATIONS OF THE
TEXAS DECEPTIVE TRADE PRACTICES ACT (DTPA)
The Law Offices of G. David Westfall, P.C., G. David Westfall,
Christina Westfall, and Stefani Podvin
(previously claimed)

COUNT FOUR-FRAUD
The Law Offices of G. David Westfall, P.C., G. David Westfall,
Christina Westfall, and Stefani Podvin
(previously claimed)

86. The above-named made misrepresentations of material facts and failed to inform Birnbaum of material facts.

87. The above-named knew or should have known of the falsity of their representations to Birnbaum or of the incompleteness of their statements to Birnbaum at the time that they were made.

88. The misrepresentations, omissions, and concealment of material facts were made intentionally or recklessly for the purpose of inducing Birnbaum to submit to their scheme, and were made with reckless and utter disregard as to their truthfulness or completeness.

89. Birnbaum reasonably and justifiably relied to his detriment on the truthfulness of the misrepresentations and on the completeness of disclosures of material facts. But for the misrepresentations, omissions, and concealment of material facts, Birnbaum would not have paid the \$20,000 retainer fee and incurred other direct costs.

90. As a direct and proximate result of the intentional misrepresentations, omissions, and concealment of material facts, Birnbaum has been damaged by the \$20,000 retainer fee, other direct costs, and loss of earnings.

91. The conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in conscious disregard for the rights of Birnbaum. Birnbaum is therefore entitled to an award of punitive damages.

Summary

92. This never was an honest "collection" suit, but a full-blown racketeering scheme being executed within full view of this Court as evidenced by the documents already before it.

93. Recognizing the suit for what it is, Birnbaum hereby drops his various claims for affirmative relief previously made except for the claims for Fraud and under the Texas Deceptive Trade Act (DTPA), and asserts the two RICO claims above.

PRAYER FOR RELIEF

Wherefore, Udo Birnbaum respectfully requests that judgment be entered against parties THE LAW OFFICES OF G. DAVID WESTFALL, P.C., G. DAVID WESTFALL, CHRISTINA WESTFALL, and STEFANI PODVIN, by reason of fraud, violation of the Texas Deceptive Trade Practice Act, and under Civil RICO.

Their conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in conscious disregard for the rights of Defendant. Defendant is therefore entitled to an award of punitive damages. Defendant seeks judgment against each of them jointly and severally:

- (a) In an amount not less than \$100,000
- (b) For the costs of suit, including reasonable attorney's fees, if any
- (c) Pre-judgment interest at the maximum rate allowed by law
- (d) Post-judgment interest at the maximum rate allowed by law
- (e) Punitive damages in an amount as the jury may award at its discretion
- (f) All such other relief, legal and equitable, special or general, as the Court deems proper and just

BIRNBAUM HEREBY DEMANDS A TRIAL BY JURY

Respectfully submitted,



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 CMRR on this the 30 day of ~~May~~ ^{APRIL}, 2001 upon G. David Westfall, 5646 Milton, Suite 520, Dallas, Texas 75206 and Frank C. Fleming, Law Office of Frank C. Fleming, 6611 Hillcrest, Suite 305, Dallas, Texas 75205-1301.

APRIL


UDO BIRNBAUM

THIS is my "civil RICO" counter-claim upon I which I was so severely PUNISHED - \$62,885 plus another \$125,770.

*

Making a claim in court is of course a First Amendment Right

