

Just read this stuff - - "inconsistent with due process".  
Markups throughout this document. Also inconsistent with  
contemporaneous finding of "well-intentioned". ALL FRAUD

No. 00-00619

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

IN THE DISTRICT COURT

Plaintiff

Was a JURY cause. Had been tried to the JURY.  
Cannot - a SECOND time - "try to the Court".  
BLATANT FRAUD. This document is a CYA

v.

UDO BIRNBAUM

Defendant/Counter-Plaintiff

See my Rule 218  
Request for Clarification  
and Amendments  
for details

G. David Westfall, Christina Westfall, and  
Stefani Podvin,

Counter-Defendants

VAN ZANDT COUNTY, TEXAS

FILED FOR RECORD  
03 OCT - 8 PM 12: 14  
KAREN WILLSON  
DIST. CLERK VAN ZANDT CO. TX

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-captioned cause came on for trial to a jury on April 8, 2002. At the conclusion of the evidence, the Court submitted questions of fact in the case to the jury.

In addition to the matters tried to the jury the Court took under consideration the Motion filed by David Westfall, the Plaintiff (the "Plaintiff"), and Christina Westfall, and Stefani Podvin (Christina Westfall and Stefani Podvin collectively referred to herein as the "Counter-Defendants") concerning the filing of a frivolous lawsuit and Rule 13 Sanctions. The combined issues of the counter-claim on frivolous lawsuit and the Rule 13 Motion were tried together to the Court on July 30, 2002. At the proceedings on July 30, 2002, the Plaintiff appeared by counsel, the Counter-Defendants appeared in person and were also represented by their attorney. At the proceedings on July 30, 2002, Udo Birnbaum (the "Defendant/Counter-Plaintiff"), the Defendant/Counter-Plaintiff, appeared pro se.

There was NO "counter-claim" - EVER - in fact they had ALL been DISMISSED by "summary judgement" - long, long ago! ALL FRAUD. Look at heading - had been ONLY "counter-DEFENDANTS

After considering the pleadings, the evidence presented at the trial to the jury as well as the evidence presented at the summary judgment hearings and the sanctions hearing before the Court.

APP 55  
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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

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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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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.

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It also is a window on his mindset during the JURY TRIAL of April 8-11, 2002, his hatred of Pro Se parties.

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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.

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Was of course a JURY TRIAL - so why was Mr. Banner "weighing" the evidence?

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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