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RECEIVED OF: BIRNBAUM,UDO

FOR: BIRNBAUM,UDO

APPENDIX Vol. 1

DESCRIPTION: COURT COSTS FOR APPEAL PAID

Appendix - Vol 1 - 262 pages
Appendix - Vol 2 - 250 pages
Scroll down

AMOUNT DUE	\$1,037.60

AMOUNT PAID	\$1,037.60

BALANCE	\$.00

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CLERK'S RECORD

Volume 1 of 1

Trial Court Cause No. 00-00619

In the 294th Judicial District Court
of Van Zandt County, Texas.
Honorable Tommy Wallace, Judge Presiding

THE LAW OFFICES OF G. DAVID WESTFALL, P.C., Plaintiff(s)

vs.

UDO BIRNBAUM, Defendant(s)

Appealed to the
5TH COURT OF APPEALS

Attorney for appellant(s):

Name Udo Birnbaum - Pro Se

Address 540 VZ CR 2916, Eustace, Texas 75124

Telephone No. (903) 479-3929

Fax No. _____

SBOT No. _____

Attorney for: _____, Appellant(s)

Delivered to the FIFTH COURT OF APPEALS

on the 25TH day of March, 2003

Signature of Clerk Karen Wilson

Name of Clerk Karen Wilson

Title District Clerk

Appellate Court Cause No. _____

Filed in the _____

this _____ day of _____

_____, Clerk

By _____, Deputy

CAPTION

The State of Texas)
County of Van Zandt)

In the 294th Judicial District Court of Van Zandt County, Texas the Honorable, Paul Banner, Judge Presiding the following proceedings were held and the following instruments and other papers were filed in this cause, to wit:

TRIAL COURT CAUSE NO. 00-00619

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

UDO BIRNBAUM,
Defendant

§
§
§
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IN THE 294TH COURT

VAN ZANDT COUNTY, TEXAS

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CIVIL DOCKET

CASE NO. 00-00

NUMBER OF CASE	STYLE OF CASE	ATTORNEYS	KIND OF ACTION	DATE OF FILING																																			
				Month	Day																																		
00-00019	The Law Offices of G. David Westfall vs. Udo Burkbaum	G. David Westfall Plaintiff. Defendant.	cust	09	21																																		
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<p><i>Judge Barnes Appointed</i></p> <p><i>PT- PFR</i></p> <p><i>X</i></p> <p><i>Dep's M/summary Judgment.</i></p> <p><i>all parties present. Evidence presented on Δ's motion to recuse. Both sides present & close. Arguments presented Δ's motion to recuse ^{is (PC)} insufficient at law and is untimely, and if it is not, Δ's burden fails to establish any grounds in its favor, and therefore, etc. et. denies the motion on its merits. Ct. takes issue of Sanctioning</i></p> <p><i>Next Burkbaum, under advisement</i></p> <p><i>Judge Ron Chapman</i></p>																																							

and exact copy of the original on file in the District Clerk's Office, Van Zandt County, Texas

VS. No. _____

Carroll Scott

ORDERS OF COURT CONTINUED

Order No.	Year	Description
9	02	4/2 All present, jury selected; sworn in started; Open State, End Recor
10	02	4/2 all present; End conbr
4	02	4/2 all present; End conbr
7	02	4/2 all present; End signed

Jury Verdict



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00-00619

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1	1 C	03282002	5 SUBPOENAS BIRNBAUM, UDO		
	1 P	03282002	5 SUBPOENAS BIRNBAUM, UDO		
3	1 C	04012002	PLAINTI. EXHIBIT LIST BIRNBAUM, UDO		
4	1 C	04042002	DEFENDANT BIRNBAUM'S OBJECTIONS TO PLAINTIFF'S BIRNBAUM, UDO REQUESTED JURY QUESTIONS		
5	1 C	04052002	PLAINT. REQ. FOR JURY QUESTIONS BIRNBAUM, UDO		
6	1 C	04102002	ORDER ON PLAINT. MOTION IN LIMINE BIRNBAUM, UDO		
7	1 C	04112002	RET. SUB. DAVID WESTFALL, BEVERLY HEARN, FRANK BIRNBAUM, UDO FLEMING, CHRISTINA WESTFALL, STEFANI PODVIN 04082002		
8	1 C	04112002	BIRNBAUM'S OBJECTIONS TO TODAY'S COURT CHARGE BIRNBAUM, UDO		
9	2 C	04292002	DEFENDANT BIRNBAUM'S AMENDED MOTION FOR ENTRY OF WESTFALL, G. DAV JUDGEMENT		

Seq. Party Name Locate Date

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I certify this to be a true and exact copy of the original on file in the District Clerk's Office, Van Zandt County, Texas.

Candi Scott

00-00619

Seq	P/C	Date	Description	Vol.	Page
1	1 C	05092002	MOTION FOR SANCTIONS BIRNBAUM, UDO		
	1 C	06052002	LETTER FROM UDO BIRNBAUM BIRNBAUM, UDO		
3	1 C	06052002	LETTER FROM BIRNBUAM TO BANKRUPTCY JUDGE BIRNBAUM, UDO		
4	1 C	07302002	FINAL JUDGEMENT BIRNBAUM, UDO	I	
5	1 C	08202002	RULE 276 BIRNBAUM, UDO		
6	1 C	08202002	MOTIONS TO RECONSIDER BIRNBAUM, UDO		
7	1 C	08212002	ORDER ON MOTIONS FOR SANCTIONS BIRNBAUM, UDO	I	
8	1 C	10042002	NOTICE OF OFFICIAL OPPRESSION BIRNBAUM, UDO		
9	1 C	10082002	APPENDIX A AND B TO BETTY FOR JUDGE BANNER WITH BIRNBAUM, UDO PETITION AND MOTION FOR RELEIF		

Seq. Party Name Locate Date

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I certify this to be a true
and exact copy of the
original on file in the
District Clerk's Office,
Van Zandt County, Texas.

Candi Scott

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Case No.

Docket Transactions

Screen 3 of 4

00-00619

File No. 00-00619

Seq	P/C	Date	Description	Vol.	Page
1	C	12022002	RETURN GREEN CARD FROM 5TH COURT OF APPEALS ON BIRNBAUM, UDO EXTENSION LETTER		
3					
4					
5					
6					
7					
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9					

Seq. Party Name Locate Date

F10- Imaging Cmd F13- Save Changes F16- Locates F24- Exit Prog F21- View Money



I certify this to be a true and exact copy of the original on file in the District Clerk's Office, Van Zandt County, Texas.
Candi Scott



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Candi Scott

No. 00-00619

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

vs.

UDO BIRNBAUM

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IN THE DISTRICT COURT

294th JUDICIAL DISTRICT

VAN ZANDT COUNTY, TEXAS

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VAN ZANDT CO. TX

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, THE LAW OFFICES OF G. DAVID WESTFALL, P.C., Plaintiff, complaining of UDO BIRNBAUM, hereinafter referred to as Defendant, and for cause of action would respectfully show the court the following:

I.

Plaintiff is a professional corporation with its principle office and place of business in Dallas, Dallas County, Texas.

Defendant is an individual whose residence is in Eustace, Van Zandt County, Texas and may be served with process at Route 1, Eustace, Texas.

II.

On or about May 5, 1999, Defendant retained Plaintiff to perform legal services in a civil matter in Cause No. 3:99-CV-0696-R in the United District Court for the Northern District of Texas in Dallas, Dallas County, Texas.

III.

The legal and/or personal services were provided at the special instance and requested of Defendant and in the regular course of business. In consideration of such services, on which systematic records were maintained, Defendant promised and became bound and liable to pay Plaintiff the prices charged for such services and expenses in the amount of \$18,121.10, being a reasonable charge for such services. A true and accurate photostatic copy of the accounts for services rendered are attached hereto by reference for all purposes as Exhibit "A". Despite Plaintiff's demands upon Defendant for payment, Defendant has refused and failed to pay the

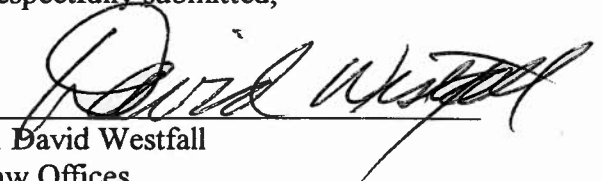
account to Plaintiff's damage in the total amount of \$18,121.10. All just and lawful offsets, payments and credits have been allowed.

IV.

Plaintiff is entitled to recover reasonable attorney's fees incurred in the filing of this suit. Demand for payment from Defendant has been made. Plaintiff requests reasonable attorney's fees as determined by the trier of fact.

WHEREFORE PREMISES CONSIDERED, Plaintiff prays that Defendant be cited to appear and answer and upon final hearing, Plaintiff have judgment against Defendant for \$18,121.10 plus prejudgment and postjudgment interest at the highest rate allowed by law, attorney's fees, costs of court and for such other and further relief, both at law and equity, to which Plaintiff may show himself to be justly entitled.

Respectfully submitted,



G. David Westfall
Law Offices
714 Jackson Street
Suite 217
Dallas, Texas 75202
(214) 741-4741
Facsimile (214) 741-4746



I certify this to be a true and exact copy of the original on file in the District Clerk's Office, Van Zandt County, Texas.
Candi Scott

No. 00-00619

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

Vs.

UDO BIRNBAUM

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

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DISPOSABLE VAN ZANDT CO. TX.
DEP.

DEFENDANT'S ANSWER, COUNTERCLAIM, AND CROSS-COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, UDO BIRNBAUM ("Defendant", "Birnbaum", "I", "me", "my", "myself", "mine"), answering THE LAW OFFICES OF G. DAVID WESTFALL, P.C. ("Plaintiff", "Law Offices"), and counter-claiming of same, and cross-complaining of G. DAVID WESTFALL ("David Westfall", "Westfall"), CHRISTINA WESTFALL, and STEFANI PODVIN, and would show the Court the following:

G. DAVID WESTFALL is an individual whose residence is in Dallas, Dallas County, Texas and may be served with process at 6623 Norway Road, Dallas, Texas 75230. (Ph. 361-2124)

CHRISTINA WESTFALL is an individual whose residence is in Dallas, Dallas County, Texas and may be served with process at 6623 Norway Road, Dallas, Texas 75230. (Ph.361-2124)

STEFANI PODVIN is an individual whose residence is in Dallas, Dallas County, Texas and may be served with process at 5935 Royal Crest Drive, Dallas, Texas 75230. (Ph. 987-4740)

In Answer to Plaintiff's ("The Law Offices") Claims

Plaintiff's allegation: *"Plaintiff is a professional corporation with its principle office and place of business in Dallas, Dallas County, Texas."* (Plaintiff's Original Petition paragraph I)

My answer: **Denied.** Upon information and belief Plaintiff "The Law Offices of G. David Westfall, P.C." **is** G. David Westfall.

18

Plaintiff's allegation: *"Defendant is an individual whose residence is in Eustace, Van Zandt County, Texas and may be served with process at Route 1, Eustace, Texas." (Plaintiff's Original Petition paragraph I)*

My answer: **Denied.** Defendant's residence is not in Eustace, Henderson County, but in Van Zandt County, at 540 VZ 2916, Eustace, Texas 75124.

Plaintiff's allegation: *"On or about May 5, 1999, Defendant retained Plaintiff to perform legal services in a civil matter in Cause No. 3:99-CV-0696-R in the United District Court for the Northern District of Texas in Dallas, Dallas County, Texas." (Plaintiff's Original Petition paragraph II)*

My answer: **Denied.** Defendant did not retain Plaintiff, but G. David Westfall, and not to "perform legal services", but to "act as [his] attorney", and "provide reasonable and necessary legal services to the best of [his] ability." G. David Westfall did not provide services such as he promised. Plaintiff did not abide by the terms of the retainer. (Exhibits 1, 2, 3, 4)

Plaintiff's allegation: *"The legal and/or personal services were provided at the special instance and requested of Defendant and in the regular course of business." (Plaintiff's Original Petition paragraph III)*

My answer: **Denied.** The services were provided not at the instance of the Defendant, but at the instance of Plaintiff "Law Offices" and attorney G. David Westfall. Defendant was fraudulently and deceptively solicited by Plaintiff and G. David Westfall in violation of Rule 7.03 of the Texas State Bar Rules (Texas Disciplinary Rules of Professional Conduct). (Exhibit 1, 2, 3)

Plaintiff's allegation: *"In consideration of such services, on which systematic records were maintained, Defendant promised and became bound and liable to pay Plaintiff the prices charged for such services and expenses in the amount of \$18,121.10, being a reasonable charge for such services." (Plaintiff's Original Petition paragraph III)*

My answer: **Denied.** Defendant alleges that no systematic records were maintained. Defendant avers that the only "bill" he ever received was about July 31, 2000, such document titled "Billing Statement, December 31, 1999", with handwritten notation portraying attempts at collection dated 2/1/00, 4/3/00, 6/1/00, and 7/31/00. (Exhibits 1, 2, 1-A, 4). Plaintiff avers that no such attempts at collection were made (Exhibit 4). Plaintiff avers that this "Last notice B-4 collection 7/31/00" was the first, and only notice ever, and that it was not accompanied by any explanation or communication. (Exhibit 1, 4). Defendant alleges this "bill" is fraudulent and not of December 31, 2000 origin.

Plaintiff's allegation: *"A true and accurate photostatic copy of the accounts for services rendered are attached hereto by reference for all purposes as Exhibit A". (Plaintiff's Original Petition paragraph III)*

My answer: **Denied.** No Exhibit A was attached to the Plaintiff's Original Petition served on me, and none is in File No. 00-0069 in the Clerk's Office in the Texas 294th District Court. (Exhibit 4)

Plaintiff's allegation: "Despite Plaintiff's demands upon Defendant for payment, Defendant has refused and failed to pay the account to Plaintiff's damage in the total amount of \$18,121.10. All just and lawful offsets, payments and credits have been allowed. (Plaintiff's Original Petition paragraph III)

My answer: Denied. G. David Westfall fraudulently solicited me in violation of Texas Bar Rule 7.03 (Solicitations and Prohibited Payments). Texas Bar Rule 7.03(d) unconditionally prohibits charging for, or collecting a fee for professional employment obtained in violation of Rule 7.03 (a), (b), or (c). Plaintiff's charges are not lawful. Additionally, the only "bill" I ever saw was certainly also fraudulent. (Exhibits 1, 2, 3, 4)

My Affirmative Defenses to Plaintiff's ("The Law Offices") Claims

Plaintiff's allegation: "Plaintiff is entitled to recover reasonable attorney's fees incurred in the filing of this suit. Demand for payment from Defendant has been made. Plaintiff requests reasonable attorney's fees as determined by the trier of fact." (Plaintiff's Original Petition paragraph IV)

My answer: Denied. Defendant asserts affirmative defenses of fraud, conversion, breach of contract and fiduciary duty, barratry, legal malpractice, adhesion, extortion, negligence, and gross negligence, and demands a jury trial.

Counterclaim and Cross-complaint

1. G. David Westfall violated Texas Bar Rule 7.03 Prohibited Solicitation by soliciting me. Texas Bar Rule 7.03 unconditionally prohibits G. David Westfall from charging or billing me for such professional employment obtained in violation of this Rule.

2. G. David Westfall violated Texas Bar Rule 1.06(b)(2) Conflict of Interest. G. David Westfall promised to provide me with legal services "to the best of my ability". Instead G. David Westfall obstructed my cause in behalf of the Civil RICO defendants. G. David Westfall already had an inherent conflict of interest in signing on to this Civil Racketeering cause against some of the very same defendant judges before whom he would be practicing in the future. Such inherent conflict of interest violates Rule 1.06(b)(2) of the Texas Bar Rules.

3. G. David Westfall violated Texas Bar Rule 8.04 Misconduct by concealing the RICO enterprise from the Court, engaging in dishonesty, fraud, deceit and misrepresentation, conduct constituting obstruction of justice, and defrauding me of "the intangible right of honest service".

4. G. David Westfall violated Texas Bar Rule 1.01(b)(2) Competent and Diligent Representation, by "frequently fail[ing] to carry out completely the obligations that the lawyer owes to a client or clients".

5. G. David Westfall violated Texas Bar Rule 1.03 Communications, by failing to "keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information".
6. G. David Westfall violated Texas Bar Rule 1.04(a) Fees, for "enter[ing] into an arrangement for, charge, or collect an illegal fee or unconscionable fee"
7. G. David Westfall violated Texas Bar Rule 1.05 Confidentiality of Information, by (1) "revealing confidential information" to Kathy Young, and (2) using "confidential information of a client to the disadvantage of the client".
8. G. David Westfall violated Texas Bar Rule 1.05(a)(3) Declining or Terminating Representation, for failure to timely withdraw "if the lawyer is discharged".
9. G. David Westfall violated Texas Bar Rule 2.01 Advisor, by failure to "render candid advice".
10. G. David Westfall violated Texas Bar Rule 3.03(a) Candor toward the Tribunal, by "knowingly making a false statement of material fact" to the tribunal in his motion to withdraw.
11. G. David Westfall violated Texas Bar Rule 7.02(a)(3) Communication Concerning a Lawyer's Services, by making "false or misleading communication" and by "comparing his services with other lawyer services", i.e. having Kathy Young represent to me "*He is different from other lawyers*", as part of his scheme to solicit me.
12. G. David Westfall has been previously publicly reprimanded for "engag[ing] in conduct involving dishonesty, fraud, deceit, or misrepresentation and engaged in conduct that adversely reflected on his fitness to practice law." G. David Westfall sued to set aside this public reprimand.
13. G. David Westfall is a seasoned and capable attorney who knows or should know the Texas Bar Rules.
14. G. David Westfall's violations of the Bar Rules as shown above is not an accident but a pattern of intentionally not providing me with "legal services to the best of my ability" to such an extent as to constitute fraud.
15. Stefani Podvin provided me with legal services on at least two occasions. The "bill" (Exhibit 1-A) however shows no charges for any work done by Stefani Podvin. Instead it shows a string of "conference with S. Podvin", without a detailed breakout.
16. No bill other than the "final" bill on or July 31, 2000 was ever sent to me.

17. Christina Westfall never sent me any bill, of any kind whatsoever, before about July 31, 2000.
18. The Law Offices of G. David Westfall, P.C. never sent me any bill, of any kind whatsoever, before about July 31, 2000.
19. G. David Westfall never sent me any bill, of any kind whatsoever, before about July 31, 2000.
20. Christina Westfall and Stefani Podvin assisted G. David Westfall in his unconscionable, fraudulent, and deceptive scheme.
21. Demand has been made upon G. David Westfall. (Exhibit 3)

Prayer for Relief

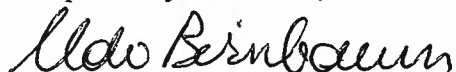
Wherefore, Defendant Udo Birnbaum respectfully requests that judgment be entered against parties **THE LAW OFFICES OF G. DAVID WESTFALL, P.C., G. DAVID WESTFALL, CHRISTINA WESTFALL, and STEFANI PODVIN**, by reason of fraud, conversion, breach of contract and fiduciary duty, legal malpractice, negligence, gross negligence, and violation of the Texas Deceptive Trade Practice Act.

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 \$40,000
- (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

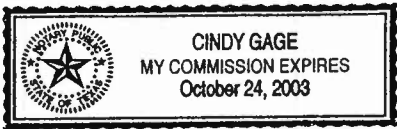
Eustace, Texas 75124

(903) 479-3929

STATE OF TEXAS
COUNTY Henderson

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

Given under my hand and seal of office this 3rd day of October, 2000



Cindy Gage
Notary in and for The State of Texas

Certificate of Service

I certify that a true and correct copy of the foregoing instrument, including exhibits, has been served upon G. David Westfall at 714 Jackson Street, Suite 217, Dallas, Texas 75202 by Cert. Mail, on this the 3rd day of October, 2000.

Udo Birnbaum
Udo Birnbaum

EXHIBIT
1

AFFIDAVIT OF UDO BIRNBAUM

My name is Udo Birnbaum. I am 63 years old and live on a farm in Van Zandt County. I have never been convicted of a felony or misdemeanor in this State or any other State, or in the United States, and am competent to make this affidavit. I have personal knowledge of the facts stated herein.

On or about December 20, 1998 I received a phone call from a person by the name of Kathy Young. Ms. Young told me she had read a newspaper article about beheaded calves being found on my farm and the name of a man was mentioned in that article whom she wanted to contact. I asked her what that name was and she said, "Michael Collins". I took her name and phone number and delivered it to Michael Collins.

Michael Collins was living in his trailer which was parked on my farm, and I overheard his conversation with Ms. Young where he agreed to meet with her and some lawyer, who I later learned was David Westfall.

The reason I know it was David Westfall is that a short time later, a week or so, Ms. Young began asking me questions about a lawsuit that was written about in a newsletter Michael Collins had published. It was not very long after that time that Ms. Young solicited me to employ David Westfall to represent me in what became a Civil RICO suit.

I paid David Westfall \$20,000 up front about May 5, 1999. I fired him on December 2, 1999. About two weeks ago on July 31, 2000, I received a document (Exhibit A) by certified mail, claiming I owed him \$18,000. Although David Westfall's handwritten notes on this document claim that he contacted me as indicated, he never previously sent me this bill, nor any bill ever, and never sent or

gave such notices. Prior to this July 31, 2000, I have never previously seen any of these entries or charges.

This bill is totally fraudulent. At \$200 per hour he had already eaten up the entire \$20,000 by July 9, 1999, barely two (2) months into the case (103 hours @ \$200 = \$20,600). If he would have sent me any such bills, at any time, I would have fired him on the spot at that time.

I fully believe this lawyer set out from the beginning to extort money from me. Also, I believe he joined the other lawyers who Michael Collins sued in federal court to stop him from speaking out on corruption in our legal system.

Attached to this affidavit is Exhibit A which is a true and accurate photostatic copy of the document I received from David Westfall, and which I incorporate herein.

Further affiant sayeth not.

Signed August 16th, 2000

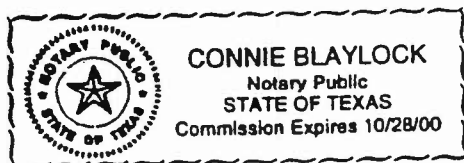
Udo Birnbaum
Udo Birnbaum

STATE OF TEXAS

COUNTY OF HENDERSON

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

Given under my hand and seal of office this 16 day of August, 2000



Connie Blaylock
Notary in and for The State of Texas

EXHIBIT
1-A

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

714 Jackson Street, Suite 700

Dallas, Texas 75202

(214) 741-4741

BILLING STATEMENT

December 31, 1999

Mr. Udo Birbaum
Route 1 Box 295
Eustace, Texas 75124

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

PROFESSIONAL SERVICES RENDERED:

5/3/99	Telephone conference with Kathy Young	
5/5/99	Review portions of file; conference with client; telephone conferences (3)	
5/6/99	Review Rule 12(b) Motions (4); telephone conferences (4)	
5/7/99	Telephone conferences with client (2); legal research on Rule 12(b); Rule 56; conference with client (@ 7points)	4.9
5/8/99	Legal research and case preparation	4.3
5/10/99	Review fax (Scheduling Order); telephone conferences (3); correspondence; telephone conferences with other attorneys regarding extension of time (3)	2.4
5/11/99	Correspondence; telephone conference with office of Roxie Cluck; review file; work on amended complaint; conference with client; legal research	3.7
5/13/99	Receipt and review correspondence (2) and Davis and Malone's 12b Motions; prepare stipulations and order re: enlargement of time, motion and order to file amended complaint and motion and order for notice of appearance; correspondence; telephone conferences (14); court appearance to review file	7.1
5/14/99	Telephone conference with client	0.2
5/17/99	Review Amended Complaint with Exhibits; telephone conferences with other attorneys (3)	2.9
5/18/99	Review correspondence, Order re: Scheduling Order	0.6

2nd Reminder - 2-1-00
Udo - what's the problem - please remit 4-3-00
first notice B-4 6-1-00
formal collector 7-31-00
0.1
0.2 mail
3.1 7-31-00
7-31-00
017

5/19/99	Receipt and review correspondence and Order of Stipulation signed by Richard Davis	0.2
5/21/99	Receipt and review Order of Stipulation signed by Richard Ray; court appearance to file Motion and Order; review file and amended complaint with exhibits	2.9
5/22/99	Review file and case preparation	3.3
5/24/99	Legal research; case preparation	2.7
5/25/99	Legal research; case preparation	2.3
5/26/99	Receipt and review signed Order of Stipulation; review draft of amended complaint; conference with client	2.9
5/27/99	Receipt and review Defendant Young's 1st W.I. to Plaintiff; telephone conference with A.G.'s office; correspondence	4.5
5/28/99	Legal research and case preparation	3.1
6/1/99	Telephone conference with client	0.3
6/2/99	Receipt and review correspondence and proposed Amended Complaint and proposed W.I. Answers	1.4
6/4/99	Review file; work on Amended Complaint	1.6
6/5/99	Review file; work on draft of Amended Complaint; legal research	3.8
6/8/99	Legal research; work on Amended Answer	2.6
6/9/99	Legal research re: 11(b) and 12(b) Motions	3.1
6/11/99	Receipt and review Defendant Young's 1st Request for Production; conference with staff and S.Podvin	3.8
6/12/99	Review file; legal research	1.8
6/15/99	Telephone conference	0.1
6/21/99	Review file; work on response to W.I.; telephone conferences (2)	1.9
6/24/99	Review file; review draft of Amended Complaint; review draft of responses to W.I.; telephone conferences (2)	3.9
6/25/99	Review file; conference with client; prepare and file Answers to Defendant Young's W.I.	3.5
6/29/99	Telephone conferences (8); correspondence	2.3

6/30/99	Receipt and review correspondence; telephone conferences (8); correspondence	1.7
7/1/99	Review faxes (3) and correspondence; sent 3 faxes; telephone conference with D.Maseo; R.Davis' office and C.Van Cleef	1.3
7/2/99	Receipt and review correspondence; review faxes (4); prepare and file Joint Status Report; telephone conferences (6); correspondence; conference with client	6.4
7/5/99	Telephone conferences (2); conference with client	1.8
7/9/99	Receipt and review correspondence; telephone conferences (6); legal research; work on response to 12(b) motions	3.5
7/10/99	Legal research and case preparation	4.6
7/13/99	Telephone conferences (3); legal research	2.9
7/14/99	Legal research	1.6
7/16/99	Receipt and review Original Answer of K.Young to Amended Complaint; telephone conferences (3)	0.8
7/17/99	Legal research; conference with S.Podvin; work on Response to 12(b) Motions, etc.	3.2
7/18/99	Conference with S.Podvin; legal research; work on Response to 12(b) motions, etc.	4.6
7/19/99	Conference with S.Podvin; work on Response to 12(b) motions	3.9
7/23/99	Receipt and review correspondence (3)	0.3
7/28/99	Receipt and review correspondence, Defendants' Amended Motion to Dismiss Under 12(b)(6)	2.1
8/2/99	Review file; pleadings; correspondence	1.2
8/4/99	Review file; correspondence pleadings; telephone conferences (4)	1.9
8/5/99	Telephone conferences (4)	0.4
8/6/99	Receipt and review correspondence and Davis' Objection to U.Bimbaum's Affidavit	0.4
8/18/99	Telephone conference with client	0.2
8/25/99	Supplemental response to Defendants' 12(b)	0.5

9/1/99	Receipt and review Defendant Young's Designation of Expert Witnesses; telephone conferences (3)	0.4
9/3/99	Telephone conferences with other attorneys (3)	0.6
9/9/99	Review proposed Findings and Conclusions; telephone conferences (3)	1.6
9/10/99	Review file; review rules re: reply to Findings and Conclusions	1.8
9/13/99	Review file; legal research re: Findings of Facts and Conclusions of Law; telephone conferences (2); review fax (10 pages); telephone conference with Mike Collins	5.1
9/14/99	Conference with client; legal research and work on Findings of Fact and Conclusions of Law	5.7
9/15/99	Conference with client; conference with S.Podvin; legal research; review findings of fact and conclusions	5.3
9/17/99	Conference with client; work on objections to Findings and Conclusions; legal research; conference with S.Podvin; court appearance to review file	5.5
9/20/99	Receipt and review Young's Motion to Dismiss under FRCP 12(b)(6) and Brief; correspondence; telephone conferences (3)	0.9
9/24/99	Receipt and review Order re: File Amended Complaint and 12(b) Motions; correspondence; telephone conferences (3)	0.7
9/25/99	Legal research re: prospective appeal	2.3
9/28/99	Legal research re: appeal	1.2
9/29/99	Telephone conferences (3)	0.7
9/29/99	Telephone conferences (2); conference with client	1.7
9/30/99	Legal research; work on Plaintiff's response to Young's 12(b); conference with C.McGarry and S.Bush	4.8
10/1/99	Telephone conferences (3); legal research	1.9
10/2/99	Legal research re: appeal	2.3
10/4/99	Telephone conferences with client (2)	0.4
10/6/99	Receipt and review correspondence; legal research; conference with client; conference with S.Podvin; review Plaintiff's response to Young's 12(b) Motion	4.3
10/7/99	Telephone conferences (4); conference with client and S.Podvin; to	

	courthouse to file response to Young's 12(b) motion	2.8
10/9/99	Conference with S.Podvin; legal research re: appeal	3.4
10/11/99	Conference with staff; legal research	1.3
10/13/99	Telephone conferences (7); telephone conference with client	1.6
10/14/99	Conference with client	0.6
10/15/99	Telephone conference with court clerk; legal research re: appeal	3.1
10/16/99	Legal research; conference with S.Podvin	2.6
10/18/99	Telephone conferences (3); telephone conference with 5th Circuit Clerk's office	0.6
10/19/99	Telephone conferences (2); legal research	1.9
10/22/99	Legal research and work on appeal	2.2
10/23/99	Conference with S.Podvin; additional legal research re: appeal	5.1
10/26/99	Telephone conferences (3)	0.6
10/27/99	Receipt and review correspondence; telephone conference with court clerk	0.4
10/27/99	Telephone conferences with court clerk at 5th Circuit (3)	0.6
10/28/99	Telephone conference with Judge's briefing clerk	0.3
10/29/99	Telephone conference with client	0.1
10/30/99	Conference with S.Podvin	2.4
11/1/99	Telephone conference with client and M.Collins	0.2
11/2/99	Telephone conference with court clerk; conference with client and M.Collins; legal research and conference with S.Podvin	5.8
11/4/99	Telephone conferences (2) with court clerk	0.3
11/5/99	Telephone conference with court clerk's office (3)	0.3
11/6/99	Conference with S.Podvin; legal research	2.6
11/8/99	Telephone conference with court clerk; conference with staff; legal research	2.3
11/9/99	Conference with S.Podvin; legal research	3.9

11/13/99	Conference with S.Podvin	0.6
11/16/99	Telephone conferences (3)	0.6
11/17/99	Telephone conference with court clerk	0.2
11/23/99	Telephone conferences (2)	0.2
12/1/99	Receipt and review correspondence; telephone conference with court clerk	0.3
12/6/99	Receipt and review Plaintiff's Pro Se Appearance and correspondence; telephone conference with M.Collins	0.5
12/8/99	Telephone conferences (2)	0.3
12/9/99	Telephone conference with District Clerk's office and Judge's briefing clerk	0.4
12/10/99	Receipt and review Young's Response to Plaintiff's MSJ and Brief; telephone conference with Young's attorney and court clerk	0.9
12/11/99	Draft Motion and Order to Withdraw	1.2
12/13/99	Receipt and review Order Denying Plaintiff's MSJ; telephone conference	0.3
12/14/99	Telephone conference with court clerk and other attorneys (3)	0.6
12/20/99	Telephone conference with court clerk	0.2
12/21/99	Finalize Motion and Order to Withdraw; correspondence	0.9

100	HOURS at \$200.00 per hour	\$	20,000.00
129.9	HOURS at \$100.00 per hour	\$	12,990.00

EXPENSES:

Paralegal: 68.6 at \$60.00 per hour	\$	4,116.00
Photocopies: 3,384 at \$.25 per page	\$	846.00
Facsimiles: 105 at \$1.00 per page	\$	105.00
Long Distance telephone expense	\$	64.10

Total expenses:	\$	<u>5,131.10</u>
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Total amount:	\$	38,121.10
Less:	\$	<u>(20,000.00)</u>

***** TOTAL AMOUNT DUE: \$ 18,121.10**

EXHIBIT
1-B

AFFIDAVIT OF KATHY YOUNG

My name is Kathy Young. I am over the age of 21 and have never been convicted of a felony or misdemeanor in this State or any other State, or in the United States, and am competent to make this affidavit. I have personal knowledge of the facts stated herein.

I am Kathy Young named in the Affidavit of Udo Birnbaum dated August 16, 2000. I am the person that David Westfall got to ask Udo Birnbaum to see him about employing him as his lawyer.

On or about May 25, 1999, a few weeks after David Westfall had become Udo Birnbaum's attorney on his Civil RICO case in Dallas, David Westfall told me get a message to Udo, which I did. David Westfall told me to tell Udo if he were to just mail his judgment to Judge James B. Zimmerman's Office in Dallas, marked attention "Sandy", that it would be signed. Getting it signed was not a big deal.

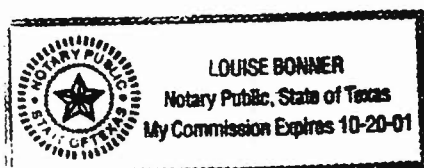
About a week later David Westfall told me to again give Udo this same message, which I did. And a few days to a week later David Westfall again told me to give this same message to Udo, which I did.

From my association with David Westfall and Udo Birnbaum I know the judgment David Westfall was referring to was a take nothing judgment Udo Birnbaum had been trying since shortly after his trial in May 1998 to get Judge Zimmerman to sign in Jones vs. Birnbaum in the Texas 294th District Court of Van Zandt County in Canton, Texas. I also learned that Judge Pat McDowell is the presiding judge of the first Administrative Judicial Region.

David Westfall had told me of an incident involving Judge McDowell as follows. David had a case before District Judge Glen Ashworth. He needed Judge Ashworth to not be the presiding judge at a hearing. He discussed this with Judge Ashworth and Judge Ashworth asked if Mr. Westfall was asking him to recuse himself. Mr. Westfall said, "No, I'm just asking you to be on vacation or fishing or something, just don't be available. David Westfall said Judge Ashworth wasn't available as requested and he pulled Judge McDowell. I didn't understand what it was he wanted from Judge McDowell. But I do remember that Mr. Westfall got the ruling he wanted and was very excited about it. This took place in Kaufman, Texas. David Westfall told me that Judge McDowell was a defendant in Udo Birnbaum's case and he had recently had a favorable ruling by Judge McDowell and it would be a feather in his hat if could get Udo to release him from the Federal Lawsuit.

Further affiant sayeth not.

Kathy Young

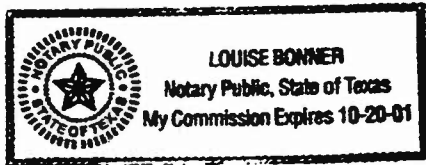


Kathy Young
Kathy Young

STATE OF TEXAS
COUNTY OF NAVARRO

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

Given under my hand and seal of office this 23rd day of August 2000.



Louise Bonner
Notary in and for The State of Texas

EXHIBIT
1-C

LAW OFFICES OF
G. DAVID WESTFALL, P.C.
A Professional Corporation
714 JACKSON STREET
200 RENAISSANCE PLACE
DALLAS, TEXAS 75202

Telephone: (214) 741-4741
Fax: (214) 741-4746

March 20, 2000

Mr. Udo Birnbaum
Route 1 Box 295
Eustace, Texas 75124

*Via Certified Mail P 326 687 374
and Regular Mail*

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

Dear Udo:

Enclosed is an Order signed by the Court on March 15, 2000 but received in our office on Monday, March 20, 2000. With this Order all issues between all parties are disposed of and the case is now ripe for appeal.

Though we have filed a Motion to Withdraw, the court has not scheduled that as yet. It may be moot since my understanding is you have requested that we no longer represent you on the appellate matter with the Clerk of the Fifth Circuit.

In any event please be advised that all of the appropriate rules are now in effect relative to your appeal.

Sincerely yours,



GDW:bh
Enclosure

EXHIBIT
1-D

11-17-99

TO: Law Office of
G. David Westfall, P.C.
714 Jackson Street #700
Dallas, TX. 75202
(214) 741-4741

FAX: (214) 741-4746

FROM: Udo Birnbaum

MESSAGE:

I have not received your response to the draft of appeal I gave you Monday. I believe my draft has some good case law in it about "honest service".

It is past time to get the show on the road. I do not want to miss any deadline. You said you would let me know about the status of the case, but you have not. Look it over, make corrections or additions, and procedurally do whatever is required to get the show on the road.

If for any reason you are unable to look it over, prepare the final form, file it, and mail copies to all defendants, by Tuesday, November 23, 1999, let me know Friday, November 19, 1999, so I can proceed, pro se.

Udo

Udo

ORIG

THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

FILED

20 2000

NANCY LOHERTY, CLERK

By *[Signature]*

UDO BIRNBAUM
Plaintiff,

vs.

RICHARD L. RAY,
TOMMY W. WALLACE,
JAMES B. ZIMMERMANN,
RICHARD DAVIS,
PAT McDOWELL,
LESLIE P. DIXON,
KERRY YOUNG,
BETTY DAVIS,
BECKY K. MALONE,
WILLIAM B. JONES,
John Doe/Mary Doe,
Defendants.

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CIVIL ACTION NO. 3:99-CV-0696-R

EXHIBIT
1-E

**G. DAVID WESTFALL'S MOTION TO WITHDRAW
AS ATTORNEY FOR UDO BIRNBAUM**

1. Come now, G. David Westfall, Attorney for Udo Birnbaum, Plaintiff herein, and asks the Court to allow him to withdraw as attorney for Plaintiff Udo Birnbaum.
2. There's good cause for this Court to grant the Motion to Withdraw because counsel has given certain advice regarding deadlines and lack of deadlines and other matters. The client has disregarded the advice of counsel and has filed certain briefs or attempted to file certain briefs and other pleadings. Such action on the part of the client makes it impossible for his attorney to properly handle the matter for him and give him proper advice.
3. Westfall has delivered a copy of this Motion to Plaintiff and has notified him in writing, both certified and regular mail, of his right to object to the Motion.
4. Birnbaum's last known address is Route 1 Box 295, Eustace, Texas 75124.

5. There are no pending settings or deadlines in this case known to counsel for Plaintiff at this time.

6. For these reasons G. David Westfall asks the Court to grant his Motion to Withdraw.

Respectfully submitted,



G. David Westfall
Law Offices of G. David Westfall, P.C.
State Bar No. 21224000
700 Renaissance Place
714 Jackson Street
Dallas, Texas 75202
(214) 741-4741
(214) 741-4746 Facsimile

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served upon all counsel of record via Hand on this the 17 day of March 2018.



G. David Westfall

EXHIBIT
1-F

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
SEP 21 1999
NANCY DOHERTY, CLERK
BY _____ Deputy

UDO BIRNBAUM,
Plaintiff,

vs.

RICHARD L. RAY, et al,
Defendants.

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No. 3:99-CV-0696-R

ENTERED ON DOCKET
SEP 22 1999
U.S. DISTRICT CLERK'S OFFICE

JUDGMENT

The Court has heretofore entered its Findings in this case, and it is therefore

ORDERED, ADJUDGED, AND DECREED that Plaintiff Udo Birnbaum's *Motion for Leave to Amend Complaint* is **GRANTED** and

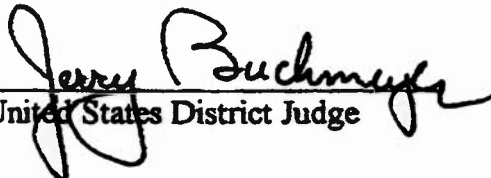
1. *Defendants Tommy W. Wallace, James B. Zimmerman, Pat McDowell, and Leslie P. Dixon's Motion to Dismiss Under Rule 12 (b)(6), Alternatively Under Rule 7 (a) FRCP "Shultea" for Abatement of this Action Including Discovery by Plaintiff until Plaintiff Complies with the Rules of Pleading and the Court has Determined the Issue of Absolute Judicial Immunity as Raised in Defendants' Motion for Dismissal on the Plaintiff's Pleadings,*
2. *Defendant Richard Davis' Motion to Dismiss Under Rule 12 (b)(6), Alternatively Under Rule 7 (a) FRCP "Shultea" for Abatement of this Action Including Discovery by Plaintiff until Plaintiff Complies with the Rules of Pleading and the Court has Determined the Issue of Absolute Judicial Immunity as Raised in Defendants' Motion for Dismissal on the Plaintiff's Pleadings,*
3. *Defendant Betty Davis' Motion to Dismiss Under Rule 12 (b)(6), Alternatively Under Rule 7 (a) FRCP "Shultea" for Abatement of this Action Including Discovery by Plaintiff until Plaintiff Complies with the Rules of Pleading and the Court has Determined the Issue of Absolute Judicial Immunity as Raised in Defendants' Motion for Dismissal on the Plaintiff's Pleadings,*
4. *Defendant Richard Ray's Motion to Dismiss Under Rule 12 (b)(6), Alternatively Under Rule 7 (a) FRCP "Shultea" for Abatement of this Action Including Discovery by Plaintiff Until Plaintiff Complies With the Rules of Pleading,*
5. *Defendant William Jones' Motion to Dismiss Under Rule 12 (b)(6), Alternatively*

Under Rule 7 (a) FRCP "Shultea" for Abatement of this Action Including Discovery by Plaintiff Until Plaintiff Complies With the Rules of Pleading,

6. *Defendant Becky Malone's Motion to Dismiss Under Rule 12 (b)(6), Alternatively Under Rule 7 (a) FRCP "Shultea" for Abatement of this Action Including Discovery by Plaintiff until Plaintiff Complies with the Rules of Pleading and the Court has Determined the Issue of Absolute Judicial Immunity as Raised in Defendants' Motion for Dismissal on the Plaintiff's Pleadings*

are **GRANTED** and Defendants Zimmerman, Wallace, McDowell, and Dixon's Amended Motion to Dismiss under Rule 12 (b)(6), Alternatively under Rule 56 for Summary Judgment, Alternatively for Abatement of this Action Including Discovery by Plaintiff until the Court has Determined the Issue of Absolute Judicial and Prosecutorial Immunity as Raised in Defendants' Motion for Dismissal on the Plaintiff's Pleadings is **DENIED AS MOOT**.

SO ORDERED this 20 day of September, 1999.


United States District Judge

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
SEP 27 1999
NANCY DOHERTY, CLERK
BY _____ Deputy

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

UDO BIRNBAUM
Plaintiff,

VS.

RICHARD L. RAY, et. al.,
Defendants.

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3:99-CV-0696-R

ENTERED ON DOCKET
SEP 28 1999
U.S. DISTRICT CLERK'S OFFICE

ORDER

**The PLAINTIFF'S OBJECTIONS TO FINDINGS, CONCLUSIONS AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE (filed September
17, 1999) are without merit, and they are OVERRULED.**

ENTERED: SEPTEMBER 24, 1999

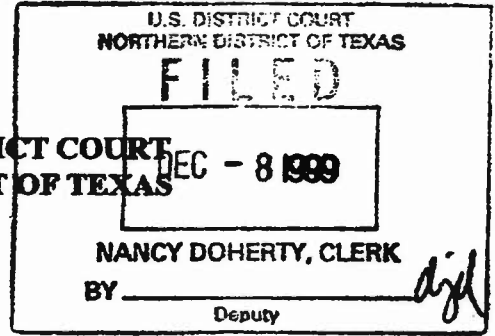
*EXhibit
1-9*

Jerry Buchmeyer

**JERRY BUCHMEYER, CHIEF JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS**

ry

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



UDO BIRNBAUM

VS.

RICHARD L. RAY, et. al.

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3:99-CV-0696-TR

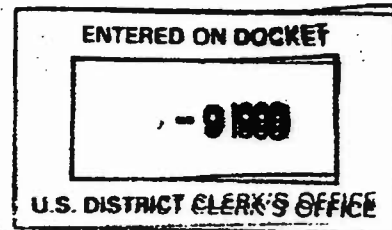
*EXHIBIT
1-H*

ORDER

The PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AGAINST KERRY
YOUNG (filed December 2, 1999) is DENIED.

It is so ORDERED.

ENTERED: DECEMBER 7, 1999



Jerry Buchmeyer

JERRY BUCHMEYER, CHIEF JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

ORIGINAL

EXHIBIT
1-5

THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UDO BIRNBAUM
Plaintiff,

vs.

RICHARD L. RAY,
TOMMY W. WALLACE,
JAMES B. ZIMMERMANN,
RICHARD DAVIS,
PAT McDOWELL,
LESLIE P. DIXON,
KERRY YOUNG,
BETTY DAVIS,
BECKY K. MALONE,
WILLIAM B. JONES,
John Doe/Mary Doe,
Defendants.

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MAR 22 2000
NATIONAL ARCHIVES
BY *[Signature]*

CIVIL ACTION NO. 3:99-CV-0696-R

ENTERED ON DOCKET
MAR 22 2000
U.S. DISTRICT CLERK'S OFFICE

**ORDER ON G. DAVID WESTFALL'S MOTION TO WITHDRAW
AS ATTORNEY FOR UDO BIRNBAUM**

On the 23 day of March, 2000, the Court considered G. David Westfall's Motion to Withdraw as Attorney for Udo Birnbaum, Plaintiff. After considering the Motion the Court finds good cause to allow G. David Westfall to withdraw as attorney for Udo Birnbaum, Plaintiff, and grants G. David Westfall's Motion to Withdraw.

SIGNED this the 23 day of March, 2000

[Signature: Jerry Buchmeyer]
U.S. DISTRICT JUDGE PRESIDING

Approved & Entry Requested:
[Signature: G. David Westfall]
G. David Westfall, Withdrawing Attorney

Udo Birnbaum, Plaintiff

105

42

Exhibit
3

REGULAR AND CERTIFIED MAIL RETURN RECEIPT REQUESTED

DEMAND LETTER

September 6, 2000

G. David Westfall, lawyer
714 Jackson Street
200 Renaissance Place
Dallas, Texas 75202

Dear Mr. Westfall,

You are hereby notified that I am making a claim against you and others.

You and others perpetrated wrongs upon me, starting with your fraud in inducing me to retain you to represent me in my RICO suit through your fraudulent statement for legal services dated December 31, 1999, but not mailed to me until July 31, 2000.

But for your unconscionable acts and your false, misleading, and deceptive practices, I would have never accepted your solicitation to represent me.

The only bill you ever sent me was postmarked July 31, 2000. You did not inform me in any manner whatsoever that you had already eaten up my entire \$20,000 retainer by July 9, 1999, barely two (2) months into the case. But for you concealing from me your fraudulent charges, I would most definitely have fired you on the spot as early as one month after you became my attorney.

For these reasons and others, this is my demand on you to return the \$20,000 I paid you on May 5, 1999, and an additional \$20,000 for the harm caused by you. But for your unconscionable, false, misleading, and deceptive acts and practices I would not have been damaged in the manner and amount that I was.

This matter can be resolved immediately if you will pay me the amount claimed in this letter as actual damages. My claim is made pursuant to the Texas Deceptive Trade Practices and Consumer Protection Act. Accordingly, if I do not receive payment within the time allowed by the statute, I will have no alternative but to file a lawsuit in this matter.

If you do not respond appropriately within 30 days, I will proceed with legal action.

Sincerely,



Udo Birnbaum
Route 1, Box 295
Eustace, TX 75124

Exhibit
2

AFFIDAVIT OF UDO BIRNBAUM

My name is Udo Birnbaum. I am over the age of 21 and have never been convicted of a felony or misdemeanor in this State or any other State, or in the United States, and am competent to make this affidavit. I have personal knowledge of the facts stated herein.

Summary of what I now know about David Westfall and Collins that bears on this Courts' matter of sanctions

I now know, based on my observations and evaluations of the circumstances as shown below, that David Westfall, long before he became Michael Collins' lawyer, was already an agent adverse to Collins' interests, and that David Westfall solicited Michael Collins not for legal fees, for Collins had no money, but to obstruct in the administration of justice for the purpose of ingratiating himself with certain of the defendants. I have likewise come to know that these certain defendants, unlike Judge Gohmert, knew of David Westfall's role, and therefore did not likewise seek sanctions.

How I came to such knowledge because of my personal experiences

I have personal experience with the same pocket of corruption in Van Zandt County that Michael Collins is complaining about. I had in 1995 been fraudulently sued for building a dam which everyone knew did not exist. I saw Michael Collins for the first time when his cause was before the same Court just ahead of the start of my four (4) day pro se trial on May 26, 1998.

We became acquainted when his and my hearings kept falling on the same date, and we thereafter continued to go to each other's hearings. I came to understand the details of Collins' cause from the files, what he told me, and the matters I have observed. I decyphered the sheriff's radio log for Collins showing that Constable Parrish, contrary to his affidavit, broke into Collins' house not once, but twice, and that all the excuses in his affidavit are clever falsehoods.

I was present at the time of the matter of the three beheaded calves, and was also present on January 31, 2000 when Collins' home was again illegally invaded. I have also learned from the circumstances in the Texas 294th District Court, both in

the Collins' cause, and in my *Jones v. Birnbaum*, the schemes these defendants use to conceal their fraudulent acts, namely by more fraudulent acts and documents.

And on March 30, 1999, I also filed a Civil RICO suit, *Birnbaum v. Ray*, (3:99cv0696) against some of the same defendants, for which I, just like Collins, was later solicited by lawyer David Westfall. But when the Court dismissed only nine (9) of the ten (10) defendants, David Westfall would not give me a straight answer as to where the case stood. He kept stalling and telling me that an appeal was not yet timely, which it clearly was, and I was forced to proceed pro se into the Fifth Circuit.

But it was not until this Court's Order sanctioning Collins that I came to understand from the circumstances surrounding that sanction, and from David Westfall's conduct in my cause, that David Westfall had solicited himself into both Michael Collins' and my Civil RICO cause for the purpose of obstruction in the administration of justice, and that he had been on the other side since before he became Michael Collins' and my lawyer.

David Westfall's Solicitation and Concealment of Solicitation shows collusion

The prior Affidavit of Udo Birnbaum (Exhibit A, 8/16/2000) and the Affidavit of Kathy Young (Exhibit B, 8/23/00) shows that David Westfall solicited both me and Michael Collins, and that as a result of that solicitation I retained and paid Westfall \$20,000 on May 5, 1999. Yet Westfall's "bill" (Exhibit A) shows a charge of a measly \$20 (0.1 hours on 5/3/99) as the first charge two days earlier, and I am forced to come up with some sort of explanation as to why Westfall would show such a meager charge, and for Westfall talking to his own solicitor at that!

I note that Westfall's "bill" (Exhibit A) does not generally list the specific party at the other end of his "teleconferences", but that he specifically went out of his way to list this one. If this fraudulent "bill" was indeed created more than one year after this date, I have to ask myself as to why David Westfall specifically listed this measly \$20 charge at the head of his "bill".

Drawing upon my observation of all else I now know about David Westfall's conduct, I now know he put it there to make it appear that Kathy Young was acting for me, to conceal that she had been acting for him as his solicitor, all in violation of the Texas Disciplinary Rules of Professional Conduct.

I also note a charge of \$980 (4.9 hours on 5/7/99) for "*conference with client @ 7points, etc*". Why would David Westfall charge me for a conference at Seven Points that did not occur, when he could just as well have been padding his "bill" somewhere else without being specific? The only thing I know of that occurred at "Seven Points" or somewhere thereabout is when Kathy Young had Mike Collins come out to her place, and David Westfall, an expensive Dallas lawyer, was interested enough to come all the way from Dallas that cold and drizzly Sunday night sometime in mid December 1998, to talk to Michael Collins regarding the matter of the bizarre "three beheaded calf story" that had been in the local papers. I was also in the story because everything had happened at my farm, but the interest was only Michael Collins. That extraordinary meeting certainly had nothing to do with me.

Again drawing upon my observation of all else I now know about David Westfall's conduct, I know he specifically put this entry on his "bill" to make it appear that Kathy Young, his solicitor, was acting for me, instead of for him.

As I now understand things from Kathy and the circumstances, David Westfall got interested in me after he found out I had some money. And Westfall's interest in my money provides me at least some reason as to why he would solicit me. But what I have really been wondering about is why David Westfall became so interested in Collins, and everything Collins had going in the Van Zandt district court, long before he became Collins' lawyer, and would solicit Collins to retain him as his lawyer, when Westfall knew Collins had no money. But I have now come to know from observing all of Westfall's conduct, and specifically when Westfall would never send Michael Collins a bill, that Westfall was instead placing himself in a position to obstruct Michael Collins' Civil RICO cause for the purpose of ingratiating himself with certain defendants as further shown below.

I have, however, found no reasonable explanation for Westfall to list an entry for talking specifically to Roxie Cluck (5/11/99), the alleged kingpin in Collins' cause, except to distract from the Kathy Young entry.

David Westfall's delay in making a formal appearance shows collusion

I retained David Westfall on May 5, 1999 but he did not make a formal appearance until May 17, 1999, and I am forced to seek the cause of this delay. I do, however, note numerous telephone conferences before the formal appearance.

From the Texas Disciplinary Rules of Professional Conduct I now know that David Westfall had an inherent conflict of interest in signing on to a Civil RICO cause against some of the very judge defendants before whom he was practicing and had reason to believe he would be practicing in the future.

I recall an early meeting in Westfall's office at which he was telling about one of the opposing counsel inquiring as to whether he, Westfall, had now also become a defendant in Collins' Civil RICO cause. I also recall Westfall telling me that when he requested a 30 day extension of time to answer the 12(b)(6) motions, that the Attorney General's Office asked him "how about 60 days?" From such free play with opposing counsel, and his premature communication with such counsel, I have come to the opinion that Westfall was testing the waters before he made his formal appearance. I also know that Westfall could have simply backed out of representing me if he would have found the waters hostile, by simply returning my retainer, and stating he had a conflict of interest.

Because Westfall did not back out, yet took so long to make his formal appearance, and other circumstances surrounding Westfall's conduct, I am now of the opinion that Westfall had an agreement that no defendant in my cause, unlike Judge Gohmert in Michael Collins' cause, would seek sanctions against him, because they knew he could and would obstruct in the administration of justice in both my and Michael Collins' Civil RICO cause.

**Westfall's attempt to release Judges Zimmermann and McDowell
as defendants shows collusion**

David Westfall attempted to get me to drop Judge Zimmermann and Judge McDowell as defendants, telling me that I would have a better case that way. He told me Judge Zimmermann was pretty well known and respected around Dallas, and would make a pretty solid appearance with the jury. I did not find out until much later just how close a relationship he had with these Judges.

Indicative of this close relationship is the matter of my take-nothing judgment in *Jones v. Birnbaum* in the Texas 294th District Court. I had been trying to get Judge Zimmerman to sign that judgment, but Westfall had enough connection with my defendants Zimmermann and McDowell to get that done. I was just to send my take-nothing judgment to McDowell's First Administrative Region in Dallas, marked attention "Sandy", and it would be signed (Affidavit of Kathy Young, Exhibit B). Also revealing is David Westfall's actual reason for getting me to drop Judge McDowell, i.e. McDowell's earlier favorable ruling, and a "feather in his hat"

(Affidavit of Kathy Young, Exhibit B). I went to Kaufman County and there does indeed exist such a favorable ruling by McDowell as described by Kathy Young.

As indicated, David Westfall had a special conflict of interest when it came to these two defendants. I told Westfall in strong terms not to drop these defendants, and he did not, but he did succeed in getting Michael Collins to drop Judge Zimmermann as a defendant in his cause.

Westfall's fraudulent motion to withdraw shows collusion

I fired David Westfall on December 2, 1999, but he did not withdraw until March 20, 2000, at which time he so notified me by certified mail (Exhibit C) stating that "*Enclosed is an Order signed by the Court on March 15, 2000 but received in our office on Monday, March 20, 2000*". However the enclosed Order (Exhibit J) was not signed by the Court until March 23, 2000. More puzzling is why such Order actually signed on March 23, 2000 by the Court has a March 22, 2000 file stamp, the day before it was signed!

And Westfall states that "*Though we have filed a Motion to Withdraw, the court has not scheduled that as yet*". What David Westfall is concealing that he did not file that motion (Exhibit E) until that very day, March 20, 2000, over three (3) months after I had fired him on December 2, 1999, and that his own "bill" (Exhibit) shows that he had continued communicating with opposing counsel despite the fact that they had on December 2, 1999 been likewise notified by certified mail that I was pro se, and that David Westfall was no longer my lawyer!

And he states (March 20, 2000) that "*my understanding is you have requested that we no longer represent you on the appellate matter with the Clerk of the Fifth Circuit*", when he knows I fired him on December 2, 1999, for not truthfully communicating with me, and that he never represented me on "*the appellate matter with the Clerk of the Fifth Circuit*". But one has to ask oneself why he would communicate with the Fifth Circuit at all as shown by his own "bill", except to continue to torpedo my cause!

And why would he state (March 20, 2000) that "*all of the appropriate rules are now in effect to your appeal*", except to conceal that the appeal had been ripe since the September 20, 1999 judgment, and that he and the defendants had been working on a scheme to torpedo my appeal by leaving one (1) defendant in my Civil Rico cause to have me miss the deadline for the appeal for the other nine (9)! By this time (March 20, 2000) all of the nine (9) appellees had already filed their response briefs,

and agreed that the Fifth Circuit did indeed have jurisdiction. So why would not my own lawyer, in a timely manner, not have told me that the appeal was ripe way back at the time of the judgment on September 20, 1999, except that my own lawyer was continuing continue to torpedo my cause, wherefore I had fired him!

The only rational inference I can come up with for Westfall's phrase "*signed by the Court on March 15, 2000*" is that David Westfall did get a motion "signed" on March 15, 2000, as he states, or that had been told it was "signed", or that it was supposed to have been "signed" on March 15, 2000.

Also, David Westfall's reason for withdrawing as given in paragraph 2 of his Motion to Withdraw (Exhibit) is, of course, also a total fraud as shown above. So is his paragraph 3 that "*Westfall has delivered a copy of this Motion to Plaintiff and has notified him in writing, both certified and regular mail, of his right to object to the Motion.*" Westfall **did not notify me** that he had filed this motion, and I of course did not respond to the fraud in it.

Westfall not doing anything about the strange "Judgment" and "de novo determination" in my Cause shows collusion

I have observed that Orders coming out of this Court that appear proper and timely are all file marked on the day they are "entered" or "ordered". This is not the case for the Order (Exhibit J) upon Westfall's Motion to withdraw, as shown above.

I have noticed such delay in filing occurs whenever a document, on its face, is puzzling or bewildering. As an example I provide the "Judgment" (Exhibit F) in my case, which is not a judgment at all, but merely the granting of "SCHULTEA" motions to stay discovery and a Motion to Amend Complaint which should of course have been addressed much earlier at the time. Another example is the Order (Exhibit G) upon my Objection to Magistrate Stickney's Finding in my cause, supposedly constituting a "de novo determination" by Judge Buchmeyer, which gives no specifics, and comes out of the Clerk's Office with a mere rubber stamp signature, again not file marked that same day, despite that it came out of the Clerk's Office itself

At a meeting Michael Collins and I had in David Westfall's office immediately after Judge Buchmeyer signed the "judgment", Westfall said that "*he never saw it*", referring to Judge Buchmeyer and the Objection we had filed to Magistrate Stickney's Findings. I am now convinced that very little in my cause came before Judge

Burchmeyer and/or Magistrate Stickney, and that everything was being privately handled between Westfall and someone inside the Clerk's Office, and that my entire complaint was being kept from Judge Buchmeyer, whereupon I ultimately fired Westfall.

Summary

I now know, based on my observations and evaluations of the circumstances as shown above, that David Westfall, long before he became Michael Collins' lawyer, was already an agent adverse to Collins' interests, and that David Westfall solicited Michael Collins not for legal fees, for Collins had no money, but to obstruct in the administration of justice for the purpose of ingratiating himself with certain of the defendants. I have likewise come to know that David Westfall, both in my and Collins' Civil RICO cause, was aided in such obstruction by someone inside the Court.

For all these reasons I am of the opinion that it is time for this Court to call upon the Justice department upon these matters.

Further affiant sayeth not.

Signed September 15th, 2000

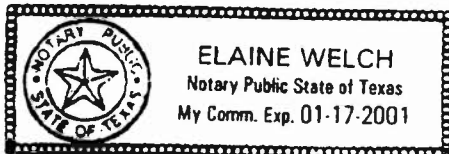
Udo Birnbaum

Udo Birnbaum
540 VZ 2916
Eustace, TX 75124
(903) 479-3929

STATE OF TEXAS
COUNTY OF HENDERSON

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

Given under my hand and seal of office this 15th day of September, 2000



Elaine Welch
Notary in and for The State of Texas

AFFIDAVIT OF UDO BIRNBAUM

My name is Udo Birnbaum. I am over the age of 21 and have never been convicted of a felony or misdemeanor in this State or any other State, or in the United States, and am competent to make this affidavit. I have personal knowledge of the facts stated herein.

The "accounts for services rendered" upon which "The Law Office" is collecting is a fraud by G.David Westfall and others

The Affidavit of Udo Birnbaum dated Aug. 16, 2000 (Exhibit 1) gives the circumstances under which David Westfall fraudulently solicited me. The Affidavit of Udo Birnbaum dated September 15, 2000 (Exhibit 2) describes David Westfall's fraudulent conduct after becoming my lawyer, and his dark reasons for soliciting both me and another related Civil Racketeering case, the Michael Collins case, i.e. obstruction in the administration of justice in both cases, and extortion of legal fees in mine. It is of interest that my federal racketeering cause, for which I retained David Westfall, is itself about extortion of legal fees and obstruction in the administration of justice.

In his suit (294th District Court, No. 00-00619) David Westfall, above his signature, states that "*systematic records were maintained*" and "*A true and accurate photostatic copy of the accounts for services rendered are attached hereto by reference for all purposes as Exhibit A.*" However no such exhibit was attached to the papers served upon me. Furthermore, no such exhibit exists in the Clerk's file.

I also know upon information and belief that no "*systematic records*" were maintained, and that no such records were used to come up with any accounts information I have ever seen or heard of regarding David Westfall's Law Office.

The only "bill" I ever saw was totally fraudulent (Exhibits 1, 1-A). If this were a true "bill", Westfall would have already eaten up the entire \$20,000 retainer only two (2) months after I retained him on May 5, 1999. He never sent me any bill or account information until about July 31, 2000, and then there was nothing in the envelope except the "bill". There was no letter. (Exhibits 1, 2)

The hand-written notes on the "bill" portray some sort of attempt to collect this "bill". These events did not occur. Neither David Westfall or anyone else ever contacted me as indicated there. Upon information and belief this scribbling is of much more recent origin than the dates indicate. (Exhibits 1, 1-A)

I know from the circumstances that this "bill" was created at a much later date than indicated by its December 31, 1999 date. It is a fraudulent collection of "legal

research", "telephone conferences", "conference with S.Podvin", Westfall's daughter Stefani Podvin, charges for talking to people not in my cause and clerks in the Fifth Circuit in which he did not represent me, and charges long after I had fired him.

Stefani Podvin, David Westfall's daughter provided me with "legal services" on at least two occasions. The "bill", however, shows no charges for any work done by Stefani Podvin. Instead it shows a string of "conference with S. Podvin" and "legal research", without a detailed breakout.

I know from the circumstances that this fraudulent "bill" could not have been created without the willing and knowing participation of Christina Westfall, David Westfall's wife and record and billing person, and his daughter Stefani Podvin. They, just like David Westfall himself, are responsible for the conversion of my \$20,000 retainer fund.

Demand has been made upon David Westfall, a copy of which is attached. (Exhibit 3)

Further affiant sayeth not.

Signed October 3rd, 2000

Udo Birnbaum

Udo Birnbaum

540 VZ 2916

Eustace, TX 75124

(903) 479-3929

STATE OF TEXAS

COUNTY Henderson

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

Given under my hand and seal of office this 3rd day of October, 2000



Cindy Gage
Notary in and for The State of Texas



I certify this to be a true and exact copy of the original on file in the District Clerk's Office, Van Zandt County, Texas.

Candi Scott

No. 00-00619

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

vs.

UDO BIRNBAUM

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IN THE DISTRICT COURT

294th JUDICIAL DISTRICT

VAN ZANDT COUNTY, TEXAS

**PLAINTIFF G. DAVID WESTFALL'S ORIGINAL ANSWER
TO DEFENDANT'S COUNTERCLAIM**

COMES NOW, G. David Westfall, Plaintiff and Counter-Defendant, in the above-styled and numbered cause and makes and files this his original answer to Defendant's Original Counterclaim and would thereby show the Court the following:

I.

Counter-Defendant asserts a general denial as is authorized by Rule 85 of the Texas Rules of Civil Procedure, and Counter-Defendant respectfully requests that the Cross-Plaintiff be required to prove the charges and allegations against Counter-Defendant by a preponderance of the evidence as is required by the Constitution and Laws of the State of Texas.

WHEREFORE PREMISES CONSIDERED, Counter-Defendant prays that Cross-Plaintiff take nothing by reason of this suit, and that Counter-Defendant go hence without day with his costs, and be granted such other and further relief, both general and special, to which Counter-Defendant may be justly entitled, both at law and equity.

Respectfully submitted,

G. David Westfall

G. David Westfall
Law Offices of G. David Westfall, P.C.
714 Jackson Street
Suite 200
Dallas, Texas 75202
(214) 741-4741
Facsimile (214) 741-4746

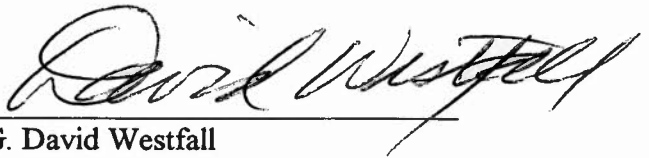
DEP.
BY
JUST CLERK VAN ZANDT CO. TX
OCT 30 11 11 31

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served upon all counsel of record via:

- _____ Certified Mail/Return Receipt Requested
- _____ Facsimile Transfer
- _____ First Class Mail
- _____ Federal Express
- _____ Courier
- _____ Hand-Delivery

on this the 30th day of Oct, 2000.



G. David Westfall

EV



I certify this to be a true and exact copy of the original on file in the District Clerk's Office, Van Zandt County, Texas.
Candi Scott

No. 00-00619

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

vs.

UDO BIRNBAUM

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IN THE DISTRICT COURT

294th JUDICIAL DISTRICT

VAN ZANDT COUNTY, TEXAS

PLAINTIFF THE LAW OFFICES OF G. DAVID WESTFALL, P.C.'S ORIGINAL ANSWER TO DEFENDANT'S COUNTERCLAIM

COMES NOW, The Law Offices of G. David Westfall, P.C., Plaintiff and Counter-Defendant, in the above-styled and numbered cause and makes and files this its original answer to Defendant's Original Counterclaim and would thereby show the Court the following:

I.

Counter-Defendant asserts a general denial as is authorized by Rule 85 of the Texas Rules of Civil Procedure, and Counter-Defendant respectfully requests that the Cross-Plaintiff be required to prove the charges and allegations against Counter-Defendant by a preponderance of the evidence as is required by the Constitution and Laws of the State of Texas.

WHEREFORE PREMISES CONSIDERED, Counter-Defendant prays that Cross-Plaintiff take nothing by reason of this suit, and that Counter-Defendant go hence without day with his costs, and be granted such other and further relief, both general and special, to which Counter-Defendant may be justly entitled, both at law and equity.

Respectfully submitted,

David Westfall

G. David Westfall
Law Offices of G. David Westfall, P.C.
714 Jackson Street
Suite 200
Dallas, Texas 75202
(214) 741-4741
Facsimile (214) 741-4746

BY _____
DEPT.
JUST CLERK VAN ZANDT CO. TX.
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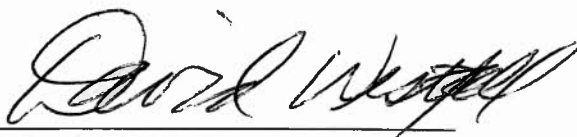
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served upon all counsel of record via:

- Certified Mail/Return Receipt Requested
- Facsimile Transfer
- First Class Mail
- Federal Express
- Courier
- Hand-Delivery

on this the 30th day of Oct, 2000.



G. David Westfall



I certify this to be a true and exact copy of the original on file in the District Clerk's Office, Van Zandt County, Texas.
Candi Scott

No. 00-00619

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

vs.

UDO BIRNBAUM

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IN THE DISTRICT COURT

294th JUDICIAL DISTRICT

VAN ZANDT COUNTY, TEXAS

**CHRISTINA WESTFALL'S ORIGINAL ANSWER
TO DEFENDANT'S COUNTERCLAIM**

COMES NOW, Christina Westfall, Counter-Defendant, in the above-styled and numbered cause and makes and files this her original answer to Defendant's Original Counterclaim and would thereby show the Court the following:

I.

Counter-Defendant asserts a general denial as is authorized by Rule 85 of the Texas Rules of Civil Procedure, and Counter-Defendant respectfully requests that the Cross-Plaintiff be required to prove the charges and allegations against Counter-Defendant by a preponderance of the evidence as is required by the Constitution and Laws of the State of Texas.

WHEREFORE PREMISES CONSIDERED, Counter-Defendant prays that Cross-Plaintiff take nothing by reason of this suit, and that Counter-Defendant go hence without day with his costs, and be granted such other and further relief, both general and special, to which Counter-Defendant may be justly entitled, both at law and equity.

Respectfully submitted,

G. David Westfall
Law Offices of G. David Westfall P.C.
714 Jackson Street
Suite 200
Dallas, Texas 75202
(214) 741-4741
Facsimile (214) 741-4746

BY _____
NOT CLERK VAN ZANDT CO. TX.
OCT 30 11:11:01
Candi Scott

27

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served upon all counsel of record via:

- Certified Mail/Return Receipt Requested
- Facsimile Transfer
- First Class Mail
- Federal Express
- Courier
- Hand-Delivery

on this the 30th day of Oct, 2000.



G. David Westfall



I certify this to be a true and exact copy of the original on file in the District Clerk's Office, Van Zandt County, Texas.
Candi Scott

No. 00-00619

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

vs.

UDO BIRNBAUM

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

STEFANI PODVIN'S ORIGINAL ANSWER TO DEFENDANT'S COUNTERCLAIM

COMES NOW, Stefani Podvin, Counter-Defendant, in the above-styled and numbered cause and makes and files this her original answer to Defendant's Original Counterclaim and would thereby show the Court the following:

I.

Counter-Defendant asserts a general denial as is authorized by Rule 85 of the Texas Rules of Civil Procedure, and Counter-Defendant respectfully requests that the Cross-Plaintiff be required to prove the charges and allegations against Counter-Defendant by a preponderance of the evidence as is required by the Constitution and Laws of the State of Texas.

II.

Counter-Defendant reserves the right to plead further orally at time of trial.

WHEREFORE PREMISES CONSIDERED, Counter-Defendant prays that Cross-Plaintiff take nothing by reason of this suit, and that Counter-Defendant go hence without day with his costs, and be granted such other and further relief, both general and special, to which Counter-Defendant may be justly entitled, both at law and equity.

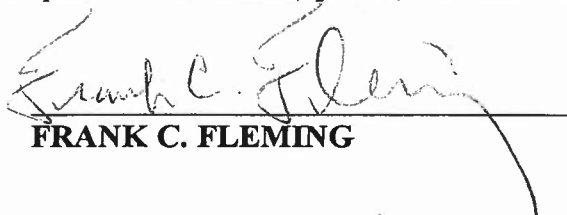
Respectfully submitted,

Frank C. Fleming

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

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing of Stefani Podvin's Original Answer have been served upon Udo Birnbaum, pro se, via First Class Mail, on this the 18 st day of December, 2000.


FRANK C. FLEMING



I certify this to be a true and exact copy of the original on file in the District Clerk's Office, Van Zandt County, Texas.

Candi Scott

No. 00-00619

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

vs.

UDO BIRNBAUM

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

PLAINTIFF'S MOTION FOR SANCTIONS

COMES NOW, The Law Offices of G. David Westfall, P.C., Plaintiff and Counter-Defendant, in the above-styled and numbered cause and makes and files this its Motion for Sanctions against Defendant Udo Birnbaum and would thereby show the Court the following:

I.

Defendant's deposition was noticed to be taken by Defendant Christina Westfall for December 5, 2000 in Van Zandt County, Texas. Defendant failed to appear for his deposition on that date.

Plaintiff traveled to Van Zandt County and appeared at the appointed date and time for the deposition. In fact, counsel appeared 15 minutes before 1:00 p.m. and waited until 20 minutes after the hour and Defendant Birnbaum did not appear for the deposition. The undersigned also checked with the Clerk's office and the Court Coordinator's office and determined that no calls had been received by anyone relative to the deposition.

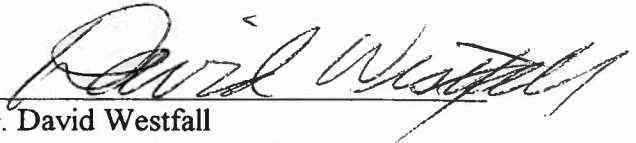
Plaintiff did not receive any notice that the deposition would not take place until the day after the deposition was to have been taken.

Plaintiff would thereby request the Court to have Defendant made available for deposition be at Defendant's expense for the failure to notify Plaintiff of the cancellation of the deposition and failure to file the appropriate Motion to Quash or for protective order. Lastly, Plaintiff would

request the Court to have Defendant Birnbaum pay for the attorney time and travel expenses for the deposition that did not occur.

WHEREFORE PREMISES CONSIDERED, Plaintiff prays that Defendant be ordered to appear for his deposition at a time and place convenient for the parties and at the sole expense of Udo Birnbaum for the attorney's fees and expense of appearing at the deposition which did not take place and for the attorney's fees incurred in preparing this Motion and obtaining the requested relief and be granted such other and further relief, both at law and equity, to which Plaintiff may be justly entitled.

Respectfully submitted,



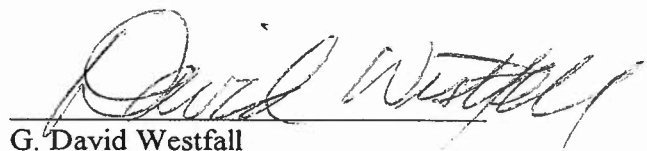
G. David Westfall
State Bar No. 21224000
Law Offices of G. David Westfall, P.C.
5646 Milton, Suite 520
Dallas, Texas 75206
(214) 741-4741
Facsimile (214) 741-4746

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served upon all counsel of record via:

- Certified Mail/Return Receipt Requested
- Facsimile Transfer
- First Class Mail
- Federal Express
- Courier
- Hand-Delivery

on this the 11th day of December, 2000.



G. David Westfall



I certify this to be a true and exact copy of the original on file in the District Clerk's Office, Van Zandt County, Texas.
Candice Scott

No. 00-00619

BY
DEP.
DISTRICT CLERK
VAN ZANDT COUNTY, TEXAS
NOV 19 2000
10:17 AM

THE LAW OFFICES OF) (IN THE DISTRICT COURT
G. DAVID WESTFALL, P.C.) () (294TH JUDICIAL DISTRICT
Vs.) () (VAN ZANDT COUNTY, TEXAS
UDO BIRNBAUM) () (

**DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR SANCTIONS:
PARTY SETTING DEPOSITION AND PARTY SEEKING SANCTIONS
ARE INVIOALATION OF RULE 191.2 RCP**

COMES NOW, Udo Birnbaum, Defendant and Counter and Cross Claimant, in the above styled and numbered cause and makes and files its Defendant's Response to Plaintiff's Motion for Sanctions and would thereby show the Court the following:

The party setting the deposition, i.e. Christina Westfall through her attorney Frank C. Fleming, did not abide by Rule 191.2 RCP in setting such depositions **without consulting** with Defendant.

The party seeking the sanction on defendant, i.e. The Law Offices of G. David Westfall, P.C. through its attorney G. David Westfall, did not abide by Rule 191.2 RCP by seeking sanctions **without first consulting** with Defendant.

Attorney G. David Westfall furthermore **failed to provide** the required certificate with his motion. Rule 191.2 RCP specifically states:

191.2 **Conference:** "Parties and their attorneys **are expected to cooperate** in discovery and to make any agreements reasonably necessary for the efficient disposition of the case. **All discovery motions** or requests for hearings relating to discovery **must contain a certificate** by the party filing the motion or request that a reasonable effort has been made to resolve the dispute **without the necessity** of court intervention and the effort failed."

G. David Westfall claims that "Plaintiff did not receive any notice that the deposition would not take place until the day after the deposition was to have been taken place". However G. David Westfall's **wife**, Christina Westfall, the cross-defendant **who set the deposition without consulting with Defendant**, received notice on December 4, 2000, one day prior to the deposition, that Defendant was not available on that day as a result of the short notice provided to Defendant and the lack of consultation with Defendant.

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Furthermore G. David Westfall's brazen attempt to make Defendant pay Plaintiff "*attorney's fees incurred in preparing this Motion*" (Plaintiff's Motion for Sanctions, page 2 line 6), when both he and his wife, who set such deposition without in any way consulting with Defendant, are in total violation of Rule 191.2 RCP, borders on extortion of additional "legal fees" in the manner alleged by Defendant in his counter/cross complaint.

WHEREFORE PREMISES CONSIDERED, Defendant prays that Plaintiff take nothing by its motion, and that this Court remind him, as well as the party setting deposition, of their duty to co-operate with Defendant, so that the merits of the claims at issue may be determined without unnecessary delay and costs.

Respectfully submitted

Udo Birnbaum

UDO BIRNBAUM, *Pro Se*

540 VZ 2916

Eustace, Texas 75124

(903) 479-3929

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this document has been served via CMRR on this the 19th day of December, 2000 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.

Udo Birnbaum

UDO BIRNBAUM



I certify this to be a true and exact copy of the original on file in the District Clerk's Office, Van Zandt County, Texas.
Candi Scott

No. 00-00619

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

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

Vs.

UDO BIRNBAUM

**MOTION FOR APPOINTMENT OF AUDITOR PURSUANT TO RULE 172 RCP
TO MAKE FINDING
OF STATE OF THE ACCOUNTS BETWEEN THE PARTIES**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Udo Birnbaum, Defendant and Counter and Cross Claimant, in the above-styled and numbered cause and makes and files this his Motion For Appointment of Auditor Pursuant to Rule 172 RCP to Make Finding of State of the Accounts Between Parties and would thereby show the Court the following:

I.

Birnbaum moves the Court to note the nature and state of the pleadings, including the issue of fraud in the "accounts for services rendered" as evidenced by Defendant's Answer, Counterclaim, and Cross-Complaint and exhibits attached thereto, and moves for appointment of an auditor to make a finding for the Court of the state of the accounts between the parties.

II.

Plaintiff "The Law Offices of G. David Westfall, P.C." even now has failed to provide a copy of the "accounts for services rendered" allegedly attached as Exhibit "A" to Plaintiff's Original Petition. Furthermore no copy is to be seen with the document Plaintiff filed with the Clerk.

III.

At issue in this Cause is whether the alleged "accounts for services rendered" (allegedly shown as Exhibit "A") is fraudulent or not. At issue in the process is whether the filing of Plaintiff's Original Petition without Exhibit "A", and still without Exhibit "A", is fraud in itself.

1.5

WHEREFORE Birnbaum requests a hearing upon these matters as to show that such appointment of an auditor is necessary for the efficient and just adjudication of this Cause.

Respectfully submitted

Udo Birnbaum

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

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this document has been served via CMRR on this the 26 day of December, 2000 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.

Udo Birnbaum
UDO BIRNBAUM



I certify this to be a true and exact copy of the original on file in the District Clerk's Office, Van Zandt County, Texas.

Candi Scott

No. 00-00619

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

Vs.

UDO BIRNBAUM

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

**SUPPLEMENT TO MOTION FOR APPOINTMENT OF AUDITOR
UNDER RULE 172 RCP AND NOTICE OF CANCELLATION OF DEPOSITIONS D.T.
OF G. DAVID WESTFALL, CHRISTINA WESTFALL, AND STEFANI PODVIN**

TO THE HONORABLE JUDGE OF SAID COURT:

DEFENDANT Udo Birnbaum hereby notifies the Court and the parties of the cancellation of the above referenced notices of depositions as are currently the subject of numerous motions for protective order before this Court.

I.

Defendant moves this Court for appointment of an auditor under Rule 172 RCP to make a finding for the Court upon the claim of a pattern of fraudulent accounting practices by Plaintiff, The Law Offices of G. David Westfall, P.C.

II.

Defendant called cross-defendants' counsel Frank Fleming to find out if he opposes Defendant's motion for appointment of such auditor and was informed that he [Fleming] definitely did. Fleming stated that he did not see a need for such auditor because this cause was "just a matter of [Birnbaum] not having paid a bill".

III.

Defendant moves for a hearing to show that this cause is not "just a matter of not having paid a bill", but about the recent creation of fraudulent "account" statements by the Plaintiff "The Law Offices" and the cross-defendants for the purpose of extorting "legal fees".

Respectfully submitted

Udo Birnbaum

UDO BIRNBAUM, *Pro Se*

540 VZ 2916

Eustace, Texas 75124

(903) 479-3929

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this document has been served via CMRR on this the 8 day of January, 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.

Udo Birnbaum

UDO BIRNBAUM

HEARING JUNE 20, 2001 10:00 A.M.
294TH DISTRICT COURT, CANTON, TEXAS

No.: 00-00619

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

VS:

UDO BIRNBAUM

THE PENDING MOTIONS:

(Sorted by date)

1. **CHRISTINA WESTFALL'S MOTION TO QUASH** NOTICE OF DEPOSITION DUCES TECUM AND FOR PROTECTIVE ORDER (12/7/00)
2. **STEFANI PODVIN'S MOTION TO QUASH** NOTICE OF DEPOSITION DUCES TECUM AND FOR PROTECTIVE ORDER (12/7/00)
3. **PLAINTIFF'S MOTION TO QUASH** NOTICE OF DEPOSITION DUCES TECUM OF G. DAVID WESTFALL AND FOR PROTECTIVE ORDER (12/11/00)
4. **PLAINTIFF'S MOTION FOR SANCTIONS** (12/11/00)
5. **[BIRNBAUM'S] MOTION FOR APPOINTMENT OF AUDITOR** PURSUANT TO RULE 172 RCP TO MAKE FINDING OF STATE OF THE ACCOUNTS BETWEEN THE PARTIES (12/26/00). **SUPPLEMENT TO MOTION** (1/8/01)
6. **PLAINTIFF'S MOTION TO QUASH** NOTICE OF DEPOSITION OF THE LAW OFFICES OF G. DAVID WESTFALL AND FOR PROTECTIVE ORDER (1/12/01)
7. **UDO BIRNBAUM'S MOTION UNDER RULE 193.4 FOR HEARING AND RULING ON OBJECTIONS AND ASSERTIONS OF PRIVILEGE** (4/20/01) w/ attachments
8. **PLAINTIFF'S MOTION TO QUASH** NOTICE OF DEPOSITION DUCES TECUM OF TESTIFYING EXPERTS G. DAVID WESTFALL AND FRANK C. FLEMING AND FOR PROTECTIVE ORDER (5/18/01)
9. **DEFENDANT, COUNTER / CROSS CLAIMANT, AND THIRD PARTY PLAINTIFF UDO BIRNBAUM ANNOUNCES READY FOR TRIAL** (5/21/01)

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

Vs.

UDO BIRNBAUM

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

**UDO BIRNBAUM'S MOTION UNDER RULE 193.4 FOR HEARING AND RULING ON
OBJECTIONS AND ASSERTIONS OF PRIVILEGE**

TO THE HONORABLE JUDGE OF SAID COURT:

DEFENDANT Udo Birnbaum pursuant to Rule 193.4 RCP moves the Court for a hearing to rule on objections made by opposing parties to certain discovery requests.

1. As indicated by Exhibit A, Birnbaum has attempted to conference with opposing counsel G. David Westfall regarding objections and implicit objections in the form of incomplete answers. G. David Westfall has failed to even respond to the request to conference.

2. As indicated by Exhibit B, Birnbaum has likewise attempted to conference with opposing counsel Frank C. Fleming regarding objections and implicit objections in the form of incomplete answers. Frank C. Fleming has failed to even respond to the request to conference.

3. Rule 193.4(a) RCP states:

Hearing. Any party may at any reasonable time request a hearing on an objection or claim of privilege asserted under this rule. The party making the objection or asserting the privilege must present any evidence necessary to support the objection or privilege. The evidence may be testimony presented at the hearing or affidavits served at least seven days before the hearing or at such other reasonable time as the court permits. If the court determines that an in camera review of some or all of the requested discovery is necessary, that material or information must be segregated and produced to the court in a sealed wrapper within a reasonable time following the hearing.

4. Birnbaum prays for the Court to hear this matter and to compel the objecting parties to answer and produce fully.

Respectfully submitted

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

CERTIFICATE OF ATTEMPT TO CONFERENCE

I, Udo Birnbaum, have attempted to conference upon this matter with opposing counsel as shown by Exhibit A and Exhibit B. To this day I have received no response of any kind from opposing counsel.

Udo Birnbaum
Udo Birnbaum

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this document has been served via CMRK on this the 20 day of 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.

Udo Birnbaum
UDO BIRNBAUM

April 16, 2001

TO: G. David Westfall
The Law Offices of G. David Westfall, P.C.
5646 Milton, Suite 520
Dallas, Texas 75206

By Fax and Regular Mail

COPY: Frank C. Fleming
Law Office of Frank C. Fleming
6611 Hillcrest, Suite 305
Dallas, Texas 75205-1301

By Fax and Regular Mail

Re: **Request for Conference (Discovery response deficiencies)**

Mr. Westfall:

I want to conference with you regarding deficiencies in responses you have provided me in behalf of both The Law Offices of G. David Westfall, P.C. and yourself:

"Plaintiff The Law Offices of G. David Westfall, P.C.'s Objections and Answers to Defendant's First Set of Interrogatories" (COS 11/20/2000):

Interrogatory No. 2	Answer is incomplete
Interrogatory No. 3	Answer is incomplete
Interrogatory No. 4	Answer is incomplete
Interrogatory No. 5	The matter of the objection
Interrogatory No. 6	Answer is incomplete
Interrogatory No. 8	The matter of the objection
Interrogatory No. 10	Answer is incomplete
Interrogatory No. 11	Answer is incomplete
Interrogatory No. 13	Answer is incomplete
Interrogatory No. 14	Answer is incomplete
Verification	

"Plaintiff The Law Offices of G. David Westfall, P.C.'s Objections and Responses to Defendant's First Request for Production" (COS 1/30/2001):

Request No. 3	Failure to provide disk
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"Plaintiff The Law Offices of G. David Westfall, P.C.'s Objections and Answers to Defendant's Second Set of Interrogatories" (COS 4/06/2000):

Interrogatory No. 1	The matter of the objection
Verification	

Exhibit
"A"

"G. David Westfall's Objections and Answers to Defendant's First Set of Interrogatories" (COS 11/20/2000):

Interrogatory No. 2	Answer is incomplete
Interrogatory No. 6	The matter of the objection
Interrogatory No. 7	The matter of the objection
Interrogatory No. 8	Answer is incomplete
Interrogatory No. 13	Answer is incomplete
Interrogatory No. 14	The matter of the objection
Verification	

"Defendant G. David Westfall's Responses to Request for Disclosure" (COS 1/08/2001):

Request No. 1	Failure to respond to Request No. 1
Request No. 2	Failure to respond to Request No. 2
Request No. 3	Failure to respond to Request No. 3
Disclosure (c)	Answer is incomplete
Disclosure (e)	Answer is incomplete
Disclosure (f)	Answer is incomplete

"G. David Westfall's Objections and Answers to Defendant's Second Set of Interrogatories" (COS 4/06/2000):

Interrogatory No. 1	The matter of the objection
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"First Request for Disclosure to G. David Westfall" (COS 12/26/00):

Request No. 1	Failure to respond to Request No. 1
Request No. 2	Failure to respond to Request No. 2
Request No. 3	Failure to respond to Request No. 3
Other matters	Answer is incomplete

Your disclosures, and particularly regarding the specifically identified matters, do not conform to the following discovery rules:

Rule 191.3(b)	"after a reasonable inquiry", "complete and correct"
Rule 191.3(b)(2)	"cause unnecessary delay"
Rule 192.7(b)	"possession, custody, or control"
Rule 193.1	"must make a complete response"
Rule 139.1(c)	"good faith factual and legal basis for the objection"
Rule 193.1(e)	"obscured by numerous unfounded objections"
Rule 196.4	production of "electronic or magnetic data"

Please be advised that a hearing upon these matters under Rule 193.4 RCP will require evidence to support the objection or privilege claimed, and that my motion for such hearing in itself requires a certification on my part "that a reasonable effort has been made to resolve the dispute without the necessity of court intervention and [whether] the effort failed."

Please timely set a time and manner for conferencing on this matter. I suggest an agreed time for either of us to telephone the other so that we may both have the proper documents readily available. Time is of the essence. You may of course call me at any time, day or evening, to conference or to arrange for the conference. I have an answering machine and fax on my (903) 479-3929 number.

Udo Birnbaum
UDO BIRNBAUM, Pro Se

Udo Birnbaum
540 VZ 2916
Eustace, TX 75124
(903 479-3929)

April 16, 2001

TO: Frank C. Fleming
Law Office of Frank C. Fleming
6611 Hillcrest, Suite 305
Dallas, Texas 75205-1301

By Fax and Regular Mail

COPY: G. David Westfall
The Law Offices of G. David Westfall, P.C.
5646 Milton, Suite 520
Dallas, Texas 75206

By Fax and Regular Mail

Re: Request for Conference (Discovery response deficiencies)

Mr. Fleming:

I want to counsel with you regarding deficiencies in responses you have provided me in behalf of your clients Christina Westfall and Stefani Podvin:

"Christina Westfall's Responses and Objections Answers to Defendant's First Set of Interrogatories" (COS 11/22/2000):

Interrogatory No. 3	Answer is incomplete
Interrogatory No. 5	The matter of the objection
Interrogatory No. 6	The matter of the objection
Interrogatory No. 9	Answer is incomplete
Interrogatory No. 10	The matter of the objection
Verification	

"First Request for Disclosure to Christina Westfall" (COS 12/26/00):

Request No. 1	Failure to respond (NO RESPONSE SERVED)
Request No. 2	Failure to respond (NO RESPONSE SERVED)
Request No. 3	Failure to respond (NO RESPONSE SERVED)

"Stefani Podvin's Responses and Objections Answers to Defendant's First Set of Interrogatories" (COS 12/29/2000):

Interrogatory No. 8	Answer is incomplete
Interrogatory No. 9	The matter of the objection
Interrogatory No. 10	Answer is incomplete
Verification	

"Stefani Podvin's Responses to Defendant's First Request for Production" (COS 1/03/2001):

Request No. 1	Failure to produce
Request No. 5	Failure to produce computer readable disk
Request No. 6	Failure to make attempt to produce

Exhibit
"B"

"Stefani Podvin's Objections and Answers to Defendant's Second Set of Interrogatories" (COS 2/09/2001):

Interrogatory No. 1	Nonresponsive
Interrogatory No. 2	Nonresponsive
Interrogatory No. 3	Nonresponsive
Interrogatory No. 4	Nonresponsive
Verification	

"Stefani Podvin's Objections and Answers to Defendant's Third Set of Interrogatories" (COS 2/16/2001):

Interrogatory No. 1	The matter of the objection
Interrogatory No. 2	The matter of the objection

"First Request for Disclosure to Stefani Podvin" (COS 12/26/00):

Request No. 1	Failure to respond (NO RESPONSE SERVED)
Request No. 2	Failure to respond (NO RESPONSE SERVED)
Request No. 3	Failure to respond (NO RESPONSE SERVED)

Your disclosures, and particularly regarding the specifically identified matters, do not conform to the following discovery rules:

Rule 191.3(b)	"after a reasonable inquiry", "complete and correct"
Rule 191.3(b)(2)	"cause unnecessary delay"
Rule 192.7(b)	"possession, custody, or control"
Rule 193.1	"must make a complete response"
Rule 193.1(c)	"good faith factual and legal basis for the objection"
Rule 193.1(e)	"obscured by numerous unfounded objections"
Rule 196.4	production of "electronic or magnetic data"

Please be advised that a hearing upon these matters under Rule 193.4 RCP will require evidence to support the objection or privilege claimed, and that my motion for such hearing in itself requires a certification on my part "that a reasonable effort has been made to resolve the dispute without the necessity of court intervention and [whether] the effort failed."

Please timely set a time and manner for conferencing on this matter. I suggest an agreed time for either of us to telephone the other so that we may both have the proper documents readily available. Time is of the essence. You may of course call me at any time, day or evening, to conference or to arrange for the conference. I have an answering machine and fax on my (903) 479-3929 number.


UDO BIRNBAUM, Pro Se

Udo Birnbaum
540 VZ 2916
Eustace, TX 75124
(903 479-3929)

SUMMARY OF THIS CLAIM

1. Comes now UDO BIRNBAUM, a consumer of legal services, counter and cross complaining under the Texas Deceptive Trade Practices Act (DTPA) upon being victimized by **false, misleading, deceptive, and unconscionable** acts by THE LAW OFFICES OF G. DAVID WESTFALL, P.C., G. DAVID WESTFALL, CHRISTINA WESTFALL, and STEFANI PODVIN, which were the producing cause of his damages.

2. UDO BIRNBAUM also complains of damage by reason of violations of 18 U.S.C. § 1961 *et seq.* ("RICO"), and brings third party plaintiff claims under 18 U.S.C. § 1964(c) ("Civil RICO") against G. DAVID WESTFALL, CHRISTINA WESTFALL, and STEFANI PODVIN, individually and jointly.

3. The suit brought against Birnbaum by Plaintiff "Law Office" never was an honest "collection" suit, but execution upon a scheme to defraud and extort. The evidence shows that the very filing of this suit by G. David Westfall was just another act of "**racketeering activity**" in a "**pattern of racketeering activity**", as that term is also defined in RICO.

4. G. David Westfall, Christina Westfall, and Stefani Podvin, in representing themselves as honest providers of legal services, **concealed and failed to disclose** that they were in reality a racketeering ring.

5. Individual documents coming out of, or associated with the Law Office, if looked at in isolation, may indeed appear quite ordinary. But if looked at as a total, and in light of the surrounding circumstances, they show a "**scheme to defraud**" and a "**pattern of racketeering activity**" to execute upon the fraud.

6. The "**pattern of racketeering activity**", 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, already supplied as Exhibit 8). Further evidence is to be found in the testimony of G. David Westfall on July 3, 2001 and the circumstances surrounding the taking of this deposition.

INTRODUCTION

7. 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").

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

9. Birnbaum, in asserting his 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".

10. 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.*

11. 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).

12. 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.

13. 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 PATTERN OF RACKETEERING ACTIVITY

14. The "**pattern of racketeering activity**" is evident from the transcript of the September 20, 2000 bankruptcy proceedings against G. David Westfall on September 20, 2000 (Exhibit 8):

- Mr. Alderson, the accountant for everybody, including "The Law Office", "Westfall Farms", Mr. Westfall, Mrs. Westfall for ten (10) years claiming not to "know" if Mr. Westfall is a shareholder of "The Law Office of G. Westfall, P.C." page 33 line 9.
- Mr. Alderson's testimony that funds are co-mingled across the board. 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".
- David Westfall trying to make himself bullet proof from a pending \$500,000 King Ranch judgment.

15. The "**pattern of racketeering activity**" is also evident from the following acts of "**racketeering activity**":

- The documents filed by or in behalf of David Westfall in his recent bankruptcy proceeding in which he claimed he had more than twelve (12) creditors against him

- The series of documents between David Westfall and his daughter Stefani Podvin designating him as director of the Law Office
- The retainer agreement between David Westfall and Udo Birnbaum
- The retainer agreement between David Westfall and Jerry Michael Collins
- The document David Westfall calls his "bill"
- The fraudulent pleading David Westfall used to bring this suit.

16. Further evidence is to be found in all the exhibits previously provided in this cause, the persons named, their affidavits, together with whatever they may have.

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 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 further 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, or as a source of privileged information.

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. He promises to provide monthly statements, but has no intent of providing such.,

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.

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.

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

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

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

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

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

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

The pattern upon Kathy Young:

44. "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.

45. 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.

46. 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.

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

48. 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.

49. 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".

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

The pattern upon Jeryl Cockerham

51. 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."*

52. 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.

53. 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".

54. 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.

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

The pattern upon Mathew Chitty:

56. 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.

57. 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.

58. 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".

59. 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".

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

The pattern upon Glen Cox:

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

62. 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.

63. 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."

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

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

The pattern upon Margie Phelps:

66. 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.

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

Summary of the Pattern of Racketeering

68. 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)

Defendants: G. David Westfall, Stefani Podvin

69. Allegations conforming to U.S. Fifth Circuit pattern jury instructions for 18 U.S.C. §1962(c):

- The **Law Office** is the alleged "enterprise".
- The enterprise engaged in, or had some effect upon, interstate or foreign commerce.
- The defendant was employed by or associated with the enterprise.
- The defendant knowingly and willfully conducted or participated, directly or indirectly, in the conduct of the affairs of the enterprise.
- The defendant did so knowingly and willfully through a pattern of racketeering activity.

70. To prove a sufficient connection between the "enterprise", the defendant, and the "alleged pattern of racketeering activity":

- The defendant participated in the operation or management of the enterprise itself in such a way, directly or indirectly, as to have played some part in directing the affairs of the enterprise.
- The defendant in fact engaged in the pattern of racketeering activity as the plaintiff claims
- The defendant's association with or employment by the enterprise facilitated his commission of the racketeering acts
- The commission of these predicate acts had some direct or indirect effect on the alleged enterprise.

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

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

73. 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).

74. 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).

75. 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.

76. 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.

77. 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.

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

79. 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)

(acquiring interest in enterprise with income derived from a pattern of racketeering activity)

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

80. Allegations conforming to U.S. Fifth Circuit pattern jury instructions for 18 U.S.C. §1962(a) (emphasis added, Notes added):

- **Westfall Farms** is the alleged "enterprise".
- The enterprise engaged in, or had some effect "on interstate commerce".
- The defendant derived income, directly or indirectly or indirectly, from a "pattern of racketeering activity". (NOTE: "a pattern", not "her pattern", i.e. David Westfall's and/or Stefani Podvin's pattern)
- Some part of that income was used in acquiring an interest in or operating the enterprise (NOTE: interest in Westfall Farms)

81. The required participation as a principal requires:

- The defendant knowingly and willfully committed, or knowingly and willfully aided and abetted in the commission of two or more alleged predicate offenses that constitute the alleged pattern of racketeering activity. (NOTE: i.e. aided and abetted David Westfall and/or Stefani Podvin)
- The defendant knowingly and willfully received income derived directly or indirectly, from that alleged pattern of racketeering activity.

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

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

84. The above-named operated an "enterprise" within the meaning of RICO, 18 U.S.C. § 1961(4).

85. 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).

86. 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).

87. At all relevant times the above-named used part of that income in acquiring an interest in or operating the "enterprise".

88. 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.

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

90. 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

91 This claim is for **false, misleading, deceptive, and unconscionable** acts by THE LAW OFFICES OF G. DAVID WESTFALL, P.C., G. DAVID WESTFALL, CHRISTINA WESTFALL, and STEFANI PODVIN, which were the producing cause of Birnbaum's damages.

92 G. David Westfall, Christina Westfall, and Stefani Podvin, in representing themselves as honest providers of legal services, **concealed and failed to disclose** that they were in reality a racketeering ring operating out of a law office.

93. If Birnbaum would have known that they were a racketeering ring, he surely would never have retained them in the first place. But for G. David Westfall committing the **unconscionable act** of soliciting Birnbaum to obstruct in the Collins matter as shown by the previously provided exhibits, Birnbaum would not have been damaged and neither the suit upon Birnbaum, or this claim under the Texas DTPA by Birnbaum would be in this court.

94. Birnbaum was damaged by the \$20,000 retainer fee paid, loss of earnings, and mental anguish.

COUNT FOUR-FRAUD

The Law Offices of G. David Westfall, P.C., G. David Westfall,

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

96. 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.

97. 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.

98. 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.

99. 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.

100. 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

101. 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.

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.

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 5th day of July, 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.


UDO BIRNBAUM

ANSWERS TO PLAINTIFF'S ALLEGATIONS

Plaintiff's allegation: *"On or about May 5, 1999, Defendant retained Plaintiff to perform legal services in a civil matter in Cause No. 3:99-CV-0696-R in the United District Court for the Northern District of Texas in Dallas, Dallas County, Texas." (Plaintiff's Original Petition paragraph II)*

My answer: **Denied.** Defendant did not retain Plaintiff, but G. David Westfall, and not to "perform legal services", but to "act as [his] attorney ", and "provide reasonable and necessary legal services to the best of [his] ability." G. David Westfall did not provide services such as he promised. Plaintiff did not abide by the terms of the retainer. (Exhibits 1, 2, 3, 4)

Plaintiff's allegation: *"The legal and/or personal services were provided at the special instance and requested of Defendant and in the regular course of business." (Plaintiff's Original Petition paragraph III)*

My answer: **Denied.** The services were provided not at the instance of the Defendant, but at the instance of Plaintiff "Law Offices" and / or attorney G. David Westfall. Defendant was fraudulently and deceptively solicited by Plaintiff and G. David Westfall in violation of Rule 7.03 of the Texas State Bar Rules (Texas Disciplinary Rules of Professional Conduct). (Exhibit 1, 2, 3)

Plaintiff's allegation: *"In consideration of such services, on which systematic records were maintained, Defendant promised and became bound and liable to pay Plaintiff the prices charged for such services and expenses in the amount of \$18,121.10, being a reasonable charge for such services." (Plaintiff's Original Petition paragraph III)*

My answer: **Denied.** Defendant alleges that no systematic records were maintained. Defendant avers that the only "bill" he ever received was about July 31, 2000, such document titled "Billing Statement, December 31, 1999", with handwritten notation portraying attempts at collection dated 2/1/00, 4/3/00, 6/1/00, and 7/31/00. (Exhibits 1, 2, 1-A, 4). Plaintiff avers that no such attempts at collection were made (Exhibit 4). Plaintiff avers that this "Last notice B-4 collection 7/31/00" was the first, and only notice ever, and that it was not accompanied by any explanation or communication. (Exhibit 1, 4). Defendant alleges this "bill" is fraudulent and not of December 31, 2000 origin.

Plaintiff's allegation: *"Despite Plaintiff's demands upon Defendant for payment, Defendant has refused and failed to pay the account to Plaintiff's damage in the total amount of \$18,121.10. All just and lawful offsets, payments and credits have been allowed. (Plaintiff's Original Petition paragraph III)*

My answer: **Denied.** G. David Westfall fraudulently solicited me in violation of Texas Bar Rule 7.03 (Solicitations and Prohibited Payments). Texas Bar Rule 7.03(d) unconditionally prohibits charging for, or collecting a fee for professional employment obtained in violation of Rule 7.03 (a), (b), or (c). Plaintiff's charges are not lawful. Additionally, the only "bill" I ever saw was certainly also fraudulent. (Exhibits 1, 2, 3, 4). Recent testimony by G. David Westfall at the deposition of him taken by Udo Birnbaum shows that the whole "accounting system" at the Law Office is one of occasionally getting around to it.

DEFENSES

Defendant asserts that "Plaintiff's Original Petition" in this Cause is a fraudulent document, known to be fraudulent by G. David Westfall when he caused it to be mailed for filing on September 20, 2000.

Defendant Birnbaum respectfully requests that Plaintiff be required to prove the charges and allegations against Defendant by a preponderance of the evidence as is required by the Constitution and Laws of the State of Texas and demands a jury trial.

COUNTERCLAIM (Plaintiff "Law Office")

Birnbaum, a consumer of legal services, makes counterclaims against Plaintiff the "Law Office" under the Texas Deceptive Trade Practices Act for **false, misleading, deceptive, and unconscionable** acts by the LAW OFFICE and G. DAVID WESTFALL, which were the **producing cause** of Birnbaum's damages. Demand was made.

G. David Westfall, in misrepresenting himself as an honest provider of legal services, **concealed and failed to disclose** that he was running a racketeering ring ("Westfall Bunch") right there out of the Law Office.

If Birnbaum would have known of the "Westfall Bunch", he surely would never have contracted through Plaintiff "Law Office" in the first place. But for G. David Westfall committing the **unconscionable** act of soliciting Birnbaum to obstruct in the administration of justice in the Collins matter in the Dallas Federal Court as shown by the attached exhibits, Birnbaum would not have been damaged, and neither the suit upon Birnbaum, nor this claim under the Texas DTPA, would exist.

CROSS-COMPLAINT of a "pattern of racketeering activity" (G. David Westfall, Christina Westfall, and Stefani Podvin)

Evidence of a "**pattern of racketeering activity**" by G. David Westfall is shown by the exhibits to this document. Exhibit 2, in particular, gives evidence of a "**pattern of racketeering activity**" by acts of "**racketeering activity**" (predicate acts) of **obstruction in the administration of justice** on the part of G. David Westfall in the Dallas Federal Court. The "bill" in this cause, reflecting charges for "conferences" with Stefani Podvin, together with her admitting that she submitted "*Billing time cards created by Stefani Podvin and provided to David Westfall*", shows

that money flowed to Stefani Podvin. Similar arguments can be made for Christina Westfall's work at the Law Office. Such flow of income from a "**pattern of racketeering activity**" violates 18 U.S.C. § 1962(a) ("RICO").

Evidence obtained from Court documents in involuntary bankruptcy proceedings against G. David Westfall in the Dallas Bankruptcy Court (Bk. No. 300-34287-HCA-70 shows the RICO violative "**pattern of racketeering activity**" as involving not only G. David Westfall, but also Christina Westfall, and Stefani Podvin. This involvement was of course also evident to Birnbaum upon the sudden appearance about July 31, 2000 of the fuzzy giant balloon "bill" of \$189,121.10 that initiated these whole proceedings, and all the fuzzy and strange documents emanating from somewhere within the Dallas Federal Court.

Birnbaum therefor brings this cross-complaint under 18 U.S.C. § 1964(c) ("Civil RICO") against David Westfall, Christina Westfall and Stefani Podvin. DAVID WESTFALL, CHRISTINA WESTFALL and STEFANI PODVIN are liable to Defendant Birnbaum for such part of Plaintiff's claims as they are liable to Birnbaum by reason of their violation of RICO.

The "**pattern of racketeering activity**" and the "**conducting of the affairs of the enterprise**" is clearly visible in the testimony of G. David Westfall and accountant Richard Alderson for the whole Law Office "Westfall Bunch" (David Westfall, Christina Westfall, Stefani Podvin), as shown in the 237 page transcript of the September 20, 2001 bankruptcy proceedings against G. David Westfall (No. 300-34287-HCA in the Dallas Bankruptcy Court, already filed as an Exhibit 8 in this Cause).

- Mr. Alderson, the accountant for everybody, including the "Law Office", "Westfall Farms", David Westfall, and Christina Westfall for ten (10) years claiming not to "know" if Mr. Westfall is a shareholder of "The Law Office of G. Westfall, P.C." page 33 line 9.
- Mr. Alderson's testimony that funds are co-mingled across the board. page 40 starting line 12 and going on for pages. Supported by the testimony of G. David Westfall himself at that hearing.
- 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".
- David Westfall trying to make himself bullet proof from a pending \$500,000 King Ranch judgment.

The "**pattern of racketeering activity**" is also evident from the following acts of "**racketeering activity**":

- The documents filed by or in behalf of David Westfall in his recent bankruptcy proceeding in which he claimed he had more than twelve (12) creditors against him
- The series of documents between David Westfall and his daughter Stefani Podvin each year designating him as director of the Law Office
- The retainer agreement between David Westfall and Udo Birnbaum
- The retainer agreement between David Westfall and Jerry Michael Collins
- The document David Westfall calls a "bill"
- The fraudulent pleading David Westfall used to bring this suit.

The "**pattern of racketeering activity**" is to be found in all the exhibits previously provided in this cause, the persons named, their affidavits, together with whatever they may have.

The "**pattern of racketeering activity**" is also clearly visible in the testimony of G. David Westfall as taken by Udo Birnbaum on July 3, 2001. **It shows G. David Westfall had no intent of ever abiding by the terms of the retainer contract he signed with Udo Birnbaum.**

Prayer for Relief

Wherefore, Defendant 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 for the reasons given above.

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 Plaintiff:

- (a) In an amount not less than \$40,000
- (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

Defendant seeks judgment against cross-defendants for such amount as they are liable to him for his liability to Plaintiff The Law Offices of G. David Westfall, P.C.

BIRNBAUM HEREBY DEMANDS A TRIAL BY JURY

Respectfully submitted,



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

NOTE: Attached to this document for ready referral:

- **The mandatory Rule 185 denial, under oath, upon a "suit on account", as previously provided on August 16, 2000 as an "Exhibit 1"**
- **Birnbaum's December 26, 2000 Motion for Appointment of Auditor, etc**
- **Birnbaum's January 8, 2001 Supplement to Motion for Appointment of Auditor, etc**
- **The cover sheet of the binders provided to all parties and the Court for our hearing June 20, 2001, indicating the Motion for Appointment of Auditor, etc as Item 7**

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this document has been served via CMRR on this the 6 day of July, 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.



UDO BIRNBAUM

Exhibit
1

AFFIDAVIT OF UDO BIRNBAUM

My name is Udo Birnbaum. I am 63 years old and live on a farm in Van Zandt County. I have never been convicted of a felony or misdemeanor in this State or any other State, or in the United States, and am competent to make this affidavit. I have personal knowledge of the facts stated herein.

On or about December 20, 1998 I received a phone call from a person by the name of Kathy Young. Ms. Young told me she had read a newspaper article about beheaded calves being found on my farm and the name of a man was mentioned in that article whom she wanted to contact. I asked her what that name was and she said, "Michael Collins". I took her name and phone number and delivered it to Michael Collins.

Michael Collins was living in his trailer which was parked on my farm, and I overheard his conversation with Ms. Young where he agreed to meet with her and some lawyer, who I later learned was David Westfall.

The reason I know it was David Westfall is that a short time later, a week or so, Ms. Young began asking me questions about a lawsuit that was written about in a newsletter Michael Collins had published. It was not very long after that time that Ms. Young solicited me to employ David Westfall to represent me in what became a Civil RICO suit.

I paid David Westfall \$20,000 up front about May 5, 1999. I fired him on December 2, 1999. About two weeks ago on July 31, 2000, I received a document (Exhibit A) by certified mail, claiming I owed him \$18,000. Although David Westfall's handwritten notes on this document claim that he contacted me as indicated, he never previously sent me this bill, nor any bill ever, and never sent or

gave such notices. Prior to this July 31, 2000, I have never previously seen any of these entries or charges.

This bill is totally fraudulent. At \$200 per hour he had already eaten up the entire \$20,000 by July 9, 1999, barely two (2) months into the case (103 hours @ \$200 = \$20,600). If he would have sent me any such bills, at any time, I would have fired him on the spot at that time.

I fully believe this lawyer set out from the beginning to extort money from me. Also, I believe he joined the other lawyers who Michael Collins sued in federal court to stop him from speaking out on corruption in our legal system.

Attached to this affidavit is Exhibit A which is a true and accurate photostatic copy of the document I received from David Westfall, and which I incorporate herein.

Further affiant sayeth not.

Signed August 16th, 2000

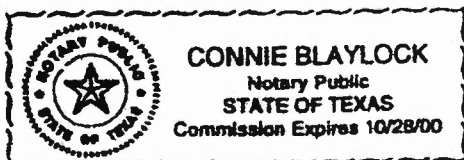
Udo Birnbaum
Udo Birnbaum

STATE OF TEXAS

COUNTY OF HENDERSON

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

Given under my hand and seal of office this 16 day of August, 2000



Connie Blaylock
Notary in and for The State of Texas



I certify this to be a true and exact copy of the original on file in the District Clerk's Office, Van Zandt County, Texas.

Candi Scott

No. 00-00619

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

IN THE DISTRICT COURT

Vs.

294TH JUDICIAL DISTRICT

UDO BIRNBAUM

VAN ZANDT COUNTY, TEXAS

Vs.

G. DAVID WESTFALL

CHRISTINA WESTFALL

STEFANI PODVIN

John Doe

Mary Doe

UDO BIRNBAUM'S AMENDED THIRD PARTY PLAINTIFF CIVIL RICO CLAIM AGAINST G. DAVID WESTFALL, CHRISTINA WESTFALL, AND STEFANI PODVIN

This pleading amends "*Udo Birnbaum's Third Party Plaintiff Civil RICO Claim against G. David Westfall, Christina Westfall, and Stefani Podvin*" (filed April 30, 2001) and declares as null "*Defendant Udo Birnbaum's First Amended Counterclaim, Cross-Complaint, and Amended Civil RICO Claim*".

"*Defendant's Answer, Counterclaim, and Cross-Complaint*" (filed October 3, 2000) stands as amended by "*Defendant's Amended Answer, Counterclaim, and Cross-Complaint*" (filed July 6, 2001).

BIRNBAUM'S pleadings in a nutshell:

"*Defendant's Amended Answer, Counterclaim, and Cross-Complaint*" holds G. DAVID WESTFALL, CHRISTINA WESTFALL, and STEFANI PODVIN liable to UDO BIRNBAUM for such amounts as they, by reason of their RICO violation, may be liable to UDO BIRNBAUM for their having made UDO BIRNBAUM liable to their agent enterprise, THE LAW OFFICES OF G. DAVID WESTFALL, P.C. (i.e. the \$18,121.10 "Plaintiff" is seeking by this suit)

This document, "*Udo Birnbaum's Amended Third Party Plaintiff Civil RICO Claim against G. David Westfall, Christina Westfall, and Stefani Podvin*" holds G. DAVID WESTFALL, CHRISTINA WESTFALL, and STEFANI PODVIN liable to UDO BIRNBAUM for such amounts as they, by reason of their RICO violation, damaged UDO BIRNBAUM through their agent enterprise, THE LAW OFFICES OF G. DAVID WESTFALL, P.C. (i.e. the \$20,000 retainer fee paid, other costs, and loss of earnings)

Same RICO "enterprise", same "pattern of racketeering activity", different liability.

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, UDO BIRNBAUM ("Defendant", "Birnbaum"), complaining of G. DAVID WESTFALL ("David Westfall", "Westfall"), CHRISTINA WESTFALL, and STEFANI PODVIN, and would show the Court the following:

G. DAVID WESTFALL is an individual whose residence is in Dallas, Dallas County, Texas and may be served with process at 6623 Norway Road, Dallas, Texas 75230. (Ph. 361-2124)

CHRISTINA WESTFALL is an individual whose residence is in Dallas, Dallas County, Texas and may be served with process at 6623 Norway Road, Dallas, Texas 75230. (Ph.361-2124)

STEFANI PODVIN is an individual whose residence is in Dallas, Dallas County, Texas and may be served with process at 5935 Royal Crest Drive, Dallas, Texas 75230. (Ph. 987-4740)

SUMMARY OF THIS CLAIM

1. UDO BIRNBAUM complains of damage by reason of violations of 18 U.S.C. § 1961 *et seq.* ("RICO"), and brings third party plaintiff claims under 18 U.S.C. § 1964(c) ("Civil RICO") against G. DAVID WESTFALL, CHRISTINA WESTFALL, and STEFANI PODVIN, individually and jointly.

2. This suit (No. 00-619) brought against Birnbaum in the name of Plaintiff "Law Office" never was an honest "collection" suit, but execution upon a scheme to defraud and extort. The evidence shows that the very filing of this suit by G. David Westfall was just another act of "**racketeering activity**" in a "**pattern of racketeering activity**", as those terms are defined in RICO.

3. Individual documents coming out of, or associated with the Law Office, if looked at in isolation, may indeed appear quite ordinary. But if looked at as a total, and in light of the surrounding circumstances, they show a "**scheme to defraud**" and a "**pattern of racketeering activity**".

4. The "**pattern of racketeering activity**", and the "**conducting 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, already supplied as Exhibit 8). Further evidence is to be found in the deposition testimony of G. David Westfall on July 3, 2001.

INTRODUCTION

5. Having diligently investigated both the facts and the law, Birnbaum has found that the various matters he is complaining of are 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").

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

7. Birnbaum, in asserting his 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".

8. 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.*

9. 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).

10. The previous 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.

11. 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 PATTERN OF RACKETEERING ACTIVITY

12. The "**pattern of racketeering activity**" is evident from the transcript of the September 20, 2000 bankruptcy proceedings against G. David Westfall on September 20, 2000 (Exhibit 8):

- Mr. Alderson, the accountant for everybody, including "The Law Office", "Westfall Farms", Mr. Westfall, Mrs. Westfall for ten (10) years claiming not to "know" if Mr. Westfall is a shareholder of "The Law Office of G. Westfall, P.C." page 33 line 9.
- Mr. Alderson's testimony that funds are co-mingled across the board. 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 a "Law Office" slush fund 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".
- David Westfall trying to make himself bullet proof from a pending \$500,000 King Ranch judgment.

13. The "**pattern of racketeering activity**" is also evident from the following acts of "**racketeering activity**":

- The documents filed by or in behalf of David Westfall in his recent bankruptcy proceeding in which he claimed he had more than twelve (12) creditors against him
- The series of documents between David Westfall and his daughter Stefani Podvin designating him as director of the Law Office each year
- The retainer agreement between David Westfall and Udo Birnbaum
- The retainer agreement between David Westfall and Jerry Michael Collins
- The document in this cause which David Westfall calls his "bill"
- The fraudulent pleading David Westfall used to bring this suit.

14. Further evidence is to be found in all the exhibits previously provided in this cause, the persons named, their affidavits, together with whatever they may have.

THE PURPOSE OF THE SCHEME

15. The purpose of the scheme is to illicitly enrich the named third party defendants 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 certain of the defendants with public servants by creating what could be termed "YOM" ("you owe me") chips, constituting future enrichment.

16. A further purpose of the scheme 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

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

18. 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, or as a source of privileged information.

19. 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. Although he promises to provide monthly statements, he has no intent of providing such, for they would reveal his scheme.

20. G. David Westfall 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).

21. G. David Westfall 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), or that he "cannot get a hold of them" (Birnbaum), all the time still working on building the trust of his victims, and of course not telling them that he is spreading lies.

22. 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 both to them and about 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.

PATTERN OF RACKETEERING ACTIVITIES

The pattern upon Udo Birnbaum:

23. 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)

24. 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.

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

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

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

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

29. Westfall, in bringing this very suit, 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:

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

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

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

33. Never pays Collins for feed and veterinary supplies obtained from the feed store Collins was operating in Eustace, Texas. Westfall claims it was a trade for legal fees.

34. 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.

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

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

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

38. Obstructed in the administration of justice in the Dallas Federal Court in cause 3:99cv0641. Evidence is to be found in the circumstances ultimately leading federal Judge Solis to sanction him \$2,500 for naming Tyler District Judge Louis B. Gohmert as one of the defendants

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

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

The pattern upon Kathy Young:

41. "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.

42. 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.

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

44. Becomes Young's mothers' lawyer telling Young that 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.

45. 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".

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

The pattern upon Jeryl Cockerham

47. Westfall gets Kathy Young to bring Cockerham to Westfall. Cockerham, former Sheriff of Van Zandt County, had been run through the mill in Van Zandt County. Westfall had it

right, when he stated to Birnbaum and Collins that *"It[Van Zandt County] is truly a RICO enterprise."*

48. 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.

49. Westfall finally sent Cockerham a bill totaling \$13,861.90 for work supposedly done between July and December of 1998, even though there exists no retainer agreement. Cockerham paid a total of \$4,500. Westfall pushed Cockerham to work at "Westfall farms".

50. 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.

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

The pattern upon Mathew Chitty:

52. Mathew Chitty was charged with a 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.

53. 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.

54. 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".

55. 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".

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

The pattern upon Glen Cox:

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

59. G. David Westfall did not do as good a job of handling Cox's legal matters as he could have and enabled 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.

59. 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."

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

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

The pattern upon Margie Phelps:

62. 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.

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

Summary of the Pattern of Racketeering

64. 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)

Defendants: G. David Westfall, Stefani Podvin

65. Allegations conforming to the elements contained in U.S. Fifth Circuit Civil RICO pattern jury instructions for 18 U.S.C. §1962(c):

- The **Law Office** is the alleged "enterprise". It is run by the above.
- The enterprise engaged in, or had some effect upon, interstate or foreign commerce.
- The defendant was employed by or associated with the enterprise.
- The defendant knowingly and willfully conducted or participated, directly or indirectly, in the conduct of the affairs of the enterprise.
- The defendant did so knowingly and willfully through a pattern of racketeering activity.

To prove a sufficient connection between the "enterprise", the defendant, and the "alleged pattern of racketeering activity":

- The defendant participated in the operation or management of the enterprise itself in such a way, directly or indirectly, as to have played some part in directing the affairs of the enterprise.
- The defendant in fact engaged in the pattern of racketeering activity as the plaintiff claims
- The defendant's association with or employment by the enterprise facilitated his commission of the racketeering acts
- The commission of these predicate acts had some direct or indirect effect on the alleged enterprise.

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

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

68. 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).

69. 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).

70. 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.

71. 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.

72. 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.

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

74. 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)
(acquiring interest in enterprise with income derived from a pattern of racketeering activity)**

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

75. Allegations conforming to U.S. Fifth Circuit Civil RICO pattern jury instructions for 18 U.S.C. §1962(a) (emphasis added, Notes added):

- **Westfall Farms** is the alleged "enterprise". The above have an ownership share.
- The enterprise engaged in, or had some effect "on interstate commerce".
- The defendant **derived income**, directly or indirectly or indirectly, **from a "pattern of racketeering activity"**. (NOTE: "a pattern", not "her pattern", i.e. David Westfall's and/or Stefani Podvin's pattern)
- Some part of that income was used in **acquiring an interest in** or operating the enterprise (NOTE: interest in Westfall Farms)

The required participation as a **principal** requires:

- The defendant knowingly and willfully committed, or **knowingly and willfully aided and abetted** in the commission of two or more alleged predicate offenses that constitute the alleged **pattern of racketeering activity**. (NOTE: i.e. aided and abetted David Westfall and/or Stefani Podvin)
- The defendant knowingly and willfully received income derived directly or indirectly, from that alleged pattern of racketeering activity.

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

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

78. The above-named operated an "enterprise" within the meaning of RICO, 18 U.S.C. § 1961(4).

79. 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).

80. 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).

81. At all relevant times the above-named used part of that income in acquiring an interest in or operating the "enterprise".

82. 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.

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

84. 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-FRAUD
Defendants: G. David Westfall

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

86. 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.

87. 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.

88. 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.

89. 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.

90. 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

91. This never was an honest "collection" suit by G. David Westfall in behalf of a "The Law Offices of G. David Westfall, P.C.", but execution by acts of "**racketeering activity**" in furtherance of a full-blown racketeering scheme, with G. David Westfall, Christina Westfall, and Stefani Podvin, as principals, using a "The Law Offices of G. David Westfall, P.C." as their agent.

92. G. David Westfall, fronting through "The Law Offices of G. David Westfall, P.C.", and in concert with others, is trying to create privilege for his wife Christina Westfall and daughter Stefani Podving by reason of their being **agents** for the "**Law Office**", when in fact the "**Law Office**" is the **agent**, and CHRISTINA WESTFALL and STEFANI PODVIN, just like G. DAVID WESTFALL, are in fact the principals.

93. "*Defendant's Amended Answer, Counterclaim, and Cross-Complaint*" holds G. DAVID WESTFALL, CHRISTINA WESTFALL, and STEFANI PODVIN, as cross-defendants, liable to UDO BIRNBAUM for such amounts as they, by reason of their RICO violation, are liable to UDO BIRNBAUM for their having made UDO BIRNBAUM liable to their agent enterprise, THE LAW OFFICES OF G. DAVID WESTFALL, P.C. (i.e. the \$18,121.10 "Plaintiff" is seeking by this suit)

94. This pleading, "*Udo Birnbaum's Amended Third Party Plaintiff Civil RICO Claim against G. David Westfall, Christina Westfall, and Stefani Podvin*" holds G. DAVID WESTFALL, CHRISTINA WESTFALL, and STEFANI PODVIN, as third party defendants, liable to UDO BIRNBAUM for such amounts as they, by reason of their RICO violation, damaged UDO BIRNBAUM through their agent enterprise, THE LAW OFFICES OF G. DAVID WESTFALL, P.C. (i.e. the \$20,000 retainer fee paid, other costs, and loss of earnings)

95. Same RICO "**enterprise**", same "**pattern of racketeering activity**", different liability.

PRAYER FOR RELIEF

Wherefore, Udo Birnbaum respectfully requests that judgment be entered against parties G. DAVID WESTFALL, CHRISTINA WESTFALL, and STEFANI PODVIN.

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

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 11 day of July, 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.

Udo Birnbaum

UDO BIRNBAUM



I certify this to be a true and exact copy of the original on file in the District Clerk's Office, Van Zandt County, Texas.
Candi Scott

No. 00-00619

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

vs.

UDO BIRNBAUM

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

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DIST. CLERK'S OFFICE
VAN ZANDT COUNTY, TEXAS

**COUNTER DEFENDANT LAW OFFICE OF G. DAVID WESTFALL, P.C.
AND G. DAVID WESTFALL'S MOTION FOR SUMMARY JUDGMENT**

COME NOW, The Law Offices of G. David Westfall, P.C. and G. David Westfall, Counter-Defendant and Third Party Defendant, in the above-styled and numbered cause and makes and files this their Motion for Summary Judgment pursuant to the provisions of Texas Rules of Civil Procedure 166a, and in support thereof would thereby show the Court the following:

I.

This Motion for Summary Judgment is based on the pleadings on file with the Court, all discovery requests and responses or lack of responses thereto. The foregoing shows as a matter of law that with regard to the issues raised there is no genuine issue as to any material fact, and that the Law Office of G. David Westfall, P.C. and G. David Westfall are entitled to judgment as a matter of law.

II.

The Texas "no-evidence motion" requires, like the federal standard, that if the issue is one on which the movant does not bare the burden of proof and after an adequate time for discovery has passed, summary judgment is mandated if the respondent fails to make a showing icient to establish the existence of each element essential to its case. *Celotex v. Catrett*, 477 U.S. 317 (1986), see Clay M. White, "A New Rule For Texas Summary Judgments," INSURANCE DEFENSE LEGAL UPDATE December 1997.

Moreover, simply showing the existence of a fact issue will not suffice to defeat a "no evidence" summary judgment; there must be a "genuine issue" regarding a "material fact." There is no genuine issue where the record, taken as a whole, could not lead a rational trier of fact to find for the respondent. *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574,

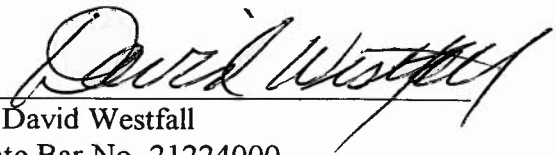
587 (1986). In the present situation, after reviewing the record as a whole, a rational trier of fact could not find for Udo Birnbaum on any of his claims against The Law Office of G. David Westfall, P.C. and G. David Westfall.

III.

There is no sustainable cause of action against The Law Office of G. David Westfall, P.C. and/or G. David Westfall as a matter of law, and there being no question in law or in fact which prohibits the granting of this Motion for Summary Judgment, The Law Office of G. David Westfall, P.C. and G. David Westfall are entitled the same.

WHEREFORE PREMISES CONSIDERED, Counter Defendant The Law Office of G. David Westfall, P.C. and Third Party Defendant G. David Westfall pray that this court grant their No-Evidence Motion for Summary Judgment dismissing Udo Birnbaum's claims against them with prejudice to its being refiled, and award such other relief, at law or equity, as to which they may be justly entitled.

Respectfully submitted,

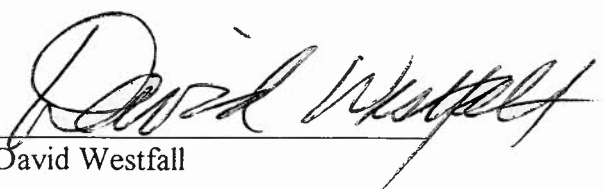

G. David Westfall
State Bar No. 21224000
Law Offices of G. David Westfall, P.C.
5646 Milton, Suite 520
Dallas, Texas 75206
(214) 741-4741
Facsimile (214) 741-4746

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served upon all counsel of record via:

- Certified Mail/Return Receipt Requested
- Facsimile Transfer
- First Class Mail
- Federal Express
- Courier
- Hand-Delivery

on this the 17th day of August, 2001.


G. David Westfall



I certify this to be a true and exact copy of the original on file in the District Clerk's Office, Van Zandt County, Texas.

Candi Scott

CAUSE NO. 00-00619

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

Plaintiff.

v.

UDO BIRNBAUM,

Defendant.

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IN THE DISTRICT COURT

294th JUDICIAL DISTRICT

VAN ZANDT COUNTY, TEXAS

**THIRD PARTY DEFENDANT, STEPHANIE PODVIN'S,
MOTION FOR SUMMARY JUDGMENT**

COMES NOW, third party defendant, Stephanie Podvin (hereinafter referred to as "Podvin" or "Movant"), third party defendant in the above-styled and numbered cause and moves for summary judgment as to all of counter-Plaintiff, Udo Birnbaum's ("Respondent") causes of action as pled in any current live pleading of Udo Birnbaum ("Birnbaum") and would hereby show the Court as follows:

I.

Procedural History:

1. Plaintiff, The Law Offices of G. David Westfall, P.C., filed this action on September 21, 2000.
2. On October 2, 2000, defendant, Birnbaum, filed his Original Answer, his Cross-Claim against The Law Offices of G. David Westfall, P.C., and his Third Party Claims against G. David Westfall, Christina Westfall, and Stephanie Podvin.
3. Since the original filing, Birnbaum has sent to the Movant, interrogatory requests, requests for production, and requests for disclosure.

BY _____ DEP.
DIST. CLERK VAN ZANDT CO. TX.
OCT 20 11 42 27

4. On July 3, 2001, Udo Birnbaum was given the opportunity and gave his deposition in this matter.
5. On July 20, 2001, Stephanie Podvin gave her deposition in this matter.
6. This matter is currently set for trial on the Court's docket for November 13, 2001.

II.

Summary Judgment Evidence

This motion for summary judgment is based upon the current live pleadings on file with the Court at the time this motion is filed as well as any amended pleading on file at the time of the ruling on this motion, all discovery requests and responses thereto or lack of responses thereto. An examination of the foregoing shows that as a matter of law, with regard to one or more of the elements on which the defendant, Birnbaum, has the burden of proof, there is no genuine issue as to any material fact, and that there is no competent summary judgment evidence to support at least one or more of the essential elements of each of the causes of action pled by Birnbaum against the Movant. Therefore, Movant is entitled to a judgment against Birnbaum, denying all of Birnbaum's causes of actions against Movant, as a matter of law under T.R.C.P. 166a (c) and/or (i).

IV.

Summary Judgment Argument

1. An adequate time for discovery has passed. At the time of the hearing on this motion, the suit will have been on file for a year. The Respondent has utilized the discovery tools of interrogatories, request for production, request for disclosure, and depositions of the parties. Further, an adequate amount of time to develop the facts is admitted by Birnbaum in a judicial

admission contained in paragraph 5 of Udo Birnbaum's Amended Third Party Plaintiff Civil RICCO Claim, filed in this Court on July 11, 2001.

2. There is no evidence to support one or more essential elements of each and every one of Birnbaum's claims or defenses on which Birnbaum has the burden of proof.

Birnbaum's Complaints against Stephanie Podvin:

3. Birnbaum alleges that Stephanie Podvin is a participant in a "**pattern of racketeering activity**" by acts of "**racketeering activity**" (predicate acts) of **obstruction in the administration of justice** on the part of G. David Westfall in the Dallas Federal Court. Birnbaum's RICCO complaint further alleges that Stephanie Podvin was the recipient of a flow of income from a pattern of racketeering activity. That is it. Birnbaum makes no other allegations against Podvin other than Podvin's participation in this "RICCO" type behavior. Birnbaum's pleadings contain no other allegation against Podvin on any lesser type of cause of action. This is the "sole indictment" brought by Birnbaum against Podvin.

Essential Factual Elements Missing in Birnbaum's Complaints:

4. Birnbaum has fully failed to provide even one single bit of summary judgment adequate evidence which in a light most favorable to Birnbaum would even tend to support a fact that Podvin was engaged in any sort of illegal, corrupt, or clandestine activity whatsoever, let alone the types of activity alleged in Birnbaum's pleadings. What the summary judgment evidence does prove is that Stephanie Podvin assisted the Law Offices of G. David Westfall, P.C. in the law office's efforts to provide Birnbaum with legal services which had been requested by Birnbaum. That is it! Stephanie Podvin, as an independent contractor to a law firm, assisted in providing

legal services for Birnbaum, and having done so, is embroiled in an alleged RICCO violation arising out of a fee dispute for the legal services provided.

5. There is no summary judgment type evidence to support a genuine fact issue for several of the elements of Birnbaum's cause of action. Birnbaum's own pleading outlines several elements in paragraph 65, on pages 10 and 11 of Udo Birnbaum's Amended Third Party Plaintiff Civil RICCO Claim.

(a) There is no evidence that Podvin knowingly and willfully conducted or participated, directly or indirectly, in the conduct of the affairs of an enterprise through a pattern of racketeering activity.

(b) There is no evidence that Podvin participated in the operation or management of the enterprise.

(c) There is no evidence that Podvin engaged in the pattern of racketeering activity as claimed by Birnbaum.

(d) There is no evidence that Podvin's association with the enterprise facilitated the commission of racketeering acts.

6. Further, there is no evidence that Podvin ever received any income from Birnbaum or the alleged racketeering enterprise.

7. Further, there is no evidence that Birnbaum has suffered **any damages** which is an essential element of Birnbaum's claims against Podvin.

8. The Texas "no-evidence" motion for summary judgment [T.R.C.P. 166a (i)] requires, like the federal standard, that if the issue is one on which the Movant does not bare the burden of proof, and after an adequate time for discovery has passed, summary judgment is mandated if the

respondent fails to make a showing sufficient to establish the existence of at least a fact issue on each and every one of the elements essential to prevail on its case. *Celotex v. Catrett*, 477 U.S. 317 (1986), see Clay M. White, "A New Rule For Texas Summary Judgments," INSURANCE DEFENSE LEGAL UPDATE December 1997.

9. Moreover, simply showing the existence of a fact issue will not suffice to defeat a "no-evidence" summary judgment; there must be a "genuine issue" regarding a "material fact." There is no genuine issue where the record, taken as a whole, could not lead a rational trier of fact to find for the respondent. *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). In the present situation, after a review of the record as a whole, a rational trier of fact could not find for Birnbaum on any of his claims against Movant, Stephanie Podvin.

Prayer For Relief:

WHEREFORE, PREMISES CONSIDERED, Movant request this matter be set for hearing with notice to Udo Birnbaum and upon hearing thereof, the Court enter judgment that as a matter of law, Birnbaum's causes of action against Movant, as plead in Birnbaum's current live pleading or any amended petition filed prior to the hearing on this motion are dismissed with prejudice, and for such other and further relief, both at law and in equity, to which this Movant may show himself justly entitled.

Respectfully submitted,



FRANK C. FLEMING

State Bar No. 00784057

6611 Hilicrest Ave. #305

Dallas, Texas 75205-1301

(214) 373-1234

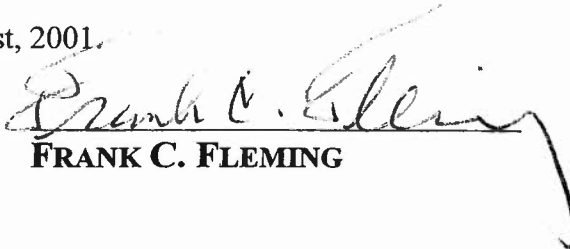
(214) 373-3232 (fax)

ATTORNEY FOR MOVANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above Motion For Summary Judgment has this day been served upon all parties by regular mail.

SIGNED this 17th day of August, 2001.



FRANK C. FLEMING

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

Plaintiff.

v.

UDO BIRNBAUM,

Defendant.

§
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§
§
§
§
§
§
§

IN THE DISTRICT COURT

2nd4th JUDICIAL DISTRICT

VAN ZANDT COUNTY, TEXAS

**THIRD PARTY DEFENDANT, CHRISTINA WESTFALL'S,
MOTION FOR SUMMARY JUDGMENT**

COMES NOW, third party defendant, Christina Westfall (hereinafter referred to as "Christina Westfall" or "Movant"), third party defendant in the above-styled and numbered cause and moves for summary judgment as to all of counter-Plaintiff, Udo Birnbaum's ("Respondent") causes of action as pled in any current live pleading of Udo Birnbaum ("Birnbaum") and would hereby show the Court as follows:

I.

Procedural History:

1. Plaintiff, The Law Offices of G. David Westfall, P.C., filed this action on September 21, 2000.
2. On October 2, 2000, defendant, Birnbaum, filed his Original Answer, his Cross-Claim against The Law Offices of G. David Westfall, P.C., and his Third Party Claims against G. David Westfall, Christina Westfall, and Stephanie Podvin.
3. Since the original filing, Birnbaum has sent to the Movant, interrogatory requests, requests for production, and requests for disclosure.

4. On July 3, 2001, Udo Birnbaum was given the opportunity and gave his deposition in this matter.
5. On July 20, 2001, Christina Westfall gave her deposition in this matter.
6. This matter is currently set for trial on the Court's docket for November 13, 2001.

II.

Summary Judgment Evidence

This motion for summary judgment is based upon the current live pleadings on file with the Court at the time this motion is filed as well as any amended pleading on file at the time of the ruling on this motion, all discovery requests and responses thereto or lack of responses thereto. An examination of the foregoing shows that as a matter of law, with regard to one or more of the elements on which the defendant, Birnbaum, has the burden of proof, there is no genuine issue as to any material fact, and that there is no competent summary judgment evidence to support at least one or more of the essential elements of each of the causes of action pled by Birnbaum against the Movant. Therefore, Movant is entitled to a judgment against Birnbaum, denying all of Birnbaum's causes of actions against Movant, as a matter of law under T.R.C.P. 166a (c) and/or (i).

IV.

Summary Judgment Argument

1. An adequate time for discovery has passed. At the time of the hearing on this motion, the suit will have been on file for a year. The Respondent has utilized the discovery tools of interrogatories, request for production, request for disclosure, and deposition of the parties. Further, an adequate amount of time to develop the facts is admitted by Birnbaum in a judicial

admission contained in paragraph 5 of Udo Birnbaum's Amended Third Party Plaintiff Civil RICCO Claim, filed in this Court on July 11, 2001.

2. There is no evidence to support one or more essential elements of each and every one of Birnbaum's claims or defenses on which Birnbaum has the burden of proof.

Birnbaum's Complaints against Christina Westfall:

3. Birnbaum alleges that Christina Westfall is a participant in a "pattern of racketeering activity" by acts of "racketeering activity" (predicate acts) of obstruction in the administration of justice on the part of G. David Westfall in the Dallas Federal Court. Birnbaum's RICCO complaint further alleges that Christina Westfall was the recipient of a flow of income from a pattern of racketeering activity. That is it! Birnbaum makes no other allegation against Christina Westfall other than Christina Westfall's participation in this "RICCO" type behavior. Birnbaum's pleadings contain no other allegation against Christina Westfall on any lesser type of cause of action. This is the "sole indictment" brought by Birnbaum against Christina Westfall.

Essential Factual Elements Missing in Birnbaum's Complaints:

4. Birnbaum has fully failed to provide even one single bit of summary judgment adequate evidence which in a light most favorable to Birnbaum would even tend to support a fact that Christina Westfall was engaged in any sort of illegal, corrupt, or clandestine activity whatsoever, let alone the types of activity alleged in Birnbaum's pleadings. What the summary judgment evidence does prove is that Christina Westfall assisted the Law Offices of G. David Westfall, P.C. in routine, non lawyer related matters, in order to assist her husband in his legal practice. That is it! Christina Westfall is the wife of the lawyer in the law firm. She has assisted from time

to time in and around the office, and having done so, is embroiled in an alleged RICCO violation arising out of a fee dispute for the legal services rendered by her husband to Birnbaum.

5. There is no summary judgment type evidence to support a genuine fact issue for several of the elements of Birnbaum's cause of action. Birnbaum's own pleading outlines several elements in paragraph 65, on pages 10 and 11 of Udo Birnbaum's Amended Third Party Plaintiff Civil RICCO Claim.

(a) There is no evidence that Christina Westfall knowingly and willfully conducted or participated, directly or indirectly, in the conduct of the affairs of an enterprise through a pattern of racketeering activity.

(b) There is no evidence that Christina Westfall participated in the operation or management of the enterprise.

(c) There is no evidence that Christina Westfall engaged in the pattern of racketeering activity as claimed by Birnbaum.

(d) There is no evidence that Christina Westfall's association with the enterprise facilitated the commission of racketeering acts.

6. Further, there is no evidence that Christina Westfall ever received any income from Birnbaum or the alleged racketeering enterprise.

7. Further, there is no evidence that Birnbaum has suffered **any damages** which is an essential element of Birnbaum's claims against Christina Westfall.

8. The Texas "no-evidence" motion for summary judgment [T.R.C.P. 166a (i)] requires, like the federal standard, that if the issue is one on which the Movant does not bare the burden of proof, and after an adequate time for discovery has passed, summary judgment is mandated if the

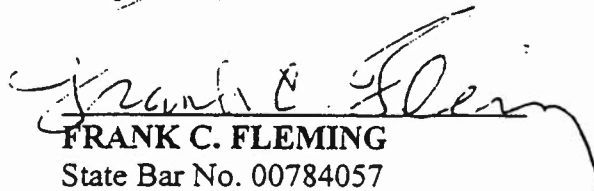
respondent fails to make a showing sufficient to establish the existence of at least a fact issue on each and every one of the elements essential to prevail on its case. *Celotex v. Catrett*, 477 U.S. 317 (1986), see Clay M. White, "A New Rule For Texas Summary Judgments," INSURANCE DEFENSE LEGAL UPDATE December 1997.

9. Moreover, simply showing the existence of a fact issue will not suffice to defeat a "no-evidence" summary judgment; there must be a "genuine issue" regarding a "material fact." There is no genuine issue where the record, taken as a whole, could not lead a rational trier of fact to find for the respondent. *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). In the present situation, after a review of the record as a whole, a rational trier of fact could not find for Birnbaum on any of his claims against Movant, Christina Westfall.

Prayer For Relief:

WHEREFORE, PREMISES CONSIDERED, Movant request this matter be set for hearing with notice to Udo Birnbaum and upon hearing thereof, the Court enter judgment that as a matter of law, Birnbaum's causes of action against Movant, as plead in Birnbaum's current live pleading or any amended petition filed prior to the hearing on this motion are dismissed with prejudice, and for such other and further relief, both at law and in equity, to which this Movant may show himself justly entitled.

Respectfully submitted,



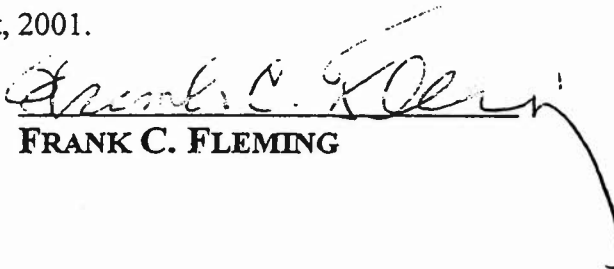
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ATTORNEY FOR MOVANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above Motion For Summary Judgment has this day been served upon all parties by regular mail.

SIGNED this 17th day of August, 2001.



FRANK C. FLEMING

I.

PROCEDURAL HISTORY

1. Plaintiff, The Law Offices of G. David Westfall, P.C., filed this action on September 21, 2000 against Udo Birnbaum for "legal fees" of \$18,121.10 beyond the \$20,000 Birnbaum had paid up front on May 5, 1999.
2. On October 3, 2000 Birnbaum filed *Defendant's Answer, Counterclaim, and Cross-complaint*, as amended on July 6, 2001 by *Defendant's Amended Answer, Counterclaim, and Cross-complaint*, counter-claiming of the "Law Office" under the Texas Deceptive Trade Practices Act (DTPA), and cross-complaining of G. David Westfall, Christina Westfall, and Stefani Podvin.
3. On December 26, 2000 Birnbaum filed *Motion for Appointment of Auditor Pursuant to Rule 172 RCP to Make Finding of State of the Accounts between the Parties*. On January 8, 2001 Birnbaum filed *Supplement to Motion for Appointment of Auditor, etc.* The Law Office never responded to this motion, and this motion is currently still pending before the Court.
4. On April 20, 2001 Birnbaum filed *Udo Birnbaum's Motion Under Rule 193.4 for Hearing and Ruling on Objections and Assertions of Privilege*. The Law Office as well as the other individual parties never responded to this motion, and this motion is currently still pending before the Court.
5. On April 30, 2001 Birnbaum filed *Udo Birnbaum's Third Party Plaintiff Civil RICO Claim Against G. David Westfall, Christina Westfall, and Stefani Podvin*. This pleading, as amended on July 11, 2001 by *Udo Birnbaum's Amended Third Party Plaintiff Civil RICO Claim against G. David Westfall, Christina Westfall, and Stefani Podvin*, complains of violations of 18 U.S.C. § 1961 et seq. ("RICO"), by the three named individuals and also of fraud by G. David Westfall. The "Law Office" is not named as a RICO defendant, but is instead designated as the "enterprise" associated with the above individual "persons".
6. At various times various parties moved to quash the taking of depositions. However the Court, on June 20, 2001 ordered dates for the taking of depositions of the respective parties.
7. On July 3, 2001, Udo Birnbaum gave his deposition in this matter. On this date G. David Westfall also gave his deposition, although time ran out and Westfall refused to produce any documents whatsoever as required by the notice duces tecum.
8. On July 20, 2001 Stefani Podvin and Christina Westfall gave their deposition. Both refused to produce any documents whatsoever as required by the notices duces tecum.

9. The Law Office, however, refused to allow the taking of their deposition as shown by *Udo Birnbaum's Motion to Compel Deposition of the Law Offices of G. David Westfall, P.C.*, filed July 16, 2001. The Law Office has not responded to this motion, and this motion is currently still **pending before the Court**.

10. On August 17, 2001 all four (4) opposing parties mailed motions seeking summary judgment, although they were **not actually filed with the Clerk** by this designated deadline.

11. This matter is currently set for trial on the Court's docket for November 13, 2001.

II.

PLAINTIFF'S NO-EVIDENCE MOTION

1. Plaintiff, the Law Office, is seeking summary judgment under Rule 166a(i) ("No-Evidence Motion"). Rule 166(a)(i) states:

After adequate time for discovery, a party without presenting summary judgment evidence may move for summary judgment on the ground that there is no evidence of one or more essential elements of a claim or defense on which an adverse party would have the burden of proof at trial. **The motion must state the elements as to which there is no evidence.** The court must grant the motion unless the respondent produces summary judgment evidence raising a genuine issue of material fact. (emphasis added)

2. Plaintiff's motion fails to state the elements as to which there is no evidence.

Plaintiff's motion is so computer-canned that it utterly fails to even name or refer to Birnbaum's **counter-cause of action** under the Texas Deceptive Trade Practices Act (DTPA), much less even refer to the essential elements to state as to which element or elements there is no evidence.

Plaintiff Law Office merely states that "*[t]he foregoing shows as a matter of law that with regard to the issues raised there is no genuine issue as to any material fact, etc.*", when there is nothing "*foregoing*" in its motion.

3. Plaintiff is abusing the summary judgment process. Birnbaum comes to show that Plaintiff, in the very bringing of this suit, is abusing the judicial process itself to collect upon a fraudulent "bill".

III.

THE DTPA ISSUES OF FACT "ELEMENTS"

1. The DTPA is a statutory law. Its "elements", more properly its "genuine issues of material fact", are the issues of fact raised by the language of the statute itself, all of which are of course "material" and to be proved to the jury:

As to materiality, **substantive law will identify** which facts are **material**. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant will not be counted. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986)

Again in *Adickes v. S.H. Kress & Co.*, 398 U.S. 177 (1970), the Court emphasized that the availability of summary judgment turned on whether a **proper jury question** was **presented**. There, one of the issues was whether there was a conspiracy between private persons and law enforcement officers. The District Court granted summary judgment for the defendants, stating that there was no evidence from which reasonably minded jurors might draw an inference of conspiracy. We reversed, pointing out that the moving parties' submissions had not foreclosed the possibility of the existence of certain facts from which "it would be open to a jury ... to infer from the circumstances" that there had been a meeting of the minds. *Id.*, at 158-159. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986)

"The attorneys also challenge the jury's finding of liability for actual and additional damages under the Texas Deceptive Trade Practices Act. The DTPA "protect[s] consumers against false, misleading, and deceptive business practices, unconscionable actions, [and failures to disclose] . . . in the course of any trade." Tex. Bus. & Com. Code §§ 17.44, 17.46(a). To prove a violation of the DTPA, **plaintiffs must prove that: (1) they are a consumer, (2) victimized by false, misleading, or deceptive acts, failures to disclose, or an unconscionable course of action, (3) which was a "producing cause" of damages.** See *Doe v. Boys Clubs of Greater Dallas*, 907 S.W.2d 472, 478 (Tex. 1995). Violations produce liability for "actual damages", and "**knowing**" violations allow for "**additional damages**" which could raise the total damage award to as much as three times the amount of actual damages. See Tex. Bus. & Com. Code § 17.50(b)(1).

The attorneys first assert that Terry's DTPA claim is merely a claim that they provided bad advice and, therefore, that the claim is not cognizable under the DTPA. While they are correct that mere claims of attorney negligence may not be cognizable under the DTPA, see *Latham v. Castillo*, 972 S.W. 2d 66, 69 (Tex. 1998); *Greathouse v. McConnell*, 982 S.W.2d 165, 172-73 (Tex. App.Houston [1st Dist.] 1998, pet. denied), (38) Terry has alleged that the attorneys affirmatively misrepresented facts and otherwise deceived them. If Terry produced evidence of specific deceptive acts, her claim was cognizable under the DTPA as well as under the common law of legal malpractice. As the Texas Supreme Court has held, Recasting the [plaintiffs'] DTPA claim as merely a legal malpractice claim would subvert the Legislature's clear purpose in enacting the DTPA to deter deceptive business practices. If the [plaintiffs] had only alleged that [their attorney] had negligently failed to timely file their claim, their claim would properly be one for legal malpractice. However, the [plaintiffs] alleged and presented some evidence that [their attorney] **affirmatively misrepresented** to them that he had filed and was actively prosecuting their claim. It is the difference between negligent conduct and deceptive conduct. To recast this claim as one for legal malpractice is to ignore this distinction. The Legislature enacted the DTPA to curtail this type of deceptive conduct. *Latham*, 972 S.W.2d at 69." *Parker v. Hunter*, 5th Cir No. 99-50054, Aug. 4, 2000 (*emphasis added*).

2. Plaintiff in its motion have not foreclosed the possibility of the existence of certain facts from which "it would be open to a jury ... to infer from the circumstances" that Plaintiff had engaged in "false, misleading, or deceptive acts, failures to disclose, or an unconscionable course of action."

3. Plaintiff, in its motion, did not designate as to which element there is no evidence, other than to conclusorily allege that the evidence does not show a violation of the DTPA. The **ultimate issue** of the violation of the DTPA, however, is the prerogative of the jury and not subject to summary judgment disposition.

IV.

BIRNBAUM'S DESIGNATED EVIDENCE

1. *Udo Birnbaum's Amended Answer, Counterclaim, and Cross-complaint*, clearly indicates the evidentiary underpinnings of his claim of **false, misleading, deceptive, and unconscionable** acts by the LAW OFFICE and G. DAVID WESTFALL, which were the **producing cause** of Birnbaum's damages.

2. The Law Office of G. David Westfall, P.C. and G. David Westfall engaged in the **unconscionable act of concealing and failing to disclose** that they were running a racketeering enterprise right there out of the Law Office. The following is directly out of the above pleading, starting on page 4:

The "**pattern of racketeering activity**" and the "**conducting of the affairs of the enterprise**" is clearly visible in the testimony of G. David Westfall and accountant Richard Alderson for the whole Law Office "Westfall Bunch" (David Westfall, Christina Westfall, Stefani Podvin), as shown in the 237 page transcript of the September 20, 2001 bankruptcy proceedings against G. David Westfall (No. 300-34287-HCA in the Dallas Bankruptcy Court, already filed as an Exhibit 8 in this Cause).

- Mr. Alderson, the accountant for everybody, including the "Law Office", "Westfall Farms", David Westfall, and Christina Westfall for ten (10) years claiming not to "know" if Mr. Westfall is a shareholder of "The Law Office of G. Westfall, P.C." page 33 line 9.
- Mr. Alderson's testimony that funds are co-mingled across the board. page 40 starting line 12 and going on for pages. Supported by the testimony of G. David Westfall himself at that hearing.
- 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".
- David Westfall trying to make himself bullet proof from a pending \$500,000 King Ranch judgment.

The "**pattern of racketeering activity**" is also evident from the following acts of "**racketeering activity**":

- The documents filed by or in behalf of David Westfall in his recent bankruptcy proceeding in which he claimed he had more than twelve (12) creditors against him
- The series of documents between David Westfall and his daughter Stefani Podvin each year designating him as director of the Law Office
- The retainer agreement between David Westfall and Udo Birnbaum
- The retainer agreement between David Westfall and Jerry Michael Collins
- The document David Westfall calls a "bill"
- The fraudulent pleading David Westfall used to bring this suit.

The "**pattern of racketeering activity**" is to be found in all the exhibits previously provided in this cause, the persons named, their affidavits, together with whatever they may have.

The "**pattern of racketeering activity**" is also clearly visible in the testimony of G. David Westfall as taken by Udo Birnbaum on July 3, 2001. It shows G. David Westfall had no intent of ever abiding by the terms of the retainer contract he signed with Udo Birnbaum. (end of direct quote)

3. Further evidence is in the documents named by Birnbaum on pages 80 line 23 through page 82 line 12 in the *Videotaped Deposition of Udo Birnbaum* as taken of him on July 3, 2001:

Q (By Mr. Fleming) Can you point out to me any documents - - any and all documents under your custody or control that refer to or evidence any fraud or misrepresentation that you are alleging occurred in your dealings with Mr. Westfall, the P.C., Ms. Podvin or Christina Westfall?

A. Yes. As to you questions as to the documents that I designate constituting fraud, racketeering and deceptive trade practices, I hereby designate whatever documents Mr. Westfall filed in his recent bankruptcy proceedings claiming that he had more than twelve creditors against him, the series of documents between him and his daughter designating him as the director of the law office.

I designate Mr. Westfall's tax return using that fraudulent representation. I designate the retainer agreement which you put in here previously in cause 399-CV-696 [in] the Dallas federal court from which Mr. Westfall was my lawyer. I designate that as a fraudulent - - a document stating my cause. I designate the retainer agreement in the Jerry Michael Collins case. 3:99-CV-641. I designate the document that Mr. Westfall calls his,

quote, bill, which I allege to be a fraudulent pleading for him to try to get more money out of me. That is this suit.

And I specifically designate these documents as constituting racketeering activity, and I designate them as - - also as constituting a specific pattern of racketeering activity by Mr. Westfall and others and designate all the evidence I have provided, all the persons I have named in the affidavits together with the bills they have as showing this pattern of racketeering activity.

The fraud is that Mr. Westfall did not tell me he was running a racketeering enterprise. It has - - it goes through all the motions. Looks like a perfectly harmless document. (page 82 line 12, end of quote)

4. And again, on page 132 line 12 through page 133 line 6 of the *Videotaped Deposition of Udo Birnbaum* as taken of him on July 3, 2001. The tone and tenor of the proceedings again does not fully come through on the transcript, as does the scheming throughout the deposition as caught by the video camera:

Q (By Mr. Fleming) I'm asking you right now for the fourth time, Mr. Birnbaum. This is your pleading. You came to the courthouse and filed it.

And I'm asking you the totality of the factual basis for this pleading.

A The totality of the factual basis for this pleading is those items that I specifically designated. One was the retainer agreement. Two was the fraudulent - - or whatever it is, bill. Three is this suit. Four, all the evidence that comes out of the bankruptcy things, okay. The swapping of legal fees for all kinds of stuff and where looked at in totality of this - - this shows, and the transfer of income, the one big slush fund out of which everything comes in, the flow of money from one thing to another.

And all that evidence shows the RICO violation between all of them. And I close my answer on that, and that's the end of my answer on that issue. If you can't understand, I don't know what to do. (page 133 line 6, end of quote)

V.

EVIDENCE IN PLAINTIFF'S OWN DOCUMENTS

1. There is plenty of evidence around, and Birnbaum designates all of it as his summary judgment evidence. There have been three deep reaching depositions, each reaching into the exhibits made a part of such depositions. There are discovery documents. Then there is the transcript of the bankruptcy proceedings against G. David Westfall as referred to in the pleadings and as filed in this Court. Then there is the entire record in the Dallas Federal Court made a part of Birnbaum's cause of action by reference. Then of course there is the "bill" with the supposed demands for payment. There clearly is no lack of evidence.

2. The question before the Court is what does all of this stuff mean. Birnbaum claims that, as far as what the Law Office did, he was **(1) a consumer, (2) victimized by false,**

misleading, or deceptive acts, failures to disclose, or an unconscionable course of action, (3) which was a "producing cause" of damages, and it shows a violation of the Texas Deceptive Trade Practices Act (DTPA). Plaintiff of course claims that all this stuff does not show such violation.

3. Even looking at only **Plaintiff's own documents and exhibits**, as presented for the *Videotaped Deposition of Udo Birnbaum* of July 3, 2001, when looked at in light most favorable to Birnbaum, such documents and exhibits show **false, misleading, or deceptive acts, failures to disclose, or an unconscionable course of action**:

a. Plaintiff's Deposition Exhibit 1: Agreement of retainership:

Birnbaum claims that the "Law Office" through G. David Westfall was **deceiving** him with this document by **concealing** that the "Law Office" never intended to bill monthly. If the "Law Office" would have billed him monthly, such would have precluded G. David Westfall from coming up with whatever giant "bill" he wished to come up with at whatever time he chose, and to try to enforce such fraudulent "bill" with a fraudulent collection suit in the name of the "Law Office".

In depositions of David Westfall he claims he **never promised anyone** that he would bill them monthly, but this document clearly shows that he did. Such concealment is **unconscionable**. The scheme is clearly shown in the Videotaped Deposition of David Westfall, taken July 3, 2001, starting page 18 line 19 through page 24 line 8. It makes very interesting reading. (Attached)

The evidence also shows the Law Office has a pattern of coming up with such fraudulent giant summary "bills". Rather than go into detail here, the matter is clearly documented in the Videotaped Deposition of David Westfall, taken July 3, 2001, and particularly how a charge for 7/31/00 could be reflected on a complete "billing statement" dated July 31, 2000. (July 3, 2001 *Videotaped Deposition of David Westfall*, page 41 line 23 through page 42 line 22).

The videotape of the parties before the camera of course shows the continuing scheme much better than the mere "objection form" that appears on the transcribed document.

b. Plaintiff's Deposition Exhibit 2: Letter from Westfall to Birnbaum:

Birnbaum claims this is a letter to get G. David Westfall out of the mess he had painted himself in the Dallas Federal Court, i.e. to conceal that he had been fired long ago and should have stopped meddling in the courts and stopped charging.

c. Plaintiff's Deposition Exhibit 3: Motion to withdraw as attorney:

Birnbaum claims this is a fraudulent "CYA" document. Client had not *"disregarded the advice of counsel ... making it impossible for his attorney to properly handle the matter ..."*, as Westfall tells the Court, but had **fired him three months ago**.

d. Plaintiff's Deposition Exhibit 4: Original order sent for approval:

Birnbaum claims this document was fraudulently submitted by Westfall to the Court. Deposition testimony shows that Westfall did not "deliver a copy of this Motion to Plaintiff" as he claims in the above document. Furthermore Westfall did not need Birnbaum's signature as he claimed in Exhibit 2 above. It was all a "CYA" scheme, and getting Birnbaum's signature was the name of the game.

e. Plaintiff's Deposition Exhibit 5: 9/15/00 Affidavit of Udo Birnbaum:

David Westfall's conduct is **unconscionable**. Birnbaum gives evidence upon the following matters:

- David Westfall's Solicitation and Concealment of Solicitation shows collusion
- David Westfall's delay in making a formal appearance shows collusion
- Westfall's attempt to release Judges Zimmermann and McDowell as defendants shows collusion
- Westfall's fraudulent motion to withdraw shows collusion
- Westfall not doing anything about the strange "Judgment" and "de novo determination" in my Cause shows collusion

f. Deposition Exhibit 6: "Billing" statement with handwriting on it:

Birnbaum testified that the **whole document is a fraud**, as is the handwriting on it.

g. Deposition Exhibit 7: Diagram by Birnbaum:

Birnbaum is diagramming the RICO violative scheme involving the Law Office. Birnbaum is testifying under examination upon the **unconscionable** scheme of the Westfalls running a full blown racketeering scheme right there out of the Law Office. The Law Office, in soliciting and

inducing Birnbaum to take G. David Westfall as attorney, was clearly concealing that it was an enterprise controlled by the Westfalls for perpetrating their scheme.

VI.

EVIDENCE IN OTHER DOCUMENTS

1. Other evidence of the pattern of racketeering activity is to be found in the exhibits to the *Videotaped Deposition of Stefani Podvin* of July 20, 2000:

a. Deposition Exhibits 2 through 9: "Written consent of shareholders":

What these documents show is G. David's scheme to make himself "bullet proof", i.e. not owning the Law Office checking account. G. David Westfall, in depositions (page 52, line 17) claims he is the owner of the Law Office, yet gets himself appointed ten (10) years in a row by straw person Stefani Podvin participating in his scheme to get himself "appointed" director by fraudulently "appointing" him director, claiming she is the owner of the Law Office (page 12 line 20). Being director permits him to do the pattern of racketeering activity. Not owning any assets makes him "bullet proof" to judgment and allows him to risk acts of "**racketeering activity**" that one would not take if one were not "bullet proof" to judgment.

b. Deposition Exhibit 10: Election to S corporation:

This document shows G. David Westfall's **scheme** to maintain control of the profits of "Stefani Podvin's" Law Office by funneling them back to Christina and David Westfall, to be ultimately funneled back to "Westfall Farms", of which David Westfall, Christina Westfall, and Stefani Podvin are "limited partners" as Stefani Podvin testified in depositions.

Not owning any assets makes G. David Westfall "bullet proof" to judgment and allows him to risk acts of "**racketeering activity**" that one would not take if one were not "bullet proof" to judgment.

c. Deposition Exhibit 11: Department of Treasury Document:

G. David Westfall and Christina Westfall succeeded in **fooling** the Internal Revenue Service with the above document.

d. Deposition Exhibit 13: Bankruptcy Transcript:

This transcript, together with the bankruptcy exhibits, shows the RICO scheme between G. David Westfall, Christina Westfall, and Stefani Podvin in **setting up** and **controlling** the "Law Office" and "Westfall Farms" to do the "**pattern of racketeering activity**".

e. Deposition Exhibit 14: Bankruptcy Transcript pages 29 and 30:

Showing how, through their long time accountant, they have been **operating** their "enterprise".

f. Deposition Exhibit 15: Bankruptcy Transcript pages 31:

Evidence the **profits** from "Stefani Podvin's" Law Office **wind up** at "Westfall Farms".

g. Deposition Exhibit 18: Bankruptcy Transcript pages 44 and 45:

Everyone is funded out of one giant slush fund account made possible by the RICO scheme.

h. Deposition Exhibit 19: 9/22/2000 Bankruptcy Transcript pages:

Everyone has agreed to release everyone. Problem is the release needs to be signed by the parties, one of them being STEFANI PODVIN as supposed "owner" of the "Law Office". **The scheme slips out:**

Mr. Pronske (Westfall's lawyer): *" We have agreed that there will be mutual releases between the parties . . . [list] . . . Are there any others that we need? And the professional corporation."*

Mr. Westfall: *"I hadn't thought about it. I don't want her to have to execute anything."*

i. Deposition Exhibit 21: Copies of checks:

Proving the **transfer of income** from the "Law Office" to G. David Westfall personally, then to "G. David Westfall Family LP" ("Westfall Farms"). G. David Westfall, Christina Westfall, and Stefani, as partners of Westfall Farms derived each derived income from the "pattern of racketeering activity".

VII.

SUMMARY OF EVIDENCE TO DTPA "ELEMENTS"

(1) that Birnbaum was a consumer

Evidence: Law Office's letterhead, Law Office's suit for legal fees, the "bill", the retainer contract, etc. Can also be found by jury.

(2) that Birnbaum was victimized by false, misleading, or deceptive acts, failures to disclose, or an unconscionable course of action

Evidence:

- The acts and scheme are clearly shown throughout the *Videotaped Deposition of David Westfall*, taken July 3, 2001, and specifically starting on page 18 line 19 through page 24 line 8. It makes very interesting reading. (Attached)
- Exhibits 1 through 7 (deposition exhibits) identified immediately above, all part of exhibits to *Videotaped Deposition of Udo Birnbaum*, and especially the "bill".
- This fraudulent suit under Cause No. 00-619 in the 294th District Court
- The transcript of the bankruptcy proceedings trial of September 20, 2000 in the Dallas Federal Bankruptcy Court against G. David Westfall, already on file in this cause. (bankruptcy cause No. 300-34287-HCA-7)

(3) that the DTPA violation was a "producing cause" of Birnbaum's damages.

Evidence: The "bill" showing the \$20,000 of which Birnbaum was stripped. G. David Westfall caused it as an officer of The Law Office.

VIII.

RE: LAW OFFICE REPRESENTATIONS TO THIS COURT

1. Par I: *"The foregoing shows as a matter of law that with regard to the issues raised there is no genuine issue as to any material fact, and that the Law Office of G. David Westfall, P.C. and G. David Westfall are entitled to judgment as a matter of law."*

Response: There is nothing "foregoing". Failure to identify the "issues" or their author. Failure to even identify the cause of action.

2. Par II: "In the present situation, after reviewing the record as a whole, a rational trier of fact could not find for Udo Birnbaum on any of his claims against The Law Office of G. David Westfall, P.C. and G. David Westfall."

Response: Conclusory wishful thinking.

IX.

SUMMARY

1. Plaintiff, in its motion, failed to designate as to which element there is no evidence, other than to conclusorily allege that the evidence does not show a violation of the DTPA. The **ultimate issue** of the violation of the DTPA, however, is the prerogative of the jury and not subject to summary judgment disposition.

2. Plaintiff is abusing the summary judgment process. Birnbaum of comes to show that Plaintiff, in the very bringing of this suit, is abusing the judicial process to collect upon a fraudulent "bill".

3. If Plaintiff had not for its dark reasons solicited Birnbaum and concealed their sorry pattern, Birnbaum would not have contracted with Plaintiff in the first place. If Plaintiff had not concealed from Birnbaum the degree to which G. David Westfall is able to worm his way into Plaintiff's accounting and billing system, if any, Birnbaum would have fired G. David Westfall within a month of having retained him. But for Plaintiff's **false, misleading, or deceptive acts, failures to disclose, or an unconscionable course of action**, Birnbaum would not have been damaged as shown in his pleadings.

Attached to this response by reference, and filed separately, are the following"

- Transcript of July 3, 2001 *Videotaped Deposition of Udo Birnbaum*, exhibits thereto, and VHS videotape thereof.
- Transcript of July 3, 2001 *Videotaped Deposition of David Westfall*, exhibits thereto, and VHS videotape thereof.
- Transcript of July 20, 2001 *Videotaped Deposition of Stefani Podvin*, exhibits thereto, and VHS videotape thereof.
- Transcript of July 20, 2001 *Videotaped Deposition of Christina Westfall*, exhibits thereto, and VHS videotape thereof.
- *Videotaped Deposition of David Westfall* by Scott Curry, sometime in mid 1993, a post judgment deposition to discover "non-exempt assets".

Attached to this response by reference, and already previously filed, are the following:

- *Transcript* of September 20, 2000 trial of G. David Westfall in the Dallas Bankruptcy Court

PRAYER

WHEREFORE, Premises considered, UDO BIRNBAUM prays that Plaintiff's motion for summary judgment be in all things denied.

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 31 day of August, 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.



UDO BIRNBAUM

damages sustained by plaintiffs." *Wilcox Development Co. v. First Interstate Bank of Oregon, N.A., D.C.Or.1983, 97 F.R.D. 440.*

The party moving for summary judgment is either hopelessly confused or willfully trying to confuse the Court. Summary judgment is not available under the circumstances:

"Congress did not limit scope of this chapter to those persons involved in what traditionally has been thought of as "organized crime," but, rather, **any "person"** as term is broadly defined in this chapter, **whether associated with organized crime or not**, can commit violation, and **any person injured** in his business or property by such violation may then sue violator for damages in federal court." *Lode v. Leonardo, D.C.Ill.1982, 557 F.Supp. 675.*

"Material issues of genuine fact existed with respect to existence of an enterprise as defined by this chapter, association of defendant printing company with such enterprise, association of the alleged enterprise with organized criminal activity, the intent and knowledge of defendant concerning the underlying predicate acts and the existence of injury caused by alleged violation of this chapter, **precluding summary judgment** in favor of defendant in action alleging the kickback scheme. *Estee Lauder, Inc. v. Harco Graphics, Inc., D.C.N.Y.1983, 558 F.Supp.83.*

Birnbaum's *Summary of Evidence to Civil RICO "elements"* designates his summary judgment evidence. Other evidence is in the witnesses named and their affidavits as already provided or in the *Appendix* to this response.

Birnbaum petitions this Court to require G. David Westfall to argue his Motion for summary judgment in light of this response and the evidence hereby presented and designated. Full argument will show that summary judgment is not available under the circumstances of this case.

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, UDO BIRNBAUM, ("Birnbaum"), Defendant and Counter-claimant against The Law Offices of G. David Westfall, P.C. ("Law Office"), and Cross-claimant and Third Party Plaintiff against G. David Westfall, and in response to G. David Westfall's Motion for Summary Judgment, would show the Court as follows:

I.

PROCEDURAL HISTORY

1. Plaintiff, The Law Offices of G. David Westfall, P.C., filed this action on September 21, 2000 against Udo Birnbaum for "legal fees" of \$18,121.10 beyond the \$20,000 Birnbaum had paid up front on May 5, 1999.

2. On October 3, 2000 Birnbaum filed *Defendant's Answer, Counterclaim, and Cross-complaint*, as amended on July 6, 2001 by *Defendant's Amended Answer, Counterclaim, and Cross-complaint*, counter-claiming of the "Law Office" under the Texas Deceptive Trade Practices Act (DTPA), and cross-complaining of G. David Westfall, Christina Westfall, and Stefani Podvin.

3. On December 26, 2000 Birnbaum filed *Motion for Appointment of Auditor Pursuant to Rule 172 RCP to Make Finding of State of the Accounts between the Parties*. On January 8, 2001 Birnbaum filed *Supplement to Motion for Appointment of Auditor, etc*. The Law Office never responded to this motion, and this motion is currently still **pending before the Court**.

4. On April 20, 2001 Birnbaum filed *Udo Birnbaum's Motion Under Rule 193.4 for Hearing and Ruling on Objections and Assertions of Privilege*. The Law Office as well as the other individual parties never responded to this motion, and this motion is currently still **pending before the Court**.

5. On April 30, 2001 Birnbaum filed *Udo Birnbaum's Third Party Plaintiff Civil RICO Claim Against G. David Westfall, Christina Westfall, and Stefani Podvin*. This pleading, as amended on July 11, 2001 by *Udo Birnbaum's Amended Third Party Plaintiff Civil RICO Claim against G. David Westfall, Christina Westfall, and Stefani Podvin*, complains of violations of 18 U.S.C. § 1961 et seq. ("RICO"), by the three named individuals and also of fraud by G. David Westfall. The "Law Office" is not named as a RICO defendant, but is instead designated as the "enterprise" associated with the above individual "persons".

6. At various times various parties moved to quash the taking of depositions. However the Court, on June 20, 2001 ordered dates for the taking of depositions of the respective parties.

7. On July 3, 2001, Udo Birnbaum gave his deposition in this matter. On this date G. David Westfall also gave his deposition, although time ran out and Westfall refused to produce any documents whatsoever as required by the notice duces tecum.

8. On July 20, 2001 Stefani Podvin and Christina Westfall gave their deposition. Both refused to produce any documents whatsoever as required by the notices duces tecum.

9. The Law Office, however, refused to allow the taking of their deposition as shown by *Udo Birnbaum's Motion to Compel Deposition of the Law Offices of G. David Westfall, P.C.*,

filed July 16, 2001. The Law Office has not responded to this motion, and this motion is currently still **pending before the Court**.

10. On August 17, 2001 all four (4) opposing parties mailed motions seeking summary judgment, although they were **not actually filed with the Clerk** by this designated deadline.

11. This matter is currently set for trial on the Court's docket for November 13, 2001.

II.

G. DAVID WESTFALL'S NO-EVIDENCE MOTION

1. G. David Westfall is seeking summary judgment under Rule 166a(i) ("No-Evidence Motion"). Rule 166a(i) states:

After adequate time for discovery, a party without presenting summary judgment evidence may move for summary judgment on the ground that there is no evidence of one or more essential elements of a claim or defense on which an adverse party would have the burden of proof at trial. **The motion must state the elements as to which there is no evidence.** The court must grant the motion unless the respondent produces summary judgment evidence raising a genuine issue of material fact. (emphasis added)

2. G. David Westfall's motion fails to state **the elements** as to which there is no evidence. G. David Westfall's motion is so computer-canned that it utterly fails to even name or refer to Birnbaum's **cross-cause** or **third party plaintiff cause** against him under 18 U.S.C. § 1964(c) ("Civil RICO"), much less even refer to the essential elements to state as to which element or elements there is no evidence. G. David Westfall merely states that "*[t]he foregoing shows as a matter of law that with regard to the issues raised there is no genuine issue as to any material fact, etc.*", when there is nothing "*foregoing*" in its motion.

3. G. David Westfall is abusing the summary judgment process. Birnbaum comes to show that G. David Westfall, in the very bringing of this suit, is abusing the judicial process itself to collect upon a fraudulent "bill".

4. Birnbaum challenges Movant to **disprove**, at the hearing now set for September 7, 2001, any element of Birnbaum's cross and third party cause of action against him. **However, the only way to prove or disprove anything upon the pile of evidence before the Court is under cross-examination before a jury.**

III.

The RICO ISSUES OF FACT "ELEMENTS"

1. RICO is statutory law. Its "elements", more properly its "genuine issues of material fact", are the issues of fact raised by the language of the statute itself, all of which are of course "material" and to be proved to the jury:

As to materiality, **substantive law will identify** which facts are **material**. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant will not be counted. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986)

"**Any person injured in his business or property** by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." *18 U.S.C. § 1964(c)*

Again in *Adickes v. S.H. Kress & Co.*, 398 U.S. 177 (1970), the Court emphasized that the availability of summary judgment turned on whether a **proper jury question was presented**. There, one of the issues was whether there was a conspiracy between private persons and law enforcement officers. The District Court granted summary judgment for the defendants, stating that there was no evidence from which reasonably minded jurors might draw an inference of conspiracy. We reversed, pointing out that the moving parties' submissions had not foreclosed the possibility of the existence of certain facts from which "it would be open to a jury ... to infer from the circumstances" that there had been a meeting of the minds. *Id.*, at 158-159. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986)

"**Material issues of genuine fact** existed with respect to existence of an enterprise as defined by this chapter, association of defendant printing company with such enterprise, association of the alleged enterprise with organized criminal activity, the intent and knowledge of defendant concerning the underlying predicate acts and the existence of injury caused by alleged violation of this chapter, **precluding summary judgment** in favor of defendant in action alleging the kickback scheme. *Estee Lauder, Inc. v. Harco Graphics, Inc.*, D.C.N.Y.1983, 558 F.Supp.83.

2. Movant, in his motion, has not foreclosed the possibility of the existence of certain facts from which "it would be open to a jury ... to infer from the circumstances" that Plaintiff had engaged in "*false, misleading, or deceptive acts, failures to disclose, or an unconscionable course of action.*"

3. Movant, in his motion, did not designate as to which element there is no evidence, other than to conclusorily allege that the evidence does not show a violation of the RICO. The **ultimate issue** of the violation of the RICO, however, is the prerogative of the jury and not subject to summary judgment disposition.

4. The "**material issues of fact**" can be clearly found in the "**Fifth Circuit Civil RICO pattern jury instructions**" hereby made a part of this response. The **material issues**, and Birnbaum's evidence thereto, are developed in the context of these instruction. Since these instructions are sufficient for the jury to make a finding upon the evidence, then this document may as well serve as the framework for directing Birnbaum's evidence toward these individual issues of fact, and Birnbaum will do so.

IV.

BIRNBAUM'S DESIGNATED EVIDENCE

1. *Udo Birnbaum's Amended Answer, Counterclaim, and Cross-complaint, and Udo Birnbaum's Amended Third Party Plaintiff Civil RICO Claim against G. David Westfall, Christina Westfall, and Stefani Podvin* clearly indicates the evidentiary underpinnings of his claim. The following is directly out of paragraphs 12 through 14 of the latter:

The "**pattern of racketeering activity**" is evident from the transcript of the September 20, 2000 bankruptcy proceedings against G. David Westfall on September 20, 2000 (Exhibit 8):

- Mr. Alderson, the accountant for everybody, including "The Law Office", "Westfall Farms", Mr. Westfall, Mrs. Westfall for ten (10) years claiming not to "know" if Mr. Westfall is a shareholder of "The Law Office of G. Westfall, P.C." page 33 line 9.
- Mr. Alderson's testimony that funds are co-mingled across the board. 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 a "Law Office" slush fund 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".
- David Westfall trying to make himself bullet proof from a pending \$500,000 King Ranch judgment.

The "**pattern of racketeering activity**" is also evident from the following acts of "**racketeering activity**":

- The documents filed by or in behalf of David Westfall in his recent bankruptcy proceeding in which he claimed he had more than twelve (12) creditors against him
- The series of documents between David Westfall and his daughter Stefani Podvin designating him as director of the Law Office each year
- The retainer agreement between David Westfall and Udo Birnbaum
- The retainer agreement between David Westfall and Jerry Michael Collins
- The document in this cause which David Westfall calls his "bill"
- The fraudulent pleading David Westfall used to bring this suit.

Further evidence is to be found in all the exhibits previously provided in this cause, the persons named, their affidavits, together with whatever they may have." (end of quote)

2. The "**pattern of racketeering activity**" is also clearly visible in the *Videotaped Deposition of David Westfall* as taken by Udo Birnbaum on July 3, 2001, starting page 18 line 19. It shows G. David Westfall had no intent of ever abiding by the terms of the retainer contract he signed with Udo Birnbaum.

3. **Further evidence** is in the documents named by Birnbaum on pages 80 line 23 through page 82 line 12 in the *Videotaped Deposition of Udo Birnbaum* as taken of him on July 3, 2001:

Q (By Mr. Fleming) Can you point out to me any documents - - any and all documents under your custody or control that refer to or evidence any fraud or misrepresentation that you are alleging occurred in your dealings with Mr. Westfall, the P.C., Ms. Podvin or Christina Westfall?

A. Yes. As to you questions as to the documents that I designate constituting fraud, racketeering and deceptive trade practices, I hereby designate whatever documents Mr. Westfall filed in his recent bankruptcy proceedings claiming that he had more than twelve creditors against him, the series of documents between him and his daughter designating him as the director of the law office.

I designate Mr. Westfall's tax return using that fraudulent representation. I designate the retainer agreement which you put in here previously in cause 399-CV-696 [in] the Dallas federal court from which Mr. Westfall was my lawyer. I designate that as a fraudulent - - a document stating my cause. I designate the retainer agreement in the Jerry Michael Collins case. 3:99-CV-641. I designate the document that Mr. Westfall calls his, quote, bill, which I allege to be a fraudulent pleading for him to try to get more money out of me. That is this suit.

And I specifically designate these documents as constituting racketeering activity, and I designate them as - - also as constituting a specific pattern of racketeering activity by Mr. Westfall and others and designate all the evidence I have provided, all the persons I have named in the affidavits together with the bills they have as showing this pattern of racketeering activity.

The fraud is that Mr. Westfall did not tell me he was running a racketeering enterprise. It has - - it goes through all the motions. Looks like a perfectly harmless document. (page 82 line 12, end of quote)

4. And again, on page 132 line 12 through page 133 line 6 of the *Videotaped Deposition of Udo Birnbaum* as taken of him on July 3, 2001. The tone and tenor of the proceedings again does not fully come through on the transcript, as does the scheming throughout the deposition as caught by the video camera:

Q (By Mr. Fleming) I'm asking you right now for the fourth time, Mr. Birnbaum. This is your pleading. You came to the courthouse and filed it.

And I'm asking you the totality of the factual basis for this pleading.

A The totality of the factual basis for this pleading is those items that I specifically designated. One was the retainer agreement. Two was the fraudulent - - or whatever it is, bill. Three is the suit. Four, all the evidence that comes out of the bankruptcy things, okay. The swapping of legal fees for all kinds of stuff and w[h]ere looked at in totality of this - - this shows, and the transfer of income, the one big slush fund out of which everything comes in, the flow of money from one thing to another.

And all that evidence shows the RICO violation between all of them. And I close my answer on that, and that's the end of my answer on that issue. If you can't understand, I don't know what to do. (page 132 line 6, end of quote)

V.

EVIDENCE IN WESTFALL'S OWN DOCUMENTS

1. There is plenty of evidence around, and Birnbaum designates all of it as his summary judgment evidence. There have been three deep reaching depositions, each reaching into the exhibits made a part of such depositions. There are discovery documents. Then there is the transcript of the bankruptcy proceedings against G. David Westfall as referred to in the pleadings and as filed in this Court. Then there is the entire record in the Dallas Federal Court made a part of Birnbaum's cause of action by reference. Then of course there is the "bill" with the supposed demands for payment. There clearly is no lack of evidence.

2. The question before the Court is what does all of this stuff mean. Birnbaum claims that, as far as what David Westfall and Stefani Podvin did, it shows a violation of RICO by a **pattern of racketeering activity**.

a. **Westfall's Deposition Exhibit 1: Agreement of retainership:**

Birnbaum claims that the "Law Office" through G. David Westfall was **deceiving** him with this document by **concealing** that the "Law Office" never intended to bill monthly. If the "Law Office" would have billed him monthly, such would have precluded G. David Westfall from coming up with whatever giant "bill" he wished to come up with at whatever time he chose, and to try to enforce such fraudulent "bill" with a fraudulent collection suit in the name of the "Law Office".

In depositions of David Westfall he claims he **never promised anyone** that he would bill them monthly, but this document clearly shows that he did. The scheme is clearly shown in the *Videotaped Deposition of David Westfall*, taken July 3, 2001, starting page 18 line 19 through line 8. It makes very interesting reading. (Attached)

The evidence also shows that G. David Westfall has a pattern of coming up with such fraudulent giant summary "bills". Rather than go into detail here, the matter is clearly documented in the *Videotaped Deposition of David Westfall*, taken July 3, 2001, and particularly how a charge for 7/31/00 could be reflected on a complete "billing statement" dated July 31, 2000. (Page 41 line 23 through page 42 line 22).

The videotape of the parties before the camera of course shows the continuing scheme much better than the mere "objection form" that appears on the transcribed document.

b. Westfall's Deposition Exhibit 2: Letter from Westfall to Birnbaum:

Birnbaum claims this is a letter to get G. David Westfall out of the mess he had painted himself in the Dallas Federal Court, i.e. to conceal that he had been fired long ago and should have stopped meddling in the courts and stopped charging. It is obstruction in the administration of justice because it involves an attorney as an officer of the court.

c. Westfall's Deposition Exhibit 3: Motion to withdraw as attorney:

Birnbaum claims this is a fraudulent "CYA" document. Client had not "*disregarded the advice of counsel ... making it impossible for his attorney to properly handle the matter ...*", as Westfall tells the Court, but had **fired him three months ago**.

d. Westfall's Deposition Exhibit 4: Original order sent for approval:

Birnbaum claims this document was fraudulently submitted by Westfall to the Court. Deposition testimony shows that Westfall did not "deliver a copy of this Motion to Plaintiff" as he

claims in the above document. Furthermore Westfall did not need my signature as he claimed in Exhibit 2 above. It was all a "CYA" scheme, and getting Birnbaum's signature was the name of the game.

e. Westfall's Deposition Exhibit 5: 9/15/00 Affidavit of Udo Birnbaum:

David Westfall's conduct is **unconscionable**. Birnbaum gives evidence upon the following matters:

- David Westfall's Solicitation and Concealment of Solicitation shows collusion
- David Westfall's delay in making a formal appearance shows collusion
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- Westfall's fraudulent motion to withdraw shows collusion
- Westfall not doing anything about the strange "Judgment" and "de novo determination" in my Cause shows collusion

f. Deposition Exhibit 6: "Billing" statement with handwriting on it:

Birnbaum testified that the **whole document is a fraud**, as is the handwriting on it.

g. Deposition Exhibit 7: Diagram by Birnbaum:

Birnbaum is diagramming the RICO violative scheme involving the Law Office. Birnbaum is testifying under examination upon the **unconscionable** scheme of the Westfall Bunch running a full blown racketeering scheme right there out of the Law Office. The Law Office, in soliciting and inducing Birnbaum to take G. David Westfall as attorney, was clearly concealing that it was an enterprise controlled by the Westfalls for perpetrating their scheme.

VI.

EVIDENCE IN OTHER DOCUMENTS

1. Other evidence of the pattern of racketeering activity is to be found in the exhibits to the *Videotaped Deposition of Stefani Podvin* of July 20, 2000:

a. Deposition Exhibits 2 through 9: "Written consent of shareholders":

What these documents show is G. David's scheme to make himself "bullet proof", i.e. not owning the Law Office checking account. G. David Westfall, in depositions (page 52, line 17) claims he is the owner of the Law Office, yet gets himself appointed ten (10) years in a row by straw person Stefani Podvin participating in his scheme to get himself "appointed" director by fraudulently "appointing" him director, claiming she is the owner of the Law Office (page 12 line 20). Being director permits him to do the pattern of racketeering activity. Not owning any assets makes him "bullet proof" to judgment and allows him to risk acts of "**racketeering activity**" that one would not take if one were not "bullet proof" to judgment.

b. Deposition Exhibit 10: Election to S corporation:

This document shows G. David Westfall's **scheme** to maintain control of the profits of "Stefani Podvin's" Law Office by funneling them back to Christina and David Westfall, to be ultimately funneled back to "Westfall Farms", of which David Westfall, Christina Westfall, and Stefani Podvin are "limited partners" as Stefani Podvin testified in depositions.

Not owning any assets makes him "bullet proof" to judgment and allows him to risk acts of "**racketeering activity**" that one would not take if one were not "bullet proof" to judgment.

c. Deposition Exhibit 11: Department of Treasury Document:

G. David Westfall and Christina Westfall succeeded in **fooling** the Internal Revenue Service with the above document.

d. Deposition Exhibit 13: Bankruptcy Transcript:

This transcript, together with the bankruptcy exhibits, shows the RICO scheme between G. David Westfall, Christina Westfall, and Stefani Podvin in **setting up** and **controlling** the "Law Office" and "Westfall Farms" to do the "**pattern of racketeering activity**".

e. Deposition Exhibit 14: Bankruptcy Transcript pages 29 and 30:

Showing how, through their long time accountant, they have been **operating** their "enterprise".

f. Deposition Exhibit 15: Bankruptcy Transcript pages 31:

Evidence the **profits** from "Stefani Podvin's" Law Office **wind up** at "Westfall Farms".

g. Deposition Exhibit 18: Bankruptcy Transcript pages 44 and 45:

Everyone is funded out of one giant slush fund account made possible by the RICO scheme.

h. Deposition Exhibit 19: 9/22/2000 Bankruptcy Transcript pages:

Everyone has agreed to release everyone. Problem is the release needs to be signed by the parties, one of them being STEFANI PODVIN as supposed "owner" of the "Law Office". **The scheme slips out:**

Mr. Pronske (Westfall's lawyer): *"We have agreed that there will be mutual releases between the parties . . . [list] . . . Are there any others that we need? And the professional corporation."*

Mr. Westfall: *"I hadn't thought about it. I don't want her to have to execute anything."*

i. Deposition Exhibit 21: Copies of checks:

Proving the **transfer of income** from the "Law Office" to G. David Westfall personally, then to "G. David Westfall Family LP" ("Westfall Farms"). G. David Westfall, Christina Westfall, and Stefani, as partners of Westfall Farms derived each derived income from the "pattern of racketeering activity".

2. Evidence of the **knowledge** of the **pattern of racketeering activity** is to be found throughout the *Videotaped Depositions* of G. David Westfall, Stefani Podvin, and Christina Westfall, as indicated by all their *"I do not know"* answers, when the evidence in the documents and each others testimony clearly conflicts with theirs.

VII.

SUMMARY OF EVIDENCE TO THIRD PARTY PLAINTIFF RICO "ELEMENTS"

(upon the damage they caused through the "Law Office")

(In the format of the "issues of fact" in the Fifth Circuit
Civil RICO pattern jury instructions)

COUNT ONE - - RICO

For violation of 18 U.S.C. §1962(c)

(participating through a pattern of racketeering activity)

Defendants: G. David Westfall, Stefani Podvin

Evidence to 18 U.S.C. §1962(c) cause of action "elements":

A. "To establish that the defendant [G. DAVID WESTFALL] has violated Section 1962(c), the plaintiff must prove each of the following five elements by a preponderance of the evidence:"

1. That an enterprise existed.

Evidence: The "Law Office" is the alleged "enterprise". It is an "enterprise" by the definitions under RICO.

2. That the enterprise engaged in, or had some effect upon, interstate or foreign commerce.

Evidence: The "Law Office" pays for equipment made in other states. It loads up the United States mail with legal documents. David Westfall takes trips out of the state and spends money there.

3. That the defendant was employed by or associated with the enterprise.

Evidence: G. David Westfall claims he is the president of "The Law Office of G. David Westfall, P.C. and also contracts through that "enterprise".

4. That the defendant knowingly and willfully conducted or participated, directly or indirectly, in the conduct of the affairs of the enterprise.

Evidence: To be determined by the jury upon evidence per the instructions below.

5. That the defendant did so knowingly and willfully through a pattern of racketeering activity.

Evidence: To be determined by the jury upon the evidence per the instructions below.

B. "The fourth and fifth elements require that the plaintiff prove by a preponderance of the evidence that the defendant knowingly and willfully conducted or participated in the conducting of the affairs of the alleged enterprise through a pattern of racketeering activity. The plaintiff must prove by a preponderance of the evidence a sufficient connection between the enterprise,

the defendant, and the alleged pattern of racketeering activity. To prove a sufficient connection between the "enterprise", the defendant, and the "alleged pattern of racketeering activity":

- 1. That the defendant participated in the operation or management of the enterprise itself in such a way, directly or indirectly, as to have played some part in directing the affairs of the enterprise.*

Evidence: G. David Westfall is the "director" who runs the "Law Office". See exhibits above and the surrounding circumstances for more detail.

- 2. That the defendant in fact engaged in the pattern of racketeering activity as the plaintiff claims*

Evidence: All the exhibits referred to above and the surrounding circumstances for more detail.

- 3. That the defendant's association with or employment by the enterprise facilitated his commission of the racketeering acts*

Evidence: He is able to do "racketeering acts" by making them appear as legal documents in the name of the "Law Office". See the exhibits above and the surrounding circumstances for more detail.

- 4. That the commission of these predicate acts had some direct or indirect effect on the alleged enterprise.*

Evidence: That is how he separated me from my money and others of their money. My \$20,000 loss is evidenced by my check and in the "bill".

C. "To establish that mail fraud has been committed, the plaintiff must prove each of the following with a preponderance of the evidence as to each defendant so charged:"

- 1. Some person or persons willfully and knowingly devised a scheme or artifice to defraud, or a scheme for obtaining money or property by means of false pretenses, representations or promises, and*

Evidence: All the exhibits above. They show the scheme to contract through the "Law Office" while at the same time making himself bullet proof to do his acts of "racketeering activity" as shown by the documents above.

2. *Some person or persons used the United States Postal Service by mailing, or by causing to be mailed, some matter or thing for the purpose of executing the scheme to defraud.*

Evidence: There is evidence of "mailing" on almost every document on file in this case.

Damages by reason of 18 U.S.C. §1962(c) violation

D. *"Finally, for the plaintiff to prevail under RICO, he must prove by a preponderance of the evidence that the defendant's RICO violations were the "proximate cause" of injury to the plaintiff's business or property". (emphasis added)*

E. *"A finding that the plaintiff was injured in his business or property because of the defendant's violation of RICO requires only that you find the plaintiff was harmed by the predicate acts." (emphasis added)*

Evidence: The \$20,000 G. David Westfall stripped from Udo Birnbaum by the "retainer contract". Also the additional \$18,1231.10 G. David Westfall and Stefani Podvin is trying to strip through their "Law Office" suit (This amount for cross-claims upon G. David Westfall, Christina Westfall, and Stefani Podvin upon the claims of the Law Office upon Udo Birnbaum. See Cause 00-619 Original Petition, this suit)

F. *"However, to find that injury to the plaintiff's business or property was caused by reason of the defendant's violation of RICO, you must find that the injury to the plaintiff was caused by, and was a direct result of the defendants' violation of either Section 1962(a) or (b) or (c). (emphasis added)*

G. *"Therefore, you must find that the commission of the acts of racketeering, or the pattern of racketeering activity, or the conduct of the affairs of the enterprise through the pattern of racketeering activity directly resulted in the injury or played a substantial part in producing the injury." (emphasis added)*

Evidence: Birnbaum's injuries also flow from the "pattern of racketeering activity" that

had been around for some time before it came upon Birnbaum. Birnbaum became one in a long string of victims. Evidence of the "pattern of racketeering activity" predate the appearance of Birnbaum on the scene, or more correctly the appearance of G. David Westfall upon Udo Birnbaum.

COUNT TWO - - RICO

For violation of 18 U.S.C. §1962(a)

(acquiring interest in enterprise with income derived from a pattern of racketeering activity)

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

Evidence to 18 U.S.C. §1962(a) cause of action "elements":

H. "To establish that a defendant violated Section 1962(a), the plaintiff must prove by a preponderance of the evidence each of the following four elements:"

1. That there was an "enterprise".

Evidence: The G. David Westfall Family Limited Partnership ("Westfall Farms") is the alleged "enterprise". It is an "enterprise" by definitions under RICO.

2. That the enterprise engaged in, or had some effect "on interstate commerce".

Evidence: "Westfall Farms" buys equipment made in other states.

3. That the defendant derived income, directly or indirectly or indirectly, from a "pattern of racketeering activity". (NOTE: "a pattern", not "her pattern", i.e. David Westfall's and/or Stefani Podvin's pattern)

Evidence: Deposition exhibit to the Videotaped Deposition of Stefani Podvin of July 20, 2000. It shows the transfer of income from the "Law Office" to G. David Westfall personally, than to "G. David Westfall Family LP ("Westfall Farms)". G. David Westfall, Christina Westfall, and Stefani, as partners in "Westfall Farms" each derived income from their "pattern of racketeering activity" involving the Law Office.

4. That some part of that income was used in acquiring an interest in or operating the enterprise (NOTE: interest in Westfall Farms)

Evidence: G. David Westfall, Christina Westfall, and Stefani Podvin used the money that came from the "pattern of racketeering activity" involving the Law Office to fund the operation of "Westfall Farms".

J. *"You should note that the pattern must be one in which the defendant has participated as a "principal". Thus in order to satisfy the second element, the plaintiff must prove the defendant was a "principal" by showing by a preponderance of the evidence:"*

1. *That the defendant knowingly and willfully committed, or knowingly and willfully aided and abetted in the commission of two or more alleged predicate offenses that constitute the alleged pattern of racketeering activity. (NOTE: i.e. aided and abetted David Westfall and/or Stefani Podvin) (emphasis added)*

Evidence: The agreement of retainership, the "billing" statement with handwriting on it, the "written consent of shareholders" documents, the "election to S corporation" 9/20/2000 bankruptcy transcript, copies of checks.

2. *That the defendant knowingly and willfully received income derived directly or indirectly, from that alleged pattern of racketeering activity.*

Evidence: Copies of checks, testimony of being a partner in "Westfall Farms".

Damages by reason of 18 U.S.C. §1962(a) violation

K. *"Finally, for the plaintiff to prevail under RICO, he must prove by a preponderance of the evidence that the defendant's RICO violations were the "proximate cause" of injury to the plaintiff's business or property". (emphasis added)*

L. *"A finding that the plaintiff was injured in his business or property because of the defendant's violation of RICO requires only that you find the plaintiff was harmed by the predicate acts." (emphasis added)*

Evidence: The \$20,000 G. David Westfall stripped from Udo Birnbaum by the "retainer contract". Also the additional \$18,1231.10 G. David Westfall is trying to strip with this suit (This amount for cross-claims upon G. David Westfall upon the claims of the Law Office

upon Udo Birnbaum. See Cause 00-619 Original Petition, this suit)

M. "However, to find that injury to the plaintiff's business or property was caused by reason of the defendant's violation of RICO, you must find that the injury to the plaintiff was caused by, and was a direct result of the defendants' violation of either Section 1962(a) or (b) or (c). (emphasis added)

Evidence: Income diverted, in violation of 18 U.S.C. § 1962(a), to "Westfall Farms" was part of the scheme to make G. David Westfall "bullet proof" from creditors. It made the "pattern of racketeering" through the "Law Office" possible. The "pattern of racketeering activity" was around long before Birnbaum came on the scene.

Birnbaum was just one of the victims of G. David Westfall's "pattern of racketeering activity" made possible by the RICO violation.

N. "Therefore, you must find that the commission of the acts of racketeering, or the pattern of racketeering activity, or the conduct of the affairs of the enterprise through the pattern of racketeering activity directly resulted in the injury or played a substantial part in producing the injury." (emphasis added)

Evidence: G. David Westfall's act of "racketeering activity" of the "retainer contract" directly resulted in the \$20,000 injury to Birnbaum. G. David Westfall's act of "racketeering activity" of the "bill" and this suit may cause an additional \$18,121.10 in injury.

COUNT THREE - - FRAUD
Defendants: G. David Westfall

O. Evidence to FRAUD cause of action "elements":

"Under Texas law, a plaintiff establishes a fraudulent inducement claim by showing the elements of a simple fraud claim. See Balogh v. Ramos, 978 S.W.2d 696, 701 (Tex. App.--Corpus Christi 1998, pet. denied) ("The supreme court has defined fraudulent inducement as a simple fraud claim."). "The elements of fraud and fraudulent inducement applicable here, are **(1) a material representation, (2) which was false, and (3) which was either known to be false when made or was asserted without knowledge of the truth, (4) which was intended to be acted upon, (5) which was relied upon, and (6) which caused injury.**" Id.

Whether such a duty to disclose exists in this case is "entirely a question of law." See Bradford, 997 S.W.2d at 725 (quoting Hoggett v. Brown, 971 S.W.2d 472, 487-88 (Tex. App.--Houston [14th Dist.] 1997, no writ)). Texas courts have found that "a duty to disclose may

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arise in four situations: (1) when there is a fiduciary relationship; (2) when one voluntarily discloses information, the whole truth must be disclosed; (3) when one makes a representation, new information must be disclosed when that new information makes the earlier representation misleading or untrue ; (4) when one makes a partial disclosure and conveys a false impression." Id. " Randall v. Segue Software, Inc, 5th Cir No. 00-10501 Nov. 20, 2000 (emphasis added)

Evidence to FRAUD cause of action "elements":

(1) a material representation,

Evidence: The "retainer agreement" to entice Birnbaum

(2) which was false, and

Evidence:

- G. David Westfall misrepresented himself and the "Law Office" as honest providers of legal services. He had all his honor certificates plastered all over the walls but was concealing that he was running a racketeering ring right there out of the "Law Office".
- Frank C. Fleming's questions at the *Videotaped Deposition of Udo Birnbaum* of July 3, 2001 show that the Westfalls (David, Christina, and Stefani) were engaged in a racket of hiding behind the "Law Office".
- G. David Westfall's subsequent actions as shown by the documents to the *Videotaped Deposition of David Westfall* of July 3, 2001 show that he never intended to live up to the terms of the agreement

(3) which was either known to be false when made or was asserted without knowledge of the truth ,

Evidence:

- G. David Westfall's own testimony in the *Videotaped Deposition of David Westfall* of July 3, 2001 shows that he never intended to live up to the terms of the agreement.
- G. David Westfall's questions at the *Videotaped Deposition of Udo Birnbaum* of July 3, 2001 show that he never intended to live up to the terms of the agreement

(4) which was intended to be acted upon,

Evidence: G. David Westfall intended Udo Birnbaum to be suckered in by the "retainer agreement" contract.

(5) which was relied upon, and

Evidence: Udo Birnbaum was suckered in by the "retainer agreement" as evidenced by the \$20,000 payment.

(6) which caused injury.

Evidence: Udo Birnbaum was injured to the tune of \$20,000 up front, mental anguish, loss of time and earnings.

VIII.

SUMMARY OF EVIDENCE TO CROSS-COMPLAINT RICO "ELEMENTS"

(upon the \$18,121.10 + the "Law Office" is seeking)

(Same evidence upon the same "elements" as above, different liability)

COUNT ONE - - RICO

For violation of 18 U.S.C. §1962(c)
(participating through a pattern of racketeering activity)
Defendants: **G. David Westfall, Stefani Podvin**

COUNT TWO - - RICO

For violation of 18 U.S.C. §1962(a)
(acquiring interest in enterprise with income derived from a pattern of racketeering activity)
Defendants: **G. David Westfall, Christina Westfall, and Stefani Podvin**

COUNT THREE - - FRAUD

Defendants: **G. David Westfall**

IX.

RE: DAVID WESTFALL'S REPRESENTATIONS TO THIS COURT

1. Par I: "The foregoing shows as a matter of law that with regard to the issues raised there is no genuine issue as to any material fact, and that the Law Office of G. David Westfall, P.C. and G. David Westfall are entitled to judgment as a matter of law."

Response: There is nothing "foregoing". Failure to identify the "issues" or their author. Failure to even identify the cause of action.

2. Par II: "In the present situation, after reviewing the record as a whole, a rational trier of fact could not find for Udo Birnbaum on any of his claims against The Law Office of G. David Westfall, P.C. and G. David Westfall."

Response: Conclusory wishful thinking.

X.

SUMMARY

G. David Westfall's motion fails to designate as to which element there is no evidence, other than to conclusorily allege that the evidence does not show a violation of the RICO. The **ultimate issue** of the violation of the RICO, however, is the prerogative of the jury and not subject to summary judgment disposition.

G. David Westfall is abusing the summary judgment process. Birnbaum comes to show that G. David Westfall, in the very bringing of this suit, is not only abusing the judicial process to collect upon a fraudulent "bill" but is continuing in his "pattern of racketeering activity".

Attached to this response by reference, and filed separately, are the following"

- Transcript of July 3, 2001 *Videotaped Deposition of Udo Birnbaum* and exhibits thereto.
- Transcript of July 3, 2001 *Videotaped Deposition of David Westfall* and exhibits thereto.
- Transcript of July 20, 2001 *Videotaped Deposition of Stefani Podvin* and exhibits thereto.
- Transcript of July 20, 2001 *Videotaped Deposition of Christina Westfall* and exhibits thereto.

Attached to this response by reference, and already previously filed, are the following:

- *Transcript* of September 20, 2000 trial of G. David Westfall in the Dallas Bankruptcy Court.

PRAYER

WHEREFORE, Premises considered, UDO BIRNBAUM prays that G. David Westfall be required to argue his motion in light of this response and the evidence hereby presented and designated, and that his motion for summary judgment be in all things denied.

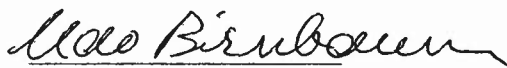
Respectfully submitted,



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 31 day of August, 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.



UDO BIRNBAUM



I certify this to be a true and exact copy of the original on file in the District Clerk's Office, Van Zandt County, Texas. Candi Scott

No. 00-00619

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

Vs.

UDO BIRNBAUM

Vs.

G. DAVID WESTFALL

CHRISTINA WESTFALL

STEFANI PODVIN

John Doe

Mary Doe

) (IN THE DISTRICT COURT
) (
) (294TH JUDICIAL DISTRICT
) (VAN ZANDT COUNTY, TEXAS
) (
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UDO BIRNBAUM'S RESPONSE TO THIRD PARTY DEFENDANT, STEPHANIE (SIC) PODVIN'S MOTION FOR SUMMARY JUDGMENT

Summary of this response:

Stefani Podvin's motion is procedurally insufficient for failing designate as to which element there is no "even one single bit of summary judgment adequate evidence" (paragraph IV, subparagraph 4), other than to conclusorily allege that the evidence does not show a violation of "RICO".

RICO is statutory law and of course does not have "elements" to point to. It does have "material issues of fact", i.e. that which is in the statute as interpreted by case law and as embedded in the U.S. Fifth Circuit Civil RICO pattern jury instructions (attached). Such "material issues of fact" are of course in the realm of the jury in making its finding as to whether the totality of the evidence actually shows a RICO violation and whether injury is by reason of such violation.

The elements of Civil RICO stem from the language itself which authorizes a private cause of action under the RICO (18 U.S.C. § 1961, et seq.) statute:

"Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c)

"There are three essential elements in a private action under this chapter: a violation of this chapter; direct injury to plaintiffs from such a violation; and

damages sustained by plaintiffs." *Wilcox Development Co. v. First Interstate Bank of Oregon, N.A., D.C.Or.1983, 97 F.R.D. 440.*

The party moving for summary judgment is either hopelessly confused or willfully trying to confuse the Court. Summary judgment is not available under the circumstances:

"Congress did not limit scope of this chapter to those persons involved in what traditionally has been thought of as "organized crime," but, rather, **any "person"** as term is broadly defined in this chapter, **whether associated with organized crime or not**, can commit violation, and **any person injured** in his business or property by such violation may then sue violator for damages in federal court." *Lode v. Leonardo, D.C.Ill.1982, 557 F.Supp. 675.*

"**Material issues of genuine fact** existed with respect to existence of an enterprise as defined by this chapter, association of defendant printing company with such enterprise, association of the alleged enterprise with organized criminal activity, the intent and knowledge of defendant concerning the underlying predicate acts and the existence of injury caused by alleged violation of this chapter, **precluding summary judgment** in favor of defendant in action alleging the kickback scheme. *Estee Lauder, Inc. v. Harco Graphics, Inc., D.C.N.Y.1983, 558 F.Supp.83.*

Birnbaum's *Summary of Evidence to Civil RICO "elements"* designates his summary judgment evidence. Other evidence is in the witnesses named and their affidavits as already provided or in the *Appendix* to this response.

Birnbaum petitions this Court to require Stefani Podvin to argue her Motion for summary judgment in light of this response and the evidence hereby presented and designated. Full argument will show that summary judgment is not available under the circumstances of this case.

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, UDO BIRNBAUM, ("Birnbaum"), Defendant and Counter-claimant against The Law Offices of G. David Westfall, P.C. ("Law Office"), and Cross-claimant and Third Party Plaintiff against Stefani Podvin, and in response to Stefani Podvin's Motion for Summary Judgment, would show the Court as follows:

I.

PROCEDURAL HISTORY

1. Plaintiff, The Law Offices of G. David Westfall, P.C., filed this action on September 21, 2000 against Udo Birnbaum for "legal fees" of \$18,121.10 beyond the \$20,000 Birnbaum had paid up front on May 5, 1999.

2. On October 3, 2000 Birnbaum filed *Defendant's Answer, Counterclaim, and Cross-complaint*, as amended on July 6, 2001 by *Defendant's Amended Answer, Counterclaim, and Cross-complaint*, counter-claiming of the "Law Office" under the Texas Deceptive Trade Practices Act (DTPA), and cross-complaining of G. David Westfall, Christina Westfall, and Stefani Podvin.

3. On December 26, 2000 Birnbaum filed *Motion for Appointment of Auditor Pursuant to Rule 172 RCP to Make Finding of State of the Accounts between the Parties*. On January 8, 2001 Birnbaum filed *Supplement to Motion for Appointment of Auditor, etc*. The Law Office never responded to this motion, and this motion is currently still **pending before the Court**.

4. On April 20, 2001 Birnbaum filed *Udo Birnbaum's Motion Under Rule 193.4 for Hearing and Ruling on Objections and Assertions of Privilege*. The Law Office as well as the other individual parties never responded to this motion, and this motion is currently still **pending before the Court**.

5. On April 30, 2001 Birnbaum filed *Udo Birnbaum's Third Party Plaintiff Civil RICO Claim Against G. David Westfall, Christina Westfall, and Stefani Podvin*. This pleading, as amended on July 11, 2001 by *Udo Birnbaum's Amended Third Party Plaintiff Civil RICO Claim against G. David Westfall, Christina Westfall, and Stefani Podvin*, complains of violations of 18 U.S.C. § 1961 et seq. ("RICO"), by the three named individuals and also of fraud by G. David Westfall. The "Law Office" is not named as a RICO defendant, but is instead designated as the "enterprise" associated with the above individual "persons".

6. At various times various parties moved to quash the taking of depositions. However the Court, on June 20, 2001 ordered dates for the taking of depositions of the respective parties.

7. On July 3, 2001, Udo Birnbaum gave his deposition in this matter. On this date G. David Westfall also gave his deposition, although time ran out and Westfall refused to produce any documents whatsoever as required by the notice duces tecum.

8. On July 20, 2001 Stefani Podvin and Christina Westfall gave their deposition. Both refused to produce any documents whatsoever as required by the notices duces tecum.

9. The Law Office, however, refused to allow the taking of their deposition as shown by *Udo Birnbaum's Motion to Compel Deposition of the Law Offices of G. David Westfall, P.C.*, filed July 16, 2001. The Law Office has not responded to this motion, and this motion is currently still **pending before the Court**.

10. On August 17, 2001 all four (4) opposing parties mailed motions seeking summary judgment, although they were **not actually filed with the Clerk** by this designated deadline.

11. This matter is currently set for trial on the Court's docket for November 13, 2001.

II.

STEFANI PODVIN'S SUMMARY JUDGMENT MOTION

1. Stefani Podvin is seeking summary judgment "*under T.R.C.P. 166a(c) and/or (i)*".

Rule 166a(i) ("No-Evidence Motion") states:

After adequate time for discovery, a party without presenting summary judgment evidence may move for summary judgment on the ground that there is no evidence of one or more essential elements of a claim or defense on which an adverse party would have the burden of proof at trial. The motion must state the elements as to which there is no evidence. The court must grant the motion unless the respondent produces summary judgment evidence raising a genuine issue of material fact. (emphasis added)

2. Stefani Podvin's motion under "no-evidence" fails to state the elements as to which there is no evidence. Stefani Podvin's motion under general summary judgment of course requires the movant to actually disprove at least one element of the cause of action:

The standard of review in summary judgment is well established. Tex. R. Civ. P. 166a(c); *Nixon v. Mr. Property Management Co.*, 690 S.W.2d 546, 548-49 (Tex. 1985); *Montgomery v. Kennedy*, 669 S.W.2d 309, 310-11 (Tex. 1984). The defendant as movant must disprove at least one element of the plaintiff's causes of action. *City of Houston v. Clear Creek Basin Auth.*, 589 SW.2d 671, 679 (Tex. 1979); *Traylor v. Cascade Ins. Co.*, 836 S.W.2d 292, 294 (Tex. App. Dallas 1992 no writ). *Stephen and Victoria Solomon v. Ralph Cole "Red Dog" Jones, et al*, No. 05-97-00225-CV, Texas Fifth District of Texas at Dallas, February 8, 2000.

3. Movant has failed to even designate the element she is trying to disprove. Birnbaum challenges Movant to disprove, at the hearing now set for September 7, 2001, any element of Birnbaum's cross and third party cause of action against her. **However, the only way to prove or disprove anything upon the pile of evidence before the Court is under cross-examination before a jury.**

III.

THE RICO ISSUES OF FACT "ELEMENTS"

1. **RICO** is statutory law. Its "**elements**", more properly its "**genuine issues of material fact**", are the issues of fact raised by the language of the statute itself, all of which are of course "material" and to be proved to the jury:

As to materiality, **substantive law will identify** which facts are **material**. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant will not be counted. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986)

"**Any person injured in his business or property** by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." *18 U.S.C. § 1964(c)*

Again in *Adickes v. S.H. Kress & Co.*, 398 U.S. 177 (1970), the Court emphasized that the availability of summary judgment turned on whether a **proper jury question was presented**. There, one of the issues was whether there was a conspiracy between private persons and law enforcement officers. The District Court granted summary judgment for the defendants, stating that there was no evidence from which reasonably minded jurors might draw an inference of conspiracy. We reversed, pointing out that the moving parties' submissions had not foreclosed the possibility of the existence of certain facts from which "it would be open to a jury ... to infer from the circumstances" that there had been a meeting of the minds. *Id.*, at 158-159. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986)

"**Material issues of genuine fact** existed with respect to existence of an enterprise as defined by this chapter, association of defendant printing company with such enterprise, association of the alleged enterprise with organized criminal activity, the intent and knowledge of defendant concerning the underlying predicate acts and the existence of injury caused by alleged violation of this chapter, **precluding summary judgment** in favor of defendant in action alleging the kickback scheme. *Estee Lauder, Inc. v. Harco Graphics, Inc.*, D.C.N.Y.1983, 558 F.Supp.83.

2. STEFANI PODVIN, in her motion, did not designate as to which element there is no evidence, other than to conclusorily allege that the evidence does not show a violation of the RICO. The **ultimate issue** of the violation of the RICO, however, is the prerogative of the jury and not subject to summary judgment disposition.

3. STEFANI PODVIN, in her motion, has not foreclosed the possibility of the existence of certain facts from which "it would be open to a jury ... to infer from the circumstances" that she had indeed violated RICO.

4. The "**material issues of fact**" can be clearly found in the "**Fifth Circuit Civil RICO pattern jury instructions**" hereby made a part of this response. The **material issues**, and

Birnbaum's evidence thereto, are developed in the context of these instruction. Since these instructions are sufficient for the jury to make a finding upon the evidence, then this document may as well serve as the framework for directing Birnbaum's evidence toward these individual issues of fact, and Birnbaum will do so.

IV.

BIRNBAUM'S DESIGNATED EVIDENCE

1. *Udo Birnbaum's Amended Answer, Counterclaim, and Cross-complaint, and Udo Birnbaum's Amended Third Party Plaintiff Civil RICO Claim against G. David Westfall, Christina Westfall, and Stefani Podvin* clearly indicates the evidentiary underpinnings of his claim. The following is directly out of paragraphs 12 through 14 of the latter:

The "**pattern of racketeering activity**" is evident from the transcript of the September 20, 2000 bankruptcy proceedings against G. David Westfall on September 20, 2000 (Exhibit 8):

- Mr. Alderson, the accountant for everybody, including "The Law Office", "Westfall Farms", Mr. Westfall, Mrs. Westfall for ten (10) years claiming not to "know" if Mr. Westfall is a shareholder of "The Law Office of G. Westfall, P.C." page 33 line 9.
- Mr. Alderson's testimony that funds are co-mingled across the board. 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 a "Law Office" slush fund 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".
- David Westfall trying to make himself bullet proof from a pending \$500,000 King Ranch judgment.

The "**pattern of racketeering activity**" is also evident from the following acts of "**racketeering activity**":

- The documents filed by or in behalf of David Westfall in his recent bankruptcy proceeding in which he claimed he had more than twelve (12) creditors against him

- The series of documents between David Westfall and his daughter Stefani Podvin designating him as director of the Law Office each year
- The retainer agreement between David Westfall and Udo Birnbaum
- The retainer agreement between David Westfall and Jerry Michael Collins
- The document in this cause which David Westfall calls his "bill"
- The fraudulent pleading David Westfall used to bring this suit.

Further evidence is to be found in all the exhibits previously provided in this cause, the persons named, their affidavits, together with whatever they may have." (end of quote)

2. The "**pattern of racketeering activity**" is also clearly visible in the *Videotaped Deposition of David Westfall* as taken by Udo Birnbaum on July 3, 2001, starting page 18 line 19. It shows G. David Westfall had no intent of ever abiding by the terms of the retainer contract he signed with Udo Birnbaum.

3. **Further evidence** is in the documents named by Birnbaum on pages 80 line 23 through page 82 line 12 in the *Videotaped Deposition of Udo Birnbaum* as taken of him on July 3, 2001:

Q (By Mr. Fleming) Can you point out to me any documents - - any and all documents under your custody or control that refer to or evidence any fraud or misrepresentation that you are alleging occurred in your dealings with Mr. Westfall, the P.C., Ms. Podvin or Christina Westfall?

A. Yes. As to you questions as to the documents that I designate constituting fraud, racketeering and deceptive trade practices, I hereby designate whatever documents Mr. Westfall filed in his recent bankruptcy proceedings claiming that he had more than twelve creditors against him, the series of documents between him and his daughter designating him as the director of the law office.

I designate Mr. Westfall's tax return using that fraudulent representation. I designate the retainer agreement which you put in here previously in cause 399-CV-696 [in] the Dallas federal court from which Mr. Westfall was my lawyer. I designate that as a fraudulent - - a document stating my cause. I designate the retainer agreement in the Jerry Michael Collins case. 3:99-CV-641. I designate the document that Mr. Westfall calls his, quote, bill, which I allege to be a fraudulent pleading for him to try to get more money out of me. That is this suit.

And I specifically designate these documents as constituting racketeering activity, and I designate them as - - also as constituting a specific pattern of racketeering activity by Mr. Westfall and others and designate all the evidence I have provided, all the persons I have named in the affidavits together with the bills they have as showing this pattern of racketeering activity.

The fraud is that Mr. Westfall did not tell me he was running a racketeering enterprise. It has - - it goes through all the motions. Looks like a perfectly harmless document. (page 82 line 12, end of quote)

4. And again, on page 132 line 12 through page 133 line 6 of the *Videotaped Deposition of Udo Birnbaum* as taken of him on July 3, 2001. The tone and tenor of the proceedings again does not fully come through on the transcript, as does the scheming throughout the deposition as caught by the video camera:

Q (By Mr. Fleming) I'm asking you right now for the fourth time, Mr. Birnbaum. This is your pleading. You came to the courthouse and filed it.

And I'm asking you the totality of the factual basis for this pleading.

A The totality of the factual basis for this pleading is those items that I specifically designated. One was the retainer agreement. Two was the fraudulent - - or whatever it is, bill. Three is the suit. Four, all the evidence that comes out of the bankruptcy things, okay. The swapping of legal fees for all kinds of stuff and w[h]ere looked at in totality of this - - this shows, and the transfer of income, the one big slush fund out of which everything comes in, the flow of money from one thing to another.

And all that evidence shows the RICO violation between all of them. And I close my answer on that, and that's the end of my answer on that issue. If you can't understand, I don't know what to do. (page 132 line 6, end of quote)

V.

EVIDENCE IN PLAINTIFF'S DOCUMENTS

1. There is plenty of evidence around, and Birnbaum designates all of it as his summary judgment evidence. There have been three deep reaching depositions, each reaching into the exhibits made a part of such depositions. There are discovery documents. Then there is the transcript of the bankruptcy proceedings against G. David Westfall as referred to in the pleadings and as filed in this Court. Then there is the entire record in the Dallas Federal Court made a part of Birnbaum's cause of action by reference. Then of course there is the "bill" with the supposed demands for payment. There clearly is no lack of evidence. And all of it is material to Birnbaum's statutory claim against the "Law Office".

2. The question before the Court is what does all of this stuff mean. Birnbaum claims that, as far as what David Westfall and Stefani Podvin did, it shows a violation of RICO by a **pattern of racketeering activity**.

a. **Westfall's Deposition Exhibit 1: Agreement of retainership:**

Birnbaum claims that the "Law Office" through G. David Westfall was **deceiving** him with this document by **concealing** that the "Law Office" never intended to bill monthly. If the "Law Office" would have billed him monthly, such would have precluded G. David Westfall from coming

up with whatever giant "bill" he wished to come up with at whatever time he chose, and to try to enforce such fraudulent "bill" with a fraudulent collection suit in the name of the "Law Office".

In depositions of David Westfall he claims he **never promised anyone** that he would bill them monthly, but this document clearly shows that he did. Such concealment is **unconscionable**. The scheme is clearly shown in the Videotaped Deposition of David Westfall, taken July 3, 2001, starting page 18 line 19 through line 8. It makes very interesting reading. (Attached)

The evidence also shows the Law Office has a pattern of coming up with such fraudulent giant summary "bills". Rather than go into detail here, the matter is clearly documented in the Videotaped Deposition of David Westfall, taken July 3, 2001, and particularly how a charge for 7/31/00 could be reflected on a complete "billing statement" dated July 31, 2000. (Page 41 line 23 through page 42 line 22).

The videotape of the parties before the camera of course shows the continuing scheme much better than the mere "objection form" that appears on the transcribed document.

b. Westfall's Deposition Exhibit 2: Letter from Westfall to Birnbaum:

Birnbaum claims this is a letter to get G. David Westfall out of the mess he had painted himself in the Dallas Federal Court, i.e. to conceal that he had been fired long ago and should have stopped meddling in the courts and stopped charging. It is obstruction in the administration of justice because it involves an attorney as an officer of the court.

c. Westfall's Deposition Exhibit 3: Motion to withdraw as attorney:

Birnbaum claims this is a fraudulent "CYA" document. Client had not *"disregarded the advice of counsel ... making it impossible for his attorney to properly handle the matter ..."*, as Westfall tells the Court, but had **fired him three months ago**.

d. Westfall's Deposition Exhibit 4: Original order sent for approval:

Birnbaum claims this document was fraudulently submitted by Westfall to the Court. Deposition testimony shows that Westfall did not "deliver a copy of this Motion to Plaintiff" as he claims in the above document. Furthermore Westfall did not need my signature as he claimed in Exhibit 2 above. It was all a "CYA" scheme, and getting Birnbaum's signature was the name of the game.

e. Westfall's Deposition Exhibit 5: 9/15/00 Affidavit of Udo Birnbaum:

David Westfall's conduct is **unconscionable**. Birnbaum gives evidence upon the following matters:

- David Westfall's Solicitation and Concealment of Solicitation shows collusion
- David Westfall's delay in making a formal appearance shows collusion
- Westfall's attempt to release Judges Zimmermann and McDowell as defendants shows collusion
- Westfall's fraudulent motion to withdraw shows collusion
- Westfall not doing anything about the strange "Judgment" and "de novo determination" in my Cause shows collusion

f. Deposition Exhibit 6: "Billing" statement with handwriting on it:

Birnbaum testified that the **whole document is a fraud**, as is the handwriting on it.

g. Deposition Exhibit 7: Diagram by Birnbaum:

Birnbaum is diagramming the RICO violative scheme involving the Law Office. Birnbaum is testifying under examination upon the **unconscionable** scheme of the Westfall Bunch running a full blown racketeering scheme right there out of the Law Office. The Law Office, in soliciting and inducing Birnbaum to take G. David Westfall as attorney, was clearly concealing that it was an enterprise controlled by the Westfall's for perpetrating their scheme.

VI.

EVIDENCE IN OTHER DOCUMENTS

1. Other evidence of the pattern of racketeering activity is to be found in the exhibits to the *Videotaped Deposition of Stefani Podvin* of July 20, 2000:

a. Deposition Exhibits 2 through 9: "Written consent of shareholders":

What these documents show is G. David's scheme to make himself "bullet proof", i.e. not owning the Law Office checking account. G. David Westfall, in depositions (page 52, line 17) claims he is the owner of the Law Office, yet gets himself appointed ten (10) years in a row by

straw person Stefani Podvin participating in his scheme to get himself "appointed" director by fraudulently "appointing" him director, claiming she is the owner of the Law Office (page 12 line 20). Being director permits him to do the pattern of racketeering activity. Not owning any assets makes him "bullet proof" to judgment and allows him to risk acts of "**racketeering activity**" that one would not take if one were not "bullet proof" to judgment.

b. Deposition Exhibit 10: Election to S corporation:

This document shows G. David Westfall's **scheme** to maintain control of the profits of "Stefani Podvin's" Law Office by funneling them back to Christina and David Westfall, to be ultimately funneled back to "Westfall Farms", of which David Westfall, Christina Westfall, and Stefani Podvin are "limited partners" as Stefani Podvin testified in depositions.

Not owning any assets makes him "bullet proof" to judgment and allows him to risk acts of "**racketeering activity**" that one would not take if one were not "bullet proof" to judgment.

c. Deposition Exhibit 11: Department of Treasury Document:

G. David Westfall and Christina Westfall succeeded in **fooling** the Internal Revenue Service with the above document.

d. Deposition Exhibit 13: Bankruptcy Transcript:

This transcript, together with the bankruptcy exhibits, shows the RICO scheme between G. David Westfall, Christina Westfall, and Stefani Podvin in **setting up** and **controlling** the "Law Office" and "Westfall Farms" to do the "**pattern of racketeering activity**".

e. Deposition Exhibit 14: Bankruptcy Transcript pages 29 and 30:

Showing how, through their long time accountant, they have been **operating** their "enterprise".

f. Deposition Exhibit 15: Bankruptcy Transcript pages 31:

Evidence the **profits** from "Stefani Podvin's" Law Office **wind up** at "Westfall Farms".

g. Deposition Exhibit 18: Bankruptcy Transcript pages 44 and 45:

Everyone is funded out of one giant slush fund account made possible by the RICO scheme.

h. Deposition Exhibit 19: 9/22/2000 Bankruptcy Transcript pages:

Everyone has agreed to release everyone. Problem is the release needs to be signed by the parties, one of them being STEFANI PODVIN as supposed "owner" of the "Law Office". **The scheme slips out:**

Mr. Pronske (Westfall's lawyer): *" We have agreed that there will be mutual releases between the parties . . . [list] . . . Are there any others that we need? And the professional corporation."*

Mr. Westfall: *"I hadn't thought about it. I don't want her to have to execute anything."*

i. Deposition Exhibit 21: Copies of checks:

Proving the **transfer of income** from the "Law Office" to G. David Westfall personally, then to "G. David Westfall Family LP" ("Westfall Farms"). G. David Westfall, Christina Westfall, and Stefani, as partners of Westfall Farms derived each derived income from the "pattern of racketeering activity".

VII.

SUMMARY OF EVIDENCE TO THIRD PARTY PLAINTIFF RICO "ELEMENTS"

(upon the damage they caused through the "Law Office")

(In the format of the "issues of fact" in the Fifth Circuit
Civil RICO pattern jury instructions)

COUNT ONE -- RICO

For violation of 18 U.S.C. §1962(c)

(participating through a pattern of racketeering activity)

Defendants: G. David Westfall, Stefani Podvin

Evidence to 18 U.S.C. §1962(c) cause of action "elements":

A. "To establish that the defendant [STEFANI PODVIN] has violated Section 1962(c), the plaintiff must prove each of the following five elements by a preponderance of the evidence:"

1. That an enterprise existed.

Evidence: The "Law Office" is the alleged "enterprise". It is an "enterprise" by the definitions under RICO.

2. That the enterprise engaged in, or had some effect upon, interstate or foreign commerce.

Evidence: The "Law Office" pays for equipment made in other states. It loads up the United States mail with legal documents.

3. That the defendant [STEFANI PODVIN] was employed by or associated with the enterprise.

Evidence: She is the owner of the "Law Office". She works around the law office. She fills out billing time cards.

4. That the defendant [STEFANI PODVIN] knowingly and willfully conducted or participated, directly or indirectly, in the conduct of the affairs of the enterprise.

Evidence: To be determined by the jury upon evidence per the instructions below.

5. That the defendant [STEFANI PODVIN] did so knowingly and willfully through a pattern of racketeering activity.

Evidence: To be determined by the jury upon the evidence per the instructions below.

B. "The fourth and fifth elements require that the plaintiff prove by a preponderance of the evidence that the defendant knowingly and willfully conducted or participated in the conducting of the affairs of the alleged enterprise through a pattern of racketeering activity. The plaintiff must prove by a preponderance of the evidence a sufficient connection between the enterprise, the defendant, and the alleged pattern of racketeering activity. To prove a sufficient connection between the "enterprise", the defendant, and the "alleged pattern of racketeering activity":

1. That the defendant [STEFANI PODVIN] participated in the operation or management of the enterprise itself in such a way, directly or indirectly, as to have

played some part in directing the affairs of the enterprise.

Evidence: She is the sole owner of the "Law Office", and as such has total control over the Law Office through her election of officers.

2. *That the defendant [STEFANI PODVIN] in fact engaged in the pattern of racketeering activity as the plaintiff claims*

Evidence: All the exhibits referred to above and the surrounding circumstances for more detail.

3. *That the defendant's [PODVIN'S] association with or employment by the enterprise facilitated his commission of the racketeering acts*

Evidence: She was able to do her acts of "racketeering activity" of appointing G. David Westfall by reason of her being the owner of the Law Office. She was able to facilitate G. David Westfall's acts of "racketeering activity" by reason of appointing him ten (10) years in a row. See the exhibits above and the surrounding circumstances for more detail.

4. *That the commission of these predicate acts had some direct or indirect effect on the alleged enterprise.*

Evidence: Money came into the Law Office by reason of G. David Westfall separating victims from their money by acts of "racketeering activity. That is how he separated me from my money. My \$20,000 loss is evidenced by my check and in the "bill".

C. *"To establish that mail fraud has been committed, the plaintiff must prove each of the following with a preponderance of the evidence as to each defendant so charged:"*

1. *Some person or persons willfully and knowingly devised a scheme or artifice to defraud, or a scheme for obtaining money or property by means of false pretenses, representations or promises, and*

Evidence: All the exhibits above. They show the scheme of G. David Westfall and Stefani Podvin to contract through the "Law Office", while at the same time making G. David Westfall bullet proof to do his acts of "racketeering activity" as shown by the

documents above.

2. *Some person or persons used the United States Postal Service by mailing, or by causing to be mailed, some matter or thing for the purpose of executing the scheme to defraud.*

Evidence: There is evidence of "mailing" on almost every document on file in this case.

Damages by reason of 18 U.S.C. §1962(c) violation

D. *"Finally, for the plaintiff to prevail under RICO, he must prove by a preponderance of the evidence that the defendant's RICO violations were the "proximate cause" of injury to the plaintiff's business or property". (emphasis added)*

E. *"A finding that the plaintiff was injured in his business or property because of the defendant's violation of RICO requires only that you find the plaintiff was harmed by the predicate acts." (emphasis added)*

Evidence: The \$20,000 G. David Westfall stripped from Udo Birnbaum by the "retainer contract". Also the additional \$18,1231.10 G. David Westfall and Stefani Podvin is trying to strip through their "Law Office" suit (This amount for cross-claims upon G. David Westfall, Christina Westfall, and Stefani Podvin upon the claims of the Law Office upon Udo Birnbaum. See Cause 00-619 Original Petition, this suit)

F. *"However, to find that injury to the plaintiff's business or property was caused by reason of the defendant's violation of RICO, you must find that the injury to the plaintiff was caused by, and was a direct result of the defendants' violation of either Section 1962(a) or (b) or (c). (emphasis added)*

G. *"Therefore, you must find that the commission of the acts of racketeering, or the pattern of racketeering activity, or the conduct of the affairs of the enterprise through the pattern of racketeering activity directly resulted in the injury or played a substantial part in producing the injury." (emphasis added)*

Evidence: Birnbaum's injuries also flow from the "pattern of racketeering activity" that had been around for some time before it came upon Birnbaum. Birnbaum became one in a long string of victims. Evidence of the "pattern of racketeering activity" predate the

appearance of Birnbaum on the scene.

COUNT TWO - - RICO

For violation of 18 U.S.C. §1962(a)

(acquiring interest in enterprise with income derived from a pattern of racketeering activity)

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

Evidence to 18 U.S.C. §1962(a) cause of action "elements":

H. "To establish that a defendant [STEFANI PODVIN] violated Section 1962(a), the plaintiff must prove by a preponderance of the evidence each of the following four elements:"

1. That there was an "enterprise".

Evidence: The G. David Westfall Family Limited Partnership ("Westfall Farms") is the alleged "enterprise". It is an "enterprise" by definitions under RICO.

2. That the enterprise engaged in, or had some effect "on interstate commerce".

Evidence: "Westfall Farms" buys equipment made in other states.

3. That the defendant [STEFANI PODVIN] derived income, directly or indirectly or indirectly, from a "pattern of racketeering activity". (NOTE: "a pattern", not "her pattern", i.e. David Westfall's and/or Stefani Podvin's pattern)

Evidence: Deposition exhibit to the Videotaped Deposition of Stefani Podvin of July 20, 2000. It shows the transfer of income from the "Law Office" to G. David Westfall personally, than to "G. David Westfall Family LP ("Westfall Farms)". G. David Westfall, Christina Westfall, and Stefani, as partners in "Westfall Farms" each derived income from the "pattern of racketeering activity" involving the Law Office.

4. That some part of that income was used in acquiring an interest in or operating the enterprise (NOTE: interest in Westfall Farms)

Evidence: G. David Westfall, Christina Westfall, and Stefani Podvin used the money that came from the "pattern of racketeering activity" involving the Law Office to fund their operation of "Westfall Farms".

J. ***"You should note that the pattern must be one in which the defendant [STEFANI PODVIN] has participated as a "principal". Thus in order to satisfy the second element, the plaintiff must prove the defendant was a "principal" by showing by a preponderance of the evidence:"***

1. ***That the defendant [STEFANI PODVIN] knowingly and willfully committed, or knowingly and willfully aided and abetted in the commission of two or more alleged predicate offenses that constitute the alleged pattern of racketeering activity. (NOTE: i.e. aided and abetted David Westfall and/or Stefani Podvin) (emphasis added)***

Evidence: The documents showing her appointment of G. David Westfall as "director" of her Law Office ten (10) years in a row. Her working around the Law Office in the manner she does, claiming she does not receive compensation for it, yet filling out "billing time cards".

2. ***That the defendant [STEFANI PODVIN] knowingly and willfully received income derived directly or indirectly, from that alleged pattern of racketeering activity.***

Evidence: Copies of checks, testimony of being a partner in "Westfall Farms".

Damages by reason of 18 U.S.C. §1962(a) violation

K. ***"Finally, for the plaintiff to prevail under RICO, he must prove by a preponderance of the evidence that the defendant's [PODVIN'S] RICO violations were the "proximate cause" of injury to the plaintiff's business or property". (emphasis added)***

L. ***"A finding that the plaintiff was injured in his business or property because of the defendant's[PODVIN'S] violation of RICO requires only that you find the plaintiff was harmed by the predicate acts." (emphasis added)***

Evidence: The \$20,000 G. David Westfall stripped from Udo Birnbaum by the "retainer contract". Also the additional \$18,1231.10 G. David Westfall and Stefani Podvin is trying to get from Birnbaum with their "Law Office" suit. (This amount for cross-claims upon G. David Westfall and Stefani Podvin upon the claims of the Law Office upon Udo Birnbaum. See Cause 00-619 Original Petition, this suit)

M. "However, to find that injury to the plaintiff's business or property was caused by reason of the defendant's [PODVIN'S] violation of RICO, you must find that the injury to the plaintiff was caused by, and was a direct result of the defendants' violation of either Section 1962(a) or (b) or (c). (emphasis added)

Evidence: Income diverted, in violation of 18 U.S.C. § 1962(a), to "Westfall Farms" was part of the scheme to make G. David Westfall "bullet proof" from creditors. It made the "pattern of racketeering" through the "Law Office" possible. The "pattern of racketeering activity" was around long before Birnbaum came on the scene. It was the long standing violation of 18 U.S.C. § 1962(a) that permitted them to make Birnbaum and others victims.

N. "Therefore, you must find that the commission of the acts of racketeering, or the pattern of racketeering activity, or the conduct of the affairs of the enterprise through the pattern of racketeering activity directly resulted in the injury or played a substantial part in producing the injury." (emphasis added)

Evidence: G. David Westfall's act of "racketeering activity" of the "retainer contract" directly resulted in the \$20,000 injury to Birnbaum. G. David Westfall's act of "racketeering activity" of the "bill" and this suit may cause an additional \$18,121.10 in injury.

VIII.

SUMMARY OF EVIDENCE TO CROSS-COMPLAINT RICO "ELEMENTS"

(upon the \$18,121.10 + the "Law Office" is seeking)

(Same evidence upon the same "elements" as above, different liability)

COUNT ONE - - RICO

For violation of 18 U.S.C. §1962(c)

(participating through a pattern of racketeering activity)

Defendants: G. David Westfall, Stefani Podvin

COUNT TWO - - RICO

For violation of 18 U.S.C. §1962(a)

(acquiring interest in enterprise with income derived from a pattern of racketeering activity)

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

IX.

RE: STEFANI PODVIN REPRESENTATIONS TO THIS COURT

1. Par II: *"An examination of the foregoing shows that as a matter of law, with regard to one or more of the **elements** on which the defendant, Birnbaum, has the burden of proof, there is no genuine issue as to any material fact, and there is no competent summary judgment evidence to support at least one or more of the **essential elements** of each of the causes of action pled by Birnbaum against the Movant."* (emphasis added)

Response: Failure to designate the missing **essential elements** and **each** of the causes.

2. Par IV subpar 1: *"An adequate time for discovery has passed. At the time of the hearing on this motion, the suit will have been on file for a year."*

Response: Movant held up deposition for six (6) months with motion to quash. Then Movant failed to produce documents at deposition. Currently **pending** before the Court is *Udo Birnbaum's Motion Under Rule 193.4 for Hearing and Ruling on Objections and Assertions of Privilege.*

3. Par IV subpar 2: *"There is no evidence to support one or more **essential elements** of each and every one of Birnbaum's **claims or defenses** on which Birnbaum has the burden of proof."* (emphasis added)

Response: Failure to designate the **essential elements** or even the **claims**.

4. Par IV subpar 1: *"Further, an adequate amount of time to develop the facts is admitted by Birnbaum in a judicial admission contained in paragraph 5 of Udo Birnbaum's Amended Third Party Plaintiff Civil RICCO (sic) Claim, filed in this Court on July 11, 2001."*

Response: Not so. Paragraph 5 reads: "Having diligently investigated both the facts and the law, Birnbaum has found that the various matters he is complaining of are not isolated garden variety wrongs, but that the evidence shows he is the victim of conduct proscribed by 18 U.S.C. § 1931 *et seq.* ("RICO")

5. Par IV subpar 3: *"Birnbaum alleges that Stephanie (sic) Podvin is a participant in a **"pattern of racketeering activity"** by acts of **"racketeering activity"** (predicate acts) of obstruction*

in the administration of justice on the part of G. David Westfall in the Dallas Federal Court."(emphasis as in original)

Response: Movant fails to designate where Birnbaum made such allegation, and Birnbaum does not phrase his complaint in this manner.

6. Par IV subpar 3: *"Birnbaum's RICCO (sic) complaint further alleges that Stephanie (sic) Podvin was the recipient of a flow of income from a pattern of racketeering activity. That is it. Birnbaum makes no other allegations against Podvin other than Podvin's participation in this "RICCO" type behavior. Birnbaum's pleadings contain no other allegation against Podvin on any lesser type of cause of action. This is the "sole indictment" brought by Birnbaum against Podvin." (emphasis added)*

Response: Not so. In his paragraph 13 Birnbaum designates the series of documents between David Westfall and his daughter Stefani Podvin designating him as director of the Law Office each year as **predicate acts**. Also that she violated 18 U.S.C. § 1962(a) by **knowingly and willfully** receiving such income.

7. Par IV subpar 4: *"Birnbaum has fully failed to provide even one single bit of summary judgment adequate evidence which in a light most favorable to Birnbaum would even tend to support a fact at Podvin was engaged in any sort of **illegal, corrupt, or clandestine activity** whatsoever, let alone the types of activity alleged in Birnbaum's pleadings."(emphasis added)*

Response: Not So. Birnbaum has provided the transcript of the September 20, 2000 bankruptcy trial of G. David Westfall. It, together with the documents entered in that trial, the affidavits, witnesses named, and discovery including depositions in this cause, shows that STEFANI PODVIN was deeply involved in **illegal, corrupt, and clandestine activity** to such an extent as to actually violate RICO.

8. Par IV subpar 4: *"What the summary judgment evidence does prove is that Stephanie (sic) Podvin assisted the Law Office of G. David Westfall, P.C. in the law office's efforts to provide Birnbaum with legal services which had been requested by Birnbaum. That is it! Stephanie (sic), as an **independent contractor** to a law firm, assisted in providing legal services for Birnbaum, and*

having done so, is embroiled in an alleged RICCO (sic) violation arising out of a fee dispute for the legal services provided." (emphasis added)

Response: Not So. Stefani Podvin is not an **independent contractor**. She testified at depositions and documents she that she **owns** the Law Office. Furthermore she testifies, that she **does not get paid** for her work, and that her work is not for the Law Office but for G. David Westfall. Furthermore this whole cause is not about a mere "**fee dispute**".

9. *Par IV subpar 5: "There is no summary judgment evidence to support a genuine fact issue for several of the elements of Birnbaum's cause of action. Birnbaum's own pleading outlines several element in paragraph 65, on pages 10 and 11 of Birnbaum's Amended Third Party Plaintiff Civil RICCO (sic) Claim." (emphasis added)*

Response: These are not the **elements** of Birnbaum's **cause of action**! These are the **pleading "elements"**, i.e. "Allegations conforming to the elements contained in U.S. Fifth Circuit Civil RICO pattern jury instructions" to make findings upon the "issues of material fact"! Birnbaum's paragraph 75, on page 12 avoids the "element" problem by simply calling it "Allegations conforming to U.S. Fifth Circuit Civil RICO pattern RICO instructions." Civil RICO of course has only **three essential elements**:

*"There are **three essential elements** in a private action under this chapter: a violation of this chapter; direct injury to plaintiffs from such a violation; and damages sustained by plaintiffs." Wilcox Development Co. v. First Interstate Bank of Oregon, N.A., D.C.Or.1983, 97 F.R.D. 440.*

10. *Par IV subpar 5a: "There is no evidence that Podvin knowingly and willfully conducted or participated, directly or indirectly, in the conduct of the affairs of an enterprise through a pattern of racketeering activity."*

Response: Not so. Podvin appointed G. David Westfall as sole director ten (10) years in a row. Whether each of these "appointment" documents constitute an act of "**racketeering activity**" and constitute a "**pattern of racketeering activity**" is of course a "**material issue of fact**" for the jury.

11. Par IV subpar 5b: "There is no evidence that Podvin participated in the operation or management of the enterprise."

Response: Not so. Podvin, as sole owner, appointed G. David Westfall as sole director ten (10) years in a row.

12. Par IV subpar 5c: "There is no evidence that Podvin engaged in the pattern of racketeering activity as claimed by Birnbaum".

Response: Not so. There is plenty of evidence. All of it. Podvin appointed G. David Westfall as sole director ten (10) years in a row. Whether this is a "pattern of racketeering activity" is up to the jury.

13. Par IV subpar 5d: "There is no evidence that Podvin's association with the enterprise facilitated the commission of racketeering acts."

Response: Not true nonsense. If Stefani Podvin were not associated with the Law Office as the sole owner, she would not be able to get by with the acts of racketeering activity of appointing the likes of G. David Westfall as the sole director for ten (10) years in a row!

14. Par IV subpar 6: "Further, there is no evidence that Podvin ever received any income from Birnbaum or the alleged racketeering enterprise."

Response: Not so. In *Stefani Podvin's responses and Objections Answers to Defendant's First Set of Interrogatories* : Interrogatory No. 7: "Identify all records as reflect charges for work done by you, Stefani Podvin, in behalf of my Civil Rico suit, and specifically identify the source documents." Answer: "Billing time cards created by Stefani Podvin and provided to David Westfall."

Further evidence is in *Videotaped Deposition of Stefani Podvin* of July 20, 2001, **Deposition Exhibit 21: Copies of checks:** Proving the **transfer of income** from the "Law Office" to G. David Westfall personally, then to "G. David Westfall Family LP" ("Westfall Farms"). G. David Westfall, Christina Westfall, and Stefani, as partners of Westfall Farms derived each derived income from the "pattern of racketeering activity".
(already referred to elsewhere in this response)

15. Par IV subpar 7: "Further, there is no evidence that Birnbaum has suffered any damages which is an essential element of Birnbaum's claims against Podvin."

Response: Not true. Birnbaum claims he was damaged by the \$20,000 paid ^{and} other injuries. Whether this \$20,000 or the other \$18,121.10 for which he is being sued is proper "legal fees" or "damages" is of course a "material issue of fact" for the jury.

16. Par IV subpar 9: "In the present situation, after a review of the record as a whole, a rational trier of fact could not find for Birnbaum on any of his claims against Movant, Stephanie (sic) Podvin."

Response: Conclusory. At this summary judgment stage, and if looked at in **light most favorable** to Birnbaum, it shows a **violation of RICO**.

X.

SUMMARY

Stefani Podvin's motion fails to designate as to which element there is no evidence, other than to conclusorily allege that the evidence does not show a violation of the RICO. The **ultimate issue** of the violation of the RICO, however, is the prerogative of the jury and not subject to summary judgment disposition.

Attached to this response by reference, and filed separately, are the following"

- Transcript of July 3, 2001 *Videotaped Deposition of Udo Birnbaum* and exhibits thereto.
- Transcript of July 3, 2001 *Videotaped Deposition of David Westfall* and exhibits thereto.
- Transcript of July 20, 2001 *Videotaped Deposition of Stefani Podvin* and exhibits thereto.
- Transcript of July 20, 2001 *Videotaped Deposition of Christina Westfall* and exhibits thereto.

Attached to this response by reference, and already previously filed, are the following:

- *Transcript* of September 20, 2000 trial of G. David Westfall in the Dallas Bankruptcy Court.

PRAYER

WHEREFORE, Premises considered, UDO BIRNBAUM prays that G. David Westfall be required to argue his motion in light of this response and the evidence hereby presented and designated, and that his motion for summary judgment be in all things denied.

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 3 / day of August, 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.


UDO BIRNBAUM

damages sustained by plaintiffs." *Wilcox Development Co. v. First Interstate Bank of Oregon, N.A., D.C.Or.1983, 97 F.R.D. 440.*

The party moving for summary judgment is either hopelessly confused or willfully trying to confuse the Court. Summary judgment is not available under the circumstances:

"Congress did not limit scope of this chapter to those persons involved in what traditionally has been thought of as "organized crime," but, rather, **any "person"** as term is broadly defined in this chapter, **whether associated with organized crime or not**, can commit violation, and **any person injured** in his business or property by such violation may then sue violator for damages in federal court." *Lode v. Leonardo, D.C.Ill.1982, 557 F.Supp. 675.*

"**Material issues of genuine fact** existed with respect to existence of an enterprise as defined by this chapter, association of defendant printing company with such enterprise, association of the alleged enterprise with organized criminal activity, the intent and knowledge of defendant concerning the underlying predicate acts and the existence of injury caused by alleged violation of this chapter, **precluding summary judgment** in favor of defendant in action alleging the kickback scheme. *Estee Lauder, Inc. v. Harco Graphics, Inc., D.C.N.Y.1983, 558 F.Supp.83.*

Birnbaum's *Summary of Evidence to Civil RICO "elements"* designates his summary judgment evidence. Other evidence is in the witnesses named and their affidavits as already provided or in the *Appendix* to this response.

Birnbaum petitions this Court to require Christina Westfall to argue her Motion for summary judgment in light of this response and the evidence hereby presented and designated. Full argument will show that summary judgment is not available under the circumstances of this case.

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, UDO BIRNBAUM, ("Birnbaum"), Defendant and Counter-claimant against The Law Offices of G. David Westfall, P.C. ("Law Office"), and Cross-claimant and Third Party Plaintiff against Christina Westfall, and in response to Christina Westfall's Motion for Summary Judgment, would show the Court as follows:

I.

PROCEDURAL HISTORY

1. Plaintiff, The Law Offices of G. David Westfall, P.C., filed this action on September 21, 2000 against Udo Birnbaum for "legal fees" of \$18,121.10 beyond the \$20,000 Birnbaum had paid up front on May 5, 1999.

2. On October 3, 2000 Birnbaum filed *Defendant's Answer, Counterclaim, and Cross-complaint*, as amended on July 6, 2001 by *Defendant's Amended Answer, Counterclaim, and Cross-complaint*, counter-claiming of the "Law Office" under the Texas Deceptive Trade Practices Act (DTPA), and cross-complaining of G. David Westfall, Christina Westfall, and Stefani Podvin.

3. On December 26, 2000 Birnbaum filed *Motion for Appointment of Auditor Pursuant to Rule 172 RCP to Make Finding of State of the Accounts between the Parties*. On January 8, 2001 Birnbaum filed *Supplement to Motion for Appointment of Auditor, etc.* The Law Office never responded to this motion, and this motion is currently still **pending before the Court**.

4. On April 20, 2001 Birnbaum filed *Udo Birnbaum's Motion Under Rule 193.4 for Hearing and Ruling on Objections and Assertions of Privilege*. The Law Office as well as the other individual parties never responded to this motion, and this motion is currently still **pending before the Court**.

5. On April 30, 2001 Birnbaum filed *Udo Birnbaum's Third Party Plaintiff Civil RICO Claim Against G. David Westfall, Christina Westfall, and Stefani Podvin*. This pleading, as amended on July 11, 2001 by *Udo Birnbaum's Amended Third Party Plaintiff Civil RICO Claim against G. David Westfall, Christina Westfall, and Stefani Podvin*, complains of violations of 18 U.S.C. § 1961 et seq. ("RICO"), by the three named individuals and also of fraud by G. David Westfall. The "Law Office" is not named as a RICO defendant, but is instead designated as the "enterprise" associated with the above individual "persons".

6. At various times various parties moved to quash the taking of depositions. However the Court, on June 20, 2001 ordered dates for the taking of depositions of the respective parties.

7. On July 3, 2001, Udo Birnbaum gave his deposition in this matter. On this date G. David Westfall also gave his deposition, although time ran out and Westfall refused to produce any documents whatsoever as required by the notice duces tecum.

8. On July 20, 2001 Stefani Podvin and Christina Westfall gave their deposition. Both refused to produce any documents whatsoever as required by the notices duces tecum.

9. The Law Office, however, refused to allow the taking of their deposition as shown by *Udo Birnbaum's Motion to Compel Deposition of the Law Offices of G. David Westfall, P.C.*, filed July 16, 2001. The Law Office has not responded to this motion, and this motion is currently still **pending before the Court**.

10. On August 17, 2001 all four (4) opposing parties mailed motions seeking summary judgment, although they were **not actually filed with the Clerk** by this designated deadline.

11. This matter is currently set for trial on the Court's docket for November 13, 2001.

II.

CHRISTINA WESTFALL'S SUMMARY JUDGMENT MOTION

1. Christina Westfall is seeking summary judgment "*under T.R.C.P. 166a(c) and/or (i)*". Rule 166a(i) ("No-Evidence Motion") states:

After adequate time for discovery, a party without presenting summary judgment evidence may move for summary judgment on the ground that there is no evidence of one or more essential elements of a claim or defense on which an adverse party would have the burden of proof at trial. **The motion must state the elements as to which there is no evidence.** The court must grant the motion unless the respondent produces summary judgment evidence raising a genuine issue of material fact. (emphasis added)

2. Christina Westfall 's motion under "no-evidence" **fails to state the elements** as to which there is no evidence. Christina Westfall 's motion under general summary judgment of course requires the movant to actually **disprove** at least one element of the cause of action:

The standard of review in **summary judgment** is well established. Tex. R. Civ. P. 166a(c); *Nixon v. Mr. Property Management Co.*, 690 S.W.2d 546, 548-49 (Tex. 1985); *Montgomery v. Kennedy*, 669 S.W.2d 309, 310-11 (Tex. 1984). The defendant as movant **must disprove** at least one **element** of the plaintiff's causes of action. *City of Houston v. Clear Creek Basin Auth.*, 589 SW.2d 671, 679 (Tex. 1979); *Traylor v. Cascade Ins. Co.*, 836 S.W.2d 292, 294 (Tex. App. Dallas 1992 no writ). *Stephen and Victoria Solomon v. Ralph Cole "Red Dog" Jones, et al.*, No. 05-97-00225-CV, Texas Fifth District of Texas at Dallas, February 8, 2000.

3. Movant has failed to even designate **the element** she is trying to disprove. Birnbaum challenges Movant to **disprove**, at the hearing now set for September 7, 2001, any element of Birnbaum's cross and third party cause of action against her. **However, the only way to prove or disprove anything upon the pile of evidence before the Court is under cross-examination before a jury.**

III.

THE RICO ISSUES OF FACT "ELEMENTS"

1. RICO is statutory law. Its "elements", more properly its "genuine issues of material fact", are the issues of fact raised by the language of the statute itself, all of which are of course "material" and to be proved to the jury:

As to materiality, **substantive law will identify** which facts are **material**. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant will not be counted. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986)

"Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." *18 U.S.C. § 1964(c)*

Again in *Adickes v. S.H. Kress & Co.*, 398 U.S. 177 (1970), the Court emphasized that the availability of summary judgment turned on whether a **proper jury question was presented**. There, one of the issues was whether there was a conspiracy between private persons and law enforcement officers. The District Court granted summary judgment for the defendants, stating that there was no evidence from which reasonably minded jurors might draw an inference of conspiracy. We reversed, pointing out that the moving parties' submissions had not foreclosed the possibility of the existence of certain facts from which "it would be open to a jury ... to infer from the circumstances" that there had been a meeting of the minds. *Id.*, at 158-159. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986)

"Material issues of genuine fact existed with respect to existence of an enterprise as defined by this chapter, association of defendant printing company with such enterprise, association of the alleged enterprise with organized criminal activity, the intent and knowledge of defendant concerning the underlying predicate acts and the existence of injury caused by alleged violation of this chapter, **precluding summary judgment** in favor of defendant in action alleging the kickback scheme. *Estee Lauder, Inc. v. Harco Graphics, Inc.*, D.C.N.Y.1983, 558 F.Supp.83.

2. CHRISTINA WESTFALL, in her motion, did not designate as to which element there is no evidence, other than to conclusorily allege that the evidence does not show a violation of RICO. The **ultimate issue** of the violation of the RICO, however, is the prerogative of the jury and not subject to summary judgment disposition.

3. CHRISTINA WESTFALL, in her motion, has not foreclosed the possibility of the existence of certain facts from which "it would be open to a jury ... to infer from the circumstances" that she had indeed violated RICO.

4. The "**material issues of fact**" can be clearly found in the "**Fifth Circuit Civil RICO pattern jury instructions**" hereby made a part of this response. The **material issues**, and Birnbaum's evidence thereto, are developed in the context of these jury instruction. Since these instructions are sufficient for the jury to make a finding upon the evidence, then this document may as well serve as the framework for directing Birnbaum's evidence toward these individual issues of fact, and Birnbaum will do so.

IV.

BIRNBAUM'S DESIGNATED EVIDENCE

1. *Udo Birnbaum's Amended Answer, Counterclaim, and Cross-complaint, and Udo Birnbaum's Amended Third Party Plaintiff Civil RICO Claim against G. David Westfall, Christina Westfall, and Stefani Podvin* clearly indicates the evidentiary underpinnings of his claim. The following is directly out of paragraphs 12 through 14 of the latter:

The "**pattern of racketeering activity**" is evident from the transcript of the September 20, 2000 bankruptcy proceedings against G. David Westfall on September 20, 2000 (Exhibit 8):

- Mr. Alderson, the accountant for everybody, including "The Law Office", "Westfall Farms", Mr. Westfall, Mrs. Westfall for ten (10) years claiming not to "know" if Mr. Westfall is a shareholder of "The Law Office of G. Westfall, P.C." page 33 line 9.
- Mr. Alderson's testimony that funds are co-mingled across the board. 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 a "Law Office" slush fund 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".
- David Westfall trying to make himself bullet proof from a pending \$500,000 King Ranch judgment.

The "**pattern of racketeering activity**" is also evident from the following acts of "**racketeering activity**":

- The documents filed by or in behalf of David Westfall in his recent bankruptcy proceeding in which he claimed he had more than twelve (12) creditors against him
- The series of documents between David Westfall and his daughter Stefani Podvin designating him as director of the Law Office each year
- The retainer agreement between David Westfall and Udo Birnbaum
- The retainer agreement between David Westfall and Jerry Michael Collins
- The document in this cause which David Westfall calls his "bill"
- The fraudulent pleading David Westfall used to bring this suit.

Further evidence is to be found in all the exhibits previously provided in this cause, the persons named, their affidavits, together with whatever they may have." (end of quote)

2. The "**pattern of racketeering activity**" is also clearly visible in the *Videotaped Deposition of David Westfall* as taken by Udo Birnbaum on July 3, 2001, starting page 18 line 19. It shows G. David Westfall had no intent of ever abiding by the terms of the retainer contract he signed with Udo Birnbaum.

3. **Further evidence** is in the documents named by Birnbaum on pages 80 line 23 through page 82 line 12 in the *Videotaped Deposition of Udo Birnbaum* as taken of him on July 3, 2001:

Q (By Mr. Fleming) Can you point out to me any documents - - any and all documents under your custody or control that refer to or evidence any fraud or misrepresentation that you are alleging occurred in your dealings with Mr. Westfall, the P.C., Ms. Podvin or Christina Westfall?

A. Yes. As to your questions as to the documents that I designate constituting fraud, racketeering and deceptive trade practices, I hereby designate whatever documents Mr. Westfall filed in his recent bankruptcy proceedings claiming that he had more than twelve creditors against him, the series of documents between him and his daughter designating him as the director of the law office.

I designate Mr. Westfall's tax return using that fraudulent representation. I designate the retainer agreement which you put in here previously in cause 399-CV-696 [in] the Dallas federal court from which Mr. Westfall was my lawyer. I designate that as a fraudulent - - a document stating my cause. I designate the retainer agreement in the Jerry Michael Collins case. 3:99-CV-641. I designate the document that Mr. Westfall calls his, quote, bill, which I allege to be a fraudulent pleading for him to try to get more money out of me. That is this suit.

And I specifically designate these documents as constituting racketeering activity, and I designate them as - - also as constituting a specific pattern of racketeering activity by Mr. Westfall and others and designate all the evidence I have provided, all the persons I have named in the affidavits together with the bills they have as showing this pattern of racketeering activity.

The fraud is that Mr. Westfall did not tell me he was running a racketeering enterprise. It has - - it goes through all the motions. Looks like a perfectly harmless document. (page 82 line 12, end of quote)

4. And again, on page 132 line 12 through page 133 line 6 of the *Videotaped Deposition of Udo Birnbaum* as taken of him on July 3, 2001. The tone and tenor of the proceedings again does not fully come through on the transcript, as does the scheming throughout the deposition as caught by the video camera:

Q (By Mr. Fleming) I'm asking you right now for the fourth time, Mr. Birnbaum. This is your pleading. You came to the courthouse and filed it.

And I'm asking you the totality of the factual basis for this pleading.

A The totality of the factual basis for this pleading is those items that I specifically designated. One was the retainer agreement. Two was the fraudulent - - or whatever it is, bill. Three is the suit. Four, all the evidence that comes out of the bankruptcy things, okay. The swapping of legal fees for all kinds of stuff and w[h]ere looked at in totality of this - - this shows, and the transfer of income, the one big slush fund out of which everything comes in, the flow of money from one thing to another.

And all that evidence shows the RICO violation between all of them. And I close my answer on that, and that's the end of my answer on that issue. If you can't understand, I don't know what to do. (page 132 line 6, end of quote)

V.

EVIDENCE IN PLAINTIFF'S DOCUMENTS

1. There is plenty of evidence around, and Birnbaum designates all of it as his summary judgment evidence. There have been three deep reaching depositions, each reaching into the exhibits made a part of such depositions. There are discovery documents. Then there is the transcript of the bankruptcy proceedings against G. David Westfall as referred to in the pleadings and as filed in this Court. Then there is the entire record in the Dallas Federal Court made a part of Birnbaum's cause of action by reference. Then of course there is the "bill" with the supposed demands for payment. There clearly is no lack of evidence. And all of it is material to Birnbaum's statutory claim against the "Law Office".

2. The question before the Court is what does all of this stuff mean. Birnbaum claims that, as far as what David Westfall and Stefani Podvin did, it shows a violation of RICO by a **pattern of racketeering activity**.

a. Westfall's Deposition Exhibit 1: Agreement of retainership:

Birnbaum claims that the "Law Office" through G. David Westfall was **deceiving** him with this document by **concealing** that the "Law Office" never intended to bill monthly. If the "Law Office" would have billed him monthly, such would have precluded G. David Westfall from coming up with whatever giant "bill" he wished to come up with at whatever time he chose, and to try to enforce such fraudulent "bill" with a fraudulent collection suit in the name of the "Law Office".

In depositions of David Westfall he claims he **never promised anyone** that he would bill them monthly, but this document clearly shows that he did. Such concealment is **unconscionable**. The scheme is clearly shown in the Videotaped Deposition of David Westfall, taken July 3, 2001, starting page 18 line 19 through line 8. It makes very interesting reading. (Attached)

The evidence also shows the Law Office has a pattern of coming up with such fraudulent giant summary "bills". Rather than go into detail here, the matter is clearly documented in the Videotaped Deposition of David Westfall, taken July 3, 2001, and particularly how a charge for 7/31/00 could be reflected on a complete "billing statement" dated July 31, 2000. (Page 41 line 23 through page 42 line 22).

The videotape of the parties before the camera of course shows the continuing scheme much better than the mere "objection form" that appears on the transcribed document.

b. Westfall's Deposition Exhibit 2: Letter from Westfall to Birnbaum:

Birnbaum claims this is a letter to get G. David Westfall out of the mess he had painted himself in the Dallas Federal Court, i.e. to conceal that he had been fired long ago and should have stopped meddling in the courts and stopped charging. It is obstruction in the administration of justice because it involves an attorney as an officer of the court.

c. Westfall's Deposition Exhibit 3: Motion to withdraw as attorney:

Birnbaum claims this is a fraudulent "CYA" document. Client had not *"disregarded the advice of counsel ... making it impossible for his attorney to properly handle the matter ..."*, as Westfall tells the Court, but had **fired him three months ago**.

d. Westfall's Deposition Exhibit 4: Original order sent for approval:

Birnbaum claims this document was fraudulently submitted by Westfall to the Court. Deposition testimony shows that Westfall did not "deliver a copy of this Motion to Plaintiff" as he

claims in the above document. Furthermore Westfall did not need my signature as he claimed in Exhibit 2 above. It was all a "CYA" scheme, and getting Birnbaum's signature was the name of the game.

e. Westfall's Deposition Exhibit 5: 9/15/00 Affidavit of Udo Birnbaum:

David Westfall's conduct is **unconscionable**. Birnbaum gives evidence upon the following matters:

- David Westfall's Solicitation and Concealment of Solicitation shows collusion
- David Westfall's delay in making a formal appearance shows collusion
- Westfall's attempt to release Judges Zimmermann and McDowell as defendants shows collusion
- Westfall's fraudulent motion to withdraw shows collusion
- Westfall not doing anything about the strange "Judgment" and "de novo determination" in my Cause shows collusion

f. Deposition Exhibit 6: "Billing" statement with handwriting on it:

Birnbaum testified that the **whole document is a fraud**, as is the handwriting on it.

g. Deposition Exhibit 7: Diagram by Birnbaum:

Birnbaum is diagramming the RICO violative scheme involving the Law Office. Birnbaum is testifying under examination upon the **unconscionable** scheme of the Westfall Bunch running a full blown racketeering scheme right there out of the Law Office. The Law Office, in soliciting and inducing Birnbaum to take G. David Westfall as attorney, was clearly concealing that it was an enterprise controlled by the Westfall's for perpetrating their scheme.

VI.

EVIDENCE IN OTHER DOCUMENTS

1. Other evidence of the pattern of racketeering activity is to be found in the exhibits to the *Videotaped Deposition of Stefani Podvin* of July 20, 2000:

a. Deposition Exhibits 2 through 9: "Written consent of shareholders":

What these documents show is G. David's scheme to make himself "bullet proof", i.e. not owning the Law Office checking account. G. David Westfall, in depositions (page 52, line 17) claims he is the owner of the Law Office, yet gets himself appointed ten (10) years in a row by straw person Stefani Podvin participating in his scheme to get himself "appointed" director by fraudulently "appointing" him director, claiming she is the owner of the Law Office (page 12 line 20). Being director permits him to do the pattern of racketeering activity. Not owning any assets makes him "bullet proof" to judgment and allows him to risk acts of "**racketeering activity**" that one would not take if one were not "bullet proof" to judgment.

b. Deposition Exhibit 10: Election to S corporation:

This document shows G. David Westfall's **scheme** to maintain control of the profits of "Stefani Podvin's" Law Office by funneling them back to Christina and David Westfall, to be ultimately funneled back to "Westfall Farms", of which David Westfall, Christina Westfall, and Stefani Podvin are "limited partners" as Stefani Podvin testified in depositions.

Not owning any assets makes him "bullet proof" to judgment and allows him to risk acts of "**racketeering activity**" that one would not take if one were not "bullet proof" to judgment.

c. Deposition Exhibit 11: Department of Treasury Document:

G. David Westfall and Christina Westfall succeeded in **fooling** the Internal Revenue Service with the above document.

d. Deposition Exhibit 13: Bankruptcy Transcript:

This transcript, together with the bankruptcy exhibits, shows the RICO scheme between G. David Westfall, Christina Westfall, and Stefani Podvin in **setting up** and **controlling** the "Law Office" and "Westfall Farms" to do the "**pattern of racketeering activity**".

e. Deposition Exhibit 14: Bankruptcy Transcript pages 29 and 30:

Showing how, through their long time accountant, they have been **operating** their "enterprise".

f. Deposition Exhibit 15: Bankruptcy Transcript pages 31:

Evidence the profits from "Stefani Podvin's" Law Office wind up at "Westfall Farms".

g. Deposition Exhibit 18: Bankruptcy Transcript pages 44 and 45:

Everyone is funded out of one giant slush fund account made possible by the RICO scheme.

h. Deposition Exhibit 19: 9/22/2000 Bankruptcy Transcript pages:

Everyone has agreed to release everyone. Problem is the release needs to be signed by the parties, one of them being STEFANI PODVIN as supposed "owner" of the "Law Office". **The scheme slips out:**

Mr. Pronske (Westfall's lawyer): *" We have agreed that there will be mutual releases between the parties . . . [list] . . . Are there any others that we need? And the professional corporation."*

Mr. Westfall: *"I hadn't thought about it. I don't want her to have to execute anything."*

i. Deposition Exhibit 21: Copies of checks:

Proving the transfer of income from the "Law Office" to G. David Westfall personally, then to "G. David Westfall Family LP" ("Westfall Farms"). G. David Westfall, Christina Westfall, and Stefani, as partners of Westfall Farms derived each derived income from the "pattern of racketeering activity".

2. Evidence of the knowledge of the pattern of racketeering activity is to be found throughout the *Videotaped Depositions* of G. David Westfall, Stefani Podvin, and Christina Westfall, as indicated by all their *"I do not know"* answers, when the evidence in the documents and each others testimony clearly conflicts with theirs.

VII.

**SUMMARY OF EVIDENCE TO THIRD PARTY PLAINTIFF RICO "ELEMENTS"
(upon the damage they caused through the "Law Office")**

(In the format of the "issues of fact" in the Fifth Circuit
Civil RICO pattern jury instructions)

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

Evidence to 18 U.S.C. §1962(c) cause of action "elements":

A. "To establish that the defendant [STEFANI or DAVID] has violated Section 1962(c), the plaintiff must prove each of the following five elements by a preponderance of the evidence:"

1. That an enterprise existed.

Evidence: The "Law Office" is the alleged "enterprise". It is an "enterprise" by the definitions under RICO.

2. That the enterprise engaged in, or had some effect upon, interstate or foreign commerce.

Evidence: The "Law Office" pays for equipment made in other states. It loads up the United States mail with legal documents.

3. That the defendant [STEFANI or DAVID] was employed by or associated with the enterprise.

Evidence: She is the owner of the "Law Office". She works around the law office. She fills out billing time cards.

4. That the defendant [STEFANI or DAVID] knowingly and willfully conducted or participated, directly or indirectly, in the conduct of the affairs of the enterprise.

Evidence: To be determined by the jury upon evidence per the instructions below.

5. That the defendant [STEFANI or DAVID] did so knowingly and willfully through a pattern of racketeering activity.

Evidence: To be determined by the jury upon the evidence per the instructions below.

B. "The fourth and fifth elements require that the plaintiff prove by a preponderance of the

evidence that the defendant knowingly and willfully conducted or participated in the conducting of the affairs of the alleged enterprise through a pattern of racketeering activity. The plaintiff must prove by a preponderance of the evidence a sufficient connection between the enterprise, the defendant, and the alleged pattern of racketeering activity. To prove a sufficient connection between the "enterprise", the defendant, and the "alleged pattern of racketeering activity":

- 1. That the defendant [STEFANI or DAVID] participated in the operation or management of the enterprise itself in such a way, directly or indirectly, as to have played some part in directing the affairs of the enterprise.***

Evidence: She is the sole owner of the "Law Office", and as such has total control over the Law Office through her election of officers.

- 2. That the defendant [STEFANI or DAVID] in fact engaged in the pattern of racketeering activity as the plaintiff claims***

Evidence: All the exhibits referred to above and the surrounding circumstances for more detail.

- 3. That the defendant's [STEFANI or DAVID] association with or employment by the enterprise facilitated his commission of the racketeering acts***

Evidence: She was able to do her acts of "racketeering activity" of appointing G. David Westfall by reason of her being the owner of the Law Office. She was able to facilitate G. David Westfall's acts of "racketeering activity" by reason of appointing him ten (10) years in a row. See the exhibits above and the surrounding circumstances for more detail.

- 4. That the commission of these predicate acts had some direct or indirect effect on the alleged enterprise.***

Evidence: Money came into the Law Office by reason of G. David Westfall separating victims from their money by acts of "racketeering activity. That is how he separated me from my money. My \$20,000 loss is evidenced by my check and in the "bill".

C. ***"To establish that mail fraud has been committed, the plaintiff must prove each of the following with a preponderance of the evidence as to each defendant so charged:"***

1. ***Some person or persons willfully and knowingly devised a scheme or artifice to defraud, or a scheme for obtaining money or property by means of false pretenses, representations or promises, and***

Evidence: All the exhibits above. They show the scheme of G. David Westfall and Stefani Podvin to contract through the "Law Office", while at the same time making G. David Westfall bullet proof to do his acts of "racketeering activity" as shown by the documents above.

2. ***Some person or persons used the United States Postal Service by mailing, or by causing to be mailed, some matter or thing for the purpose of executing the scheme to defraud.***

Evidence: There is evidence of "mailing" on almost every document on file in this case.

Damages by reason of 18 U.S.C. §1962(c) violation

D. ***"Finally, for the plaintiff to prevail under RICO, he must prove by a preponderance of the evidence that the defendant's [DAVID or STEFANI] RICO violations were the "proximate cause" of injury to the plaintiff's business or property". (emphasis added)***

E. ***"A finding that the plaintiff was injured in his business or property because of the defendant's [DAVID or STEFANI] violation of RICO requires only that you find the plaintiff was harmed by the predicate acts." (emphasis added)***

Evidence: The \$20,000 G. David Westfall stripped from Udo Birnbaum by the "retainer contract". Also the additional \$18,1231.10 G. David Westfall and Stefani Podvin is trying to strip through their "Law Office" suit (This amount for cross-claims upon G. David Westfall, Christina Westfall, and Stefani Podvin upon the claims of the Law Office upon Udo Birnbaum. See Cause 00-619 Original Petition, this suit)

F. "However, to find that injury to the plaintiff's business or property was caused by reason of the defendant's violation of RICO, you must find that the injury to the plaintiff was caused by, and was a direct result of the defendants' violation of either Section 1962(a) or (b) or (c).
(emphasis added)

G. "Therefore, you must find that the commission of the acts of racketeering, or the pattern of racketeering activity, or the conduct of the affairs of the enterprise through the pattern of racketeering activity directly resulted in the injury or played a substantial part in producing the injury." (emphasis added)

Evidence: Birnbaum's injuries also flow from the "pattern of racketeering activity" that had been around for some time before it came upon Birnbaum. Birnbaum became one in a long string of victims. Evidence of the "pattern of racketeering activity" predate the appearance of Birnbaum on the scene.

COUNT TWO - - RICO

For violation of 18 U.S.C. §1962(a)

(acquiring interest in enterprise with income derived from a pattern of racketeering activity)

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

Evidence to 18 U.S.C. §1962(a) cause of action "elements":

H. "To establish that a defendant [CHRISTINA WESTFALL] violated Section 1962(a), the plaintiff must prove by a preponderance of the evidence each of the following four elements:"

1. That there was an "enterprise".

Evidence: The G. David Westfall Family Limited Partnership ("Westfall Farms") is the alleged "enterprise". It is an "enterprise" by definitions under RICO.

2. That the enterprise engaged in, or had some effect "on interstate commerce".

Evidence: "Westfall Farms" buys equipment made in other states.

3. That the defendant [CHRISTINA WESTFALL] derived income, directly or indirectly or indirectly, from a "pattern of racketeering activity". (NOTE: "a pattern", not "her pattern", i.e. David Westfall's and/or Stefani Podvin's pattern)

Evidence: Deposition exhibit to the Videotaped Deposition of Stefani Podvin of July 20, 2000. It shows the transfer of income from the "Law Office" to G. David Westfall personally, than to "G. David Westfall Family LP ("Westfall Farms"). G. David Westfall, Christina Westfall, and Stefani, as partners in "Westfall Farms" each derived income from the "pattern of racketeering activity" involving the Law Office.

4. *That some part of that income was used in acquiring an interest in or operating the enterprise (NOTE: interest in Westfall Farms)*

Evidence: G. David Westfall, Christina Westfall, and Stefani Podvin used the money that came from the "pattern of racketeering activity" involving the Law Office to fund their operation of "Westfall Farms".

J. *"You should note that the pattern must be one in which the defendant [CHRISTINA WESTFALL] has participated as a "principal". Thus in order to satisfy the second element, the plaintiff must prove the defendant was a "principal" by showing by a preponderance of the evidence:"*

1. *That the defendant [CHRISTINA WESTFALL] knowingly and willfully committed, or knowingly and willfully aided and abetted in the commission of two or more alleged predicate offenses that constitute the alleged pattern of racketeering activity. (NOTE: i.e. aided and abetted David Westfall and/or Stefani Podvin) (emphasis added)*

Evidence: Christina signing the S corporation election document (Deposition of Christina Westfall, exhibits 1 and 2). Her working around the Law Office in the manner she does, claiming she does not receive compensation for it. Being the office manager, yet in Interrogatories claiming she only does "limited bookkeeping duties". Also all the "objectionss" and lying in her answers in interrogatories.

2. *That the defendant [CHRISTINA WESTFALL] knowingly and willfully received income derived directly or indirectly, from that alleged pattern of racketeering activity.*

Evidence: Copies of checks, testimony of being a partner in "Westfall Farms".

Damages by reason of 18 U.S.C. §1962(a) violation

K. "Finally, for the plaintiff to prevail under RICO, he must prove by a preponderance of the evidence that the defendant's RICO violations were the "proximate cause" of injury to the plaintiff's business or property". (emphasis added)

L. "A finding that the plaintiff was injured in his business or property because of the defendant's violation of RICO requires only that you find the plaintiff was harmed by the predicate acts." (emphasis added)

Evidence: The \$20,000 G. David Westfall stripped from Udo Birnbaum by the "retainer contract". Also the additional \$18,1231.10 G. David Westfall and Stefani Podvin is trying to get from Birnbaum with their "Law Office" suit. (This amount for cross-claims upon G. David Westfall and Stefani Podvin upon the claims of the Law Office upon Udo Birnbaum. See Cause 00-619 Original Petition, this suit)

M. "However, to find that injury to the plaintiff's business or property was caused by reason of the defendant's [CHRISTINA WESTFALL] violation of RICO, you must find that the injury to the plaintiff was caused by, and was a direct result of the defendants' violation of either Section 1962(a) or (b) or (c). (emphasis added)

Evidence: Income diverted, in violation of 18 U.S.C. § 1962(a), to "Westfall Farms" was part of the scheme to make G. David Westfall "bullet proof" from creditors. It made the "pattern of racketeering" through the "Law Office" possible. The "pattern of racketeering activity" was around long before Birnbaum came on the scene. It was the long standing violation of 18 U.S.C. § 1962(a) that permitted them to make Birnbaum and others victims.

N. "Therefore, you must find that the commission of the acts of racketeering, or the pattern of racketeering activity, or the conduct of the affairs of the enterprise through the pattern of racketeering activity directly resulted in the injury or played a substantial part in producing the injury." (emphasis added)

Evidence: G. David Westfall's act of "racketeering activity" of the "retainer contract" directly resulted in the \$20,000 injury to Birnbaum. G. David Westfall's act of "racketeering activity" of the "bill" and this suit may cause an additional \$18,121.10 in injury.

VIII.
SUMMARY OF EVIDENCE TO CROSS-COMPLAINT RICO "ELEMENTS"
(upon the \$18,121.10 + the "Law Office" is seeking)

(Same evidence upon the same "elements" as above, different liability)

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

COUNT TWO - - RICO
For violation of 18 U.S.C. §1962(a)
(acquiring interest in enterprise with income derived from a pattern of racketeering activity)
Defendants: G. David Westfall, Christina Westfall, and Stefani Podvin

IX.

RE: CHRISTINA WESTFALL'S REPRESENTATIONS TO THIS COURT

1. Par II: *"An examination of the foregoing shows that as a matter of law, with regard to one or more of the **elements** on which the defendant, Birnbaum, has the burden of proof, there is no genuine issue as to any material fact, and there is no competent summary judgment evidence to support at least one or more of the **essential elements** of each of the causes of action pled by Birnbaum against the Movant." (emphasis added)*

Response: Failure to designate the missing **essential elements** and **each** of the causes.

2. Par IV subpar 1: *"An adequate time for discovery has passed. At the time of the hearing on this motion, the suit will have been on file for a year."*

Response: Movant held up deposition for six (6) months with motion to quash. Then Movant failed to produce documents at deposition. Currently **pending** before the Court is *Udo Birnbaum's Motion Under Rule 193.4 for Hearing and Ruling on Objections and Assertions of Privilege.*

3. Par IV subpar 2: *"There is no evidence to support one or more **essential elements** of each and every one of Birnbaum's **claims or defenses** on which Birnbaum has the burden of proof." (emphasis added)*

Response: Failure to designate the **essential elements** or even the **claims**.

4. *Par IV subpar 1: "Further, an adequate amount of time to develop the facts is admitted by Birnbaum in a judicial admission contained in paragraph 5 of Udo Birnbaum's Amended Third Party Plaintiff Civil RICCO (sic) Claim, filed in this Court on July 11, 2001."*

Response: Not so. Paragraph 5 reads: "Having diligently investigated both the facts and the law, Birnbaum has found that the various matters he is complaining of are not isolated garden variety wrongs, but that the evidence shows he is the victim of conduct proscribed by 18 U.S.C. § 1931 *et seq.* ("RICO")

5. *Par IV subpar 3: "Birnbaum alleges that Christina Westfall is a participant in a "pattern of racketeering activity" by acts of "racketeering activity" (predicate acts) of obstruction in the administration of justice on the part of G. David Westfall in the Dallas Federal Court."(emphasis as in original)*

Response: Movant fails to designate where Birnbaum made such allegation, and Birnbaum does not phrase his complaint in this manner.

6. *Par IV subpar 3: "Birnbaum's RICCO (sic) complaint further alleges that Christina Westfall was the recipient of a flow of income from a pattern of racketeering activity. That is it. Birnbaum makes no other allegations against Christina Westfall other than Christina Westfall's participation in this "RICCO" type behavior. Birnbaum's pleadings contain no other allegation against Christina Westfall on any lesser type of cause of action. This is the "sole indictment" brought by Birnbaum against Christina Westfall." (emphasis added)*

Response: Not so. Birnbaum alleges that she did so in a manner that violated 18 U.S.C. § 1962(a) by **knowingly** and **willfully** receiving such income. Evidence is in the documents addressed above.

7. *Par IV subpar 4: "Birnbaum has fully failed to provide even one single bit of summary judgment adequate evidence which in a light most favorable to Birnbaum would even tend to support a fact at Christina Westfall was engaged in any sort of illegal, corrupt, or clandestine activity whatsoever, let alone the types of activity alleged in Birnbaum's pleadings."(emphasis added)*

Response: Not So. Birnbaum has provided the transcript of the September 20, 2000 bankruptcy trial of G. David Westfall. It, together with the documents entered in that trial, the affidavits, witnesses named, and discovery including depositions in this cause, shows that Christina Westfall was deeply involved in **illegal, corrupt, and clandestine activity** to such an extent as to actually violate RICO.

8. *Par IV subpar 4: "What the summary judgment evidence does prove is that Christina Westfall assisted the Law Offices of G. David Westfall, P.C. in routine, non lawyer related matters, in order to assist her husband in his legal practice. That is it! Christina Westfall is the wife of the lawyer in the firm. She assisted from time to time in and around the office, and having done so, is embroiled in an alleged RICCO (sic) violation arising out of a fee dispute for the legal services rendered by her husband to Birnbaum." (emphasis added)*

Response: Not So. As **office manager of a law office** she was deeply involved in **lawyer matters**. Documents identified above show that she is deeply involved in everything from **Westfall Farms** to "S Corporation election" for the Professional Corporation which she knows is not owned by her husband, but by her daughter Stefani Podvin. Furthermore this whole cause is not about a mere "**fee dispute**".

9. *Par IV subpar 5: "There is no summary judgment type evidence to support a genuine fact issue for several of the elements of Birnbaum's cause of action. Birnbaum's own pleading outlines several element in paragraph 65, on pages 10 and 11 of Birnbaum's Amended Third Party Plaintiff Civil RICCO (sic) Claim." (emphasis added)*

Response: These are not the **elements** of Birnbaum's **cause of action**! These are the **pleading "elements"**, i.e. "Allegations conforming to the elements contained in U.S. Fifth Circuit Civil RICO pattern jury instructions" to make findings upon the "issues of material fact"! Birnbaum's paragraph 75, on page 12 avoids the "element" problem by simply calling it "Allegations conforming to U.S. Fifth Circuit Civil RICO pattern RICO instructions." Civil RICO of course has only **three essential elements**:

"There are **three essential elements** in a private action under this chapter: a violation of this chapter; direct injury to plaintiffs from such a violation; and damages sustained by plaintiffs." *Wilcox Development Co. v. First Interstate Bank of Oregon, N.A., D.C.Or.1983, 97 F.R.D. 440.*

10. Par IV subpar 5a: *"There is no evidence that Christina Westfall knowingly and willfully conducted or participated, directly or indirectly, in the conduct of the affairs of an enterprise through a pattern of racketeering activity."*

Response: Not yet. That is why Birnbaum is **not currently naming** Christina Westfall as a defendant under Count II, Violation of 18 U.S.C. § 1962(c).

11. Par IV subpar 5b: *"There is no evidence that Christina Westfall participated in the operation or management of the enterprise."*

Response: Not yet. That is why Birnbaum is **not currently naming** Christina Westfall as a defendant under Count II, Violation of 18 U.S.C. § 1962(c).

12. Par IV subpar 5c: *"There is no evidence that Christina Westfall engaged in the pattern of racketeering activity as claimed by Birnbaum".*

Response: Not yet. That is why Birnbaum is **not currently naming** Christina Westfall as a defendant under Count II, Violation of 18 U.S.C. § 1962(c).

13. Par IV subpar 5d: *"There is no evidence that Christina Westfall's association with the enterprise facilitated the commission of racketeering acts."*

Response: Not yet. That is why Birnbaum is **not currently naming** Christina Westfall as a defendant under Count II, Violation of 18 U.S.C. § 1962(c).

14. Par IV subpar 6: *"Further, there is no evidence that Christina Westfall ever received any income from Birnbaum or the alleged racketeering enterprise."*

Response:

15. Par IV subpar 7: *"Further, there is no evidence that Birnbaum has suffered any damages which is an essential element of Birnbaum's claims against Christina Westfall."*

Response: Not true. Birnbaum claims he was damaged by the \$20,000 paid and other injuries. Whether this \$20,000 or the other \$18,121.10 for which he is being sued is proper "legal fees" or "damages" is of course a "material issue of fact" for the jury.

16. *Par IV subpar 9: "In the present situation, after a review of the record as a whole, a rational trier of fact could not find for Birnbaum on any of his claims against Movant, Christina Westfall."*

Response: Conclusary. At this summary judgment stage, and if looked at in **light most favorable** to Birnbaum, it shows a **violation of RICO**.

X.

SUMMARY

Christina Westfall's motion fails to designate as to which element there is no evidence, other than to conclusorily allege that the evidence does not show a violation of the RICO. The **ultimate issue** of the violation of the RICO, however, is the prerogative of the jury and not subject to summary judgment disposition.

Attached to this response by reference, and filed separately, are the following"

- Transcript of July 3, 2001 *Videotaped Deposition of Udo Birnbaum* and exhibits thereto.
- Transcript of July 3, 2001 *Videotaped Deposition of David Westfall* and exhibits thereto.
- Transcript of July 20, 2001 *Videotaped Deposition of Stefani Podvin* and exhibits thereto.
- Transcript of July 20, 2001 *Videotaped Deposition of Christina Westfall* and exhibits thereto.

Attached to this response by reference, and already previously filed, are the following:

- *Transcript* of September 20, 2000 trial of G. David Westfall in the Dallas Bankruptcy Court.

PRAYER

WHEREFORE, Premises considered, UDO BIRNBAUM prays that Christina Westfall be required to argue her motion in light of this response and the evidence hereby presented and designated, and that her motion for summary judgment be in all things denied.

Respectfully submitted,

Udo Birnbaum

Udo Birnbaum, Pro Se

540 VZ 2916

Eustace, Texas 75124

(903) 479-3929

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this document has been served via CMRR on this the 31 day of August, 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.

Udo Birnbaum

UDO BIRNBAUM

NOTICE OF INTENT PURSUANT TO RULE 166a(d)
to use discovery products to oppose the summary judgment

NOTICE is hereby given of Udo Birnbaum's intent to use the volumes and exhibits named above to oppose summary judgment. Notice is also given of intent to oppose summary judgment by reference to all other discovery documents, whether requests, answers or failure to provide such, or pending motions relating thereto.

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

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this document has been served via Regular Mail and Fax on this the 31 day of August, 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. Only ~~Volumes 1, 8, and 9~~ is provided with this mailing. The other material has either been previously provided to the above, or was provided by the court reporter at the same time the copy was provided to Birnbaum.

Exhibit 9, 16, 17 *Udo Birnbaum*
UDO BIRNBAUM

EXHIBIT 9

REGARDING G. DAVID WESTFALL CONDUCT

Exh.

- 9-A Account Work Sheet. Analysis of Westfall "bill" shows it to be a fraud**
- 9-B Affidavit of Michael Collins (8/29/2001) regarding Westfall soliciting suits against public officials and regarding fraudulent Westfall "bill"**
- 9-C Affidavit of Kathy Young (8/30/00) regarding Westfall soliciting suits against public officials and regarding Westfall backdating the "bill"**
- 9-D Affidavit of Marjorie Phelps (8/30/00) of Westfall soliciting suits against public officials**
- 9-E Affidavit of Kathy Young (8/23/2000) of Westfall soliciting Birnbaum**
- 9-F Finding of Westfall abusing the legal process**
- 9-G Finding of Westfall violating Bar rules by soliciting clients**
- 9-H Order re: Westfall community supervision for cruelty to animals**
- 9-J Investigator's report re: Westfall cruelty to animals**
- 9-K Affidavit of Westfall's ranch manager re: Westfall instruction to hide evidence**
- 9-L Affidavit of Christina Westfall (3/20/1998) showing she is intimately involved**
- 9-M Deposition of Berverly Hearn showing Christina Westfall is intimately involved**
- 9-N Westfall fraud in Bankruptcy Court claiming he had more than 12 valid creditors**
- 9-O Fifth Circuit Pattern Civil RICO jury instructions**

Birnbaum's MSJ Response

EXH. 9

Account Work Sheet

Note: This work sheet tracks the supposed "account", starting at the original \$200 per hour, then going to \$100 per hour after the first 100 hours of legal time. The "bill" **does not provide** contemporaneous expenses for paralegal and copies. The \$5131.00 on the "bill" for expenses was applied at \$3000 at the peak of the "First Amended Complaint", and then another approximate additional \$2000 (\$5000 total at this time) about the time of the "Objection to the magistrate's finding".

The supposed "account", if one goes by the "bill", went in the hole in less than two (2) months! Yet there was no request for more money at that time to be put into the "account"!

Something is **gross wrong**. Birnbaum's pleadings give the details.

Date	Hours	Amount Legal fees	Account (running)	Notes	Real
<u>Page 1</u>					
5/3/99	0.1	20	-20	\$200/hour	
5/5/99			20000	Retainer paid	
5/5/99	6.1	1220	18760		
5/6/99	3.1	620	18140		
5/7/99	4.9	980	17160		
5/8/99	4.3	860	16300		
5/10/99	2.4	480	15820		
5/11/99	3.7	740	15080		
5/13/99	7.1	1420	13660		
5/14/99	0.2	40	13620		
5/17/99	2.9	580	13040		
5/18/99	0.6	120	12920		
<u>Page 2</u>					
5/19/99	0.2	40	12880		
5/21/99	2.9	580	12300		
5/22/99	3.3	660	11640		
5/24/99	2.7	540	11100		
5/25/99	2.3	460	10640		
5/26/99	2.9	580	10060		
5/27/99	4.5	900	9160		
5/28/99	3.1	620	8540		
6/1/99	0.3	60	8480		
6/2/99	1.4	280	8200		
6/4/99	1.6	320	7880		
6/5/99	3.8	760	7120		
6/8/99	2.6	520	6600		
6/9/99	3.1	620	5980		
6/11/99	3.8	760	5220		
6/12/99	1.8	360	4860		

Birnbaum's MSJ Response
EXHIBIT 9-A

6/15/99	0.1	20	4840
6/21/99	1.9	380	4480
6/24/99	3.9	780	3700
6/25/99	3.5	700	3000
6/29/99	2.3	460	2540

Page 3

6/30/99	1.7	340	2200
7/1/99	1.3	260	1940
7/2/99	6.4	1280	660
7/5/99	1.8	360	300
7/9/99	3.5	700	-200
7/10/99	4.6	460	-660
7/13/99	2.9	290	-950
7/14/99	1.6	160	-1110
7/16/99	0.8	80	-1190
7/17/99	3.2	320	-1510
7/18/99	4.6	460	-1970
7/19/99	3.9	390	-2360
7/23/99	0.3	30	-2390
7/28/99	2.1	210	-2600
8/2/99	1.2	120	-2720
8/4/99	1.9	190	-2910
8/5/99	0.4	40	-2950
8/6/99	0.4	40	-2990
8/18/99	0.2	20	-3010
8/25/99	0.5	50	-3060

NEGATIVE balance about here

now \$100/hour

-3000 **-4510** In the hole
Yet no request for more money

Page 4

9/1/99	0.4	40	-3100
9/3/99	0.6	60	-3160
9/9/99	1.6	160	-3320
9/10/99	1.6	160	-3480
9/13/99	5.1	510	-3990
9/14/99	5.7	570	-4560
9/15/99	5.3	530	-5090
9/17/99	5.5	550	-5640
9/20/99	0.9	90	-5730
9/24/99	0.7	70	-5800
9/25/99	2.3	230	-6030
9/28/99	1.2	120	-6150
9/29/99	0.7	70	-6250
9/29/99	1.7	170	-6390
9/30/99	4.8	480	-6870
10/1/99	1.9	190	-7060
10/2/99	2.3	230	-7290

-5000 **-10640** in the hole
Yet no request for more money

10/4/99	0.4	40	-7330
10/6/99	4.3	430	-7760

Page 5

10/7/99	2.8	280	-8040
10/9/99	3.4	340	-8380
10/11/99	1.3	130	-8510
10/13/99	1.6	160	-8670
10/14/99	0.6	60	-8730
10/15/99	3.1	310	-9040
10/16/99	2.6	260	-9300
10/18/99	0.6	60	-9360
10/19/99	1.9	190	-9550
10/22/99	2.2	220	-9770
10/23/99	5.1	510	-10280
10/26/99	0.6	60	-10340
10/27/99	0.4	40	-10380
10/27/99	0.6	60	-10440
10/28/99	0.3	30	-10470
10/29/99	0.1	10	-10480
10/30/99	2.4	240	-10720
11/1/99	0.2	20	-10740
11/2/99	5.8	580	-11320
11/4/99	0.3	30	-11350
11/5/99	0.3	30	-11380
11/6/99	2.6	260	-11640
11/8/99	2.3	230	-11870
11/9/99	3.9	390	-12260

Page 6

11/13/99	0.6	60	-12320
11/16/99	0.6	60	-12380
11/17/99	0.2	20	-12400
11/23/99	0.2	20	-12420
12/1/99	0.3	30	-12450
12/6/99	0.5	50	-12500
12/8/99	0.3	30	-12530
12/9/99	0.4	40	-12570
12/10/99	0.9	90	-12660
12/11/99	1.2	120	-12780
12/13/99	0.3	30	-12810
12/14/99	0.6	60	-12870
12/20/99	0.2	20	-12890
12/21/99	0.9	90	-12980

AFFIDAVIT OF JERRY MICHAEL COLLINS

My name is Jerry Michael Collins. I am over the age of 21 and have never been convicted of a felony or misdemeanor in this State or any other state, or in the United States and am competent to make this affidavit. I have personal knowledge of the facts stated herein.

I am the Michael Collins named in the Affidavit of Udo Birnbaum dated August 16, 2000 and October 3, 2000 and in the Affidavit of Kathy Young dated August 23, 2000. I am intimately familiar with the facts as they relate to The Law Offices of G. David Westfall, P.C. v. Udo Birnbaum, Cause 00-619 in the 294th District Court of Van Zandt County.

Following the matter of the three beheaded calves described in the above affidavits, G. David Westfall solicited both Udo Birnbaum and me in December 1998, as described in named affidavits and referred Birnbaum and me to the Civil RICO statute. G. David Westfall touted the statute as a "SOB to defend against" and encouraged both of us to file Civil RICO suits against public officials including judges.

I have since come to know that G. David Westfall has a pattern of encouraging parties to file suits against public officials. G. David Westfall was my lawyer in *Jerry Michael Collins v. Richard Lawrence, et al*, Cause 3:99cv0641 in the Dallas Federal Court, but never billed me monthly as he promised, and to this date never sent me a bill. After Federal Judge Solis dismissed my suit, G. David Westfall quietly removed himself as my lawyer, by instructing me to file a notice of appeal to the 5th Circuit, pro se.

Under his inherent power, Judge Solis fined me and ordered me to pay \$2500 to the clerk of the Court and \$189.87 to the Comptroller for the State of Texas. G. David Westfall was ordered by Judge Solis to pay like amounts to his Court and the State of Texas. Judge Solis stated in his final order that G. David Westfall and I deserved a special place in the cornucopia of evil plaguing his judicial system.

I paid those fines in full from the sale of my non-fiction book titled – "Cornucopia of Evil" ©. Federal court records show G. David Westfall never filed any objection to the Order of Judge Solis and never paid any of the fines.

I know that G. David Westfall represented Udo Birnbaum in *Udo Birnbaum v. Richard Ray, et al*, cause 3:99cv0696 in Dallas Federal Court, likewise promised to bill Udo Birnbaum monthly, but never did. Furthermore, I know G. David Westfall never sent any bill to Udo Birnbaum other than the one he sent on or about July 31, 2000.

Coincidentally, on the same date, G. David Westfall sent me a bill for \$9,957.50 on the *Jerry Michael Collins v. Wal-Mart, Inc.* even though there was never a retainer contract of any kind.

I know G. David Westfall sent a bill of about \$13,861.90 to Jeryl Cockerham, another of his clients who he also solicited through Kathy Young. I have come to know that G. David Westfall had a pattern of coming up with such giant surprise bills.

In early 2000 G. David Westfall invited me to live in his downtown law office after the third time my homes had been invaded by east Texas law enforcement officers, without a warrant to seize my property.

While living in that office for over a week, I visited with Christina Westfall on several occasions, in her private office. Yet Christina Westfall stated in her July 20, 2001 deposition, page 9, line 8, "I'm not associated with the PC". Mrs. Westfall also stated, on page 35, line 20, "I don't know of the accounting records at the law office."

In depositions (page 26 line 9) G. David Westfall stated that he first met me "with Kathy Young". The truth is G. David Westfall had Kathy Young initiate a meeting with

Birnbaum's MSJ Response

EXHIBIT 9-B

me on or about December 20, 1998. On that cold December night G. David Westfall drove nearly 70 miles from Dallas to meet with me.

On page 27, line 5 of the deposition G. David Westfall was asked what I wanted. Westfall said, "Food, he had not eaten for three days". That is simply a lie.

That meeting I had with G. David Westfall and Kathy Young lasted over 2 hours with questions being asked of me about the problems I had with east Texas public officials. When that meeting was over I saw G. David Westfall and Kathy Young sitting in the Suburban vehicle he came there in.

On page 30, line 5 of the deposition G. David Westfall he stated that he "sent me a bill "at the end of the year, the same as we sent [Birnbaum]. That is another lie. G. David Westfall did not send Udo Birnbaum a bill until July 31, 2000 for another \$18,121.

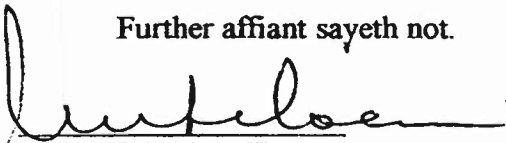
G. David Westfall stated in his deposition, page 36, line 4, that there was an agreement between him and me to trade feed and cattle medication for legal fees. That was not the case. Westfall did get those items from me, then pressured me to allow him to offset it for "legal fees", but I did not agree. Then, he refused to pay me for those items and pressured me to move to and work at Westfall Farms to offset "legal fees". He first talked about me just being around the place to watch things, then he came up with all sorts of things he wanted me to do. I did not do those things.

The "bill" G. David Westfall sent me on July 31, 2000 is just as fraudulent as the one he sent Udo Birnbaum. G. David Westfall claims "systematic billing" but his "bills" are just that, "paper bills".

I now know that the matters Birnbaum is complaining about are not isolated garden-variety wrongs. They constitute a "pattern of racketeering activity" prohibited by RICO. Mr. Birnbaum became the victim of not only the pattern, but of the "act of racketeering activity" of soliciting him and me.

I also know that Mr. Birnbaum is now the victim of the further act of G. David Westfall to extort \$18,121.10 from Mr. Birnbaum by filing a fraudulent suit in the 294th District Court.

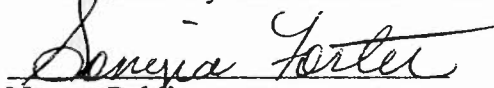
Further affiant sayeth not.

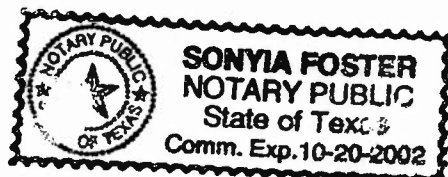

Jerry Michael Collins

STATE OF TEXAS
COUNTY OF HENDERSON

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

Given under my hand and seal of office this 29 day of August 2001.


Notary Public



AFFIDAVIT OF KATHY YOUNG

My name is Kathy Young. I am over the age of 21 and have never been convicted of a crime in this State or any other State and am competent to make this affidavit. I have personal knowledge of the facts stated herein.

I was in the Law Office of G. David Westfall located at 714 Jackson Street, Suite 200, Renaissance Place in Dallas, TX on July 12, 2000. While sitting in front of Mr. Westfall's desk I noticed a billing statement for Udo Birnbaum in draft form with several subtotals ultimately showing a total in the amount of just over \$18,000.00. The draft of the bill did not show a date, only the marking "DRAFT" across the top of the page. I asked Mr. Westfall about the bill and he said, "I am in the process of completing Mr. Birnbaum's bill. It is unfortunate that Brother Birnbaum refused to pay me another \$20,000.00 for the appeal. His case died as a result of that decision."

I left shortly after the meeting and returned to Westfall Family Farms where I lived and worked for Mr. Westfall. I contacted Udo Birnbaum about what I had seen on Westfall's desk and Udo became very upset. He said he had never received a bill from David Westfall, including an accounting of the first \$20,000.00 he had already paid him to handle the "Civil Rico" case styled Udo Birnbaum vs. Richard Ray et al.

David Westfall had encouraged both Mr. Birnbaum and Mr. Collins' to file the "Civil Rico" cases, knowing that Judges and Public Officials would be Defendant's and had even assisted them by answering legal questions, giving legal advice and providing them a book on "Civil Rico". Michael Collins' gave that book to me and asked that I return it to David Westfall and thank him for his assistance. Westfall had told me that he was one of the few Lawyers that really understood "RICO" and was competent to litigate a "Federal Racketeering Suit". He said he was the only Lawyer he knew with the knowledge and integrity to litigate that type of suit. Westfall has told me on many occasions that he is one of the best lawyers in the State and is "The Lawyer another Lawyer comes to when they get into trouble".

I talked with Westfall about the fact that Judge Zimmerman was his proclaimed "Friend" yet he encouraged Birnbaum and Collins to sue him under the "Rico Statute". Westfall responded with, "He is my friend and I like him very much. He's an old German like me but the facts show that he screwed up and he, like the rest of us, should be held accountable for his actions. Now the truth is, because he's a Judge he will be able to wiggle loose eventually, but that doesn't mean he shouldn't be sued." The whole situation was very perplexing but David spoke with absolute certainty and confidence. I believed what he had told me and admired him for having the courage to stand up for truth and justice or so I thought at the time.

Several weeks after I had seen the draft of Udo Birnbaum's bill for unpaid legal services, Udo Birnbaum receives the bill back-dated to December 31, 1999 with several had written notes on the top of the page indicating that Westfall had sent several notices previously requesting payment. How is this possible when I saw the **unfinished bill in "DRAFT FORM"** sitting on Mr. Westfall's desk on **July 12, 2000**? Additionally, **Westfall admitted he was currently working on the bill.** This is only one of many instances in which I have personal knowledge of Mr. Westfall intentionally lying to the court. Does Mr. Westfall think he is so big and powerful that the court will allow this type of conduct to continue? Or in the alternative, **was Westfall absolutely correct when he stated, "The Legal System like the State Bar of Texas works as a well-oiled machine to protect its members and peers and takes only token disciplinary actions when it feels necessary. The truth is not now nor has it ever been the issue in the courtroom?"** Perhaps I'm naïve, but I have been of the opinion that Lawyers and the Legal System maintained some degree of integrity.

I later discovered that at the time Westfall made the decision to enter an appearance for Birnbaum and Collins was immediately after one of his large legal fees was subject to a garnishment action around May of 1999. Westfall was pretty excited about a case he had settled which entitled him to a \$135,000.00 legal fee. He had been pushing for a trial by jury and the other side settled. In a meeting with me during the first week of May Westfall said, "Remember the case I told you I had just settled that entitled me to a \$135,000.00 legal fee. I just received notice the defendant's Lawyers have appealed the settlement. Contact Birnbaum and Collins, tell them I will represent them for a \$20,000.00 retainer." I didn't find out until nearly a year later that settlements don't get appealed, just verdicts. Thru the Internet I discovered that on June 30, 2000 Westfall was forced into Involuntary Bankruptcy over unpaid Judgments at which time his assets were frozen. Is it just a coincidence that shortly after Westfall loses control of his assets he is suddenly inspired to create a bill for services rendered for nearly the same dollar amount as he had previously requested of Mr. Birnbaum to secure counsel on the appeal.

In addition to all this, Westfall had encouraged me to gather information and continue investigating to the best of my ability because he would be filing a "Civil Rico" and "Civil Rights Violation" case on my behalf against Van Zandt County, Leslie Pointer Dixon, C.B. Wiley, the Van Zandt County Sheriff's Dept., my husband and numerous others. Westfall told me that it was common knowledge in the legal profession that East Texas is a bunch of "Corrupt Ignorant Yahoo's" that behave as loose cannons with no regard for "Right, Truth, Justice or anything that resembles Integrity or Morality". I have to admit any evidence to the contrary, so far, has been minimal. He said the suit needed to be filed within 5 years preferable, but we had 10 years on the outside. He also said he would be able to recover enough money from those "Yahoo's" to retire on.

I might also mention that at no time over the two years that Westfall was my attorney of record did I ever receive a bill despite several oral and written requests. He also failed to provide me with a copy of our contract, once again, despite numerous oral and written requests.

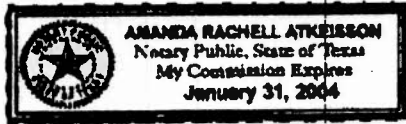
Further affiant sayeth not.


Kathy Young

STATE OF TEXAS
COUNTY OF NAVARRO

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

Given under my hand and seal of office this 30th day of August 2001.




Notary in and for The State of Texas

AFFIDAVIT OF MARJORIE PHELPS

My name is Marjorie Phelps, I am over the age of 21 and have never been convicted of a felony or misdemeanor in this State or any other State and am competent to make this affidavit. I have personal knowledge of the facts stated herein.

I am a former client of Attorney G. David Westfall. I first contacted Mr. Westfall after hearing he had been arrested for animal cruelty. I was interested in the details of the allegations and made an appointment to see him at his office in Dallas, TX. I discovered much later that he had been convicted of "Cruelty to Animals" for starving a large herd of cattle, many of which died due to starvation prior to his arrest. There were also statements by his own employee of Mr. Westfall's efforts to destroy evidence and impede the investigations being conducted by the Ellis County Sheriff's Department and the SPCA of Texas.

During that meeting, Mr. Westfall became aware that I had been terminated from my job at Cooper's Lybrand and asked if I wished to pursue them for wrongful termination. I told him, "No, I was there to discuss the animal raid issue." Shortly after that meeting he sent me a pleading he had prepared against my former employer with a note asking me to come see him. I contacted him to discuss the issue at which time he convinced me that we should move forward with that lawsuit. I reluctantly agreed. Over the course of the next two years the following happened:

- 1) Mr. Westfall asked for all the research I had done about the animal raid victims including the names, addresses and phone numbers of the victims.
- 2) He also wanted a book I had on Civil Rico. He was interested in the Statute and said he didn't know much about it but would be interested in learning more. He also stated he did very little litigation in Federal Court. Most of his cases were filed in State Court.
- 3) He asked me to do additional research for my case and others and bring everything to him promptly.
- 4) He asked me to solicit clients for him.
- 5) He encouraged me to file a Civil Rico Suit against Local Judges and Public Officials and had several meetings with Attorney Barbara Moore about this lawsuit. Mr. Westfall had agreed to represent me on this matter yet never entered an appearance on my behalf. He helped Attorney Barbara Moore prepare the pleadings and had me file them Pro Se' saying he would come on the scene at the appropriate time. Some time later, Barbara Moore entered an appearance in the case but later told me that David Westfall has tricked her into doing so.

- 6) David Westfall agreed to represent several other animal raid victims and accepted money from them after agreeing to file "Civil Rico" and Civil Rights Violation Cases" on their behalf but never filed any of those cases. Additionally, he never returned their money and files despite several requests from his clients and further refused to accept or return their phone calls.
- 7) The "Wrongful Termination" case he filed against Cooper's Lybrand suddenly died after I refused his advances for sex.
- 8) Mr. Westfall never returned my file, property or research after I refused his sexual advances.
- 9) I never received a bill, billing statement or interim monthly billing statements from the Law Offices of G. David Westfall.

Further affiant sayeth not.

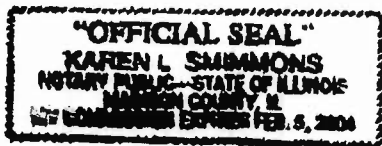
Marjorie Phelps

 Marjorie Phelps

**STATE OF ILLINOIS
 COUNTY OF MADISON**

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

Given under my hand and seal of office this 30th day of August
 2001.



Karen L. Simmons

 Notary in and for The State of Texas Illinois

EXHIBIT
1-B

AFFIDAVIT OF KATHY YOUNG

My name is Kathy Young. I am over the age of 21 and have never been convicted of a felony or misdemeanor in this State or any other State, or in the United States, and am competent to make this affidavit. I have personal knowledge of the facts stated herein.

I am Kathy Young named in the Affidavit of Udo Birnbaum dated August 16, 2000. I am the person that David Westfall got to ask Udo Birnbaum to see him about employing him as his lawyer.

On or about May 25, 1999, a few weeks after David Westfall had become Udo Birnbaum's attorney on his Civil RICO case in Dallas, David Westfall told me get a message to Udo, which I did. David Westfall told me to tell Udo if he were to just mail his judgment to Judge James B. Zimmerman's Office in Dallas, marked attention "Sandy", that it would be signed. Getting it signed was not a big deal.

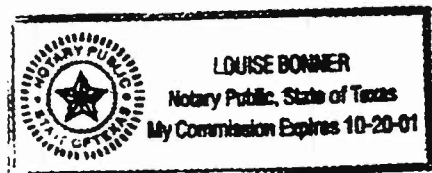
About a week later David Westfall told me to again give Udo this same message, which I did. And a few days to a week later David Westfall again told me to give this same message to Udo, which I did.

From my association with David Westfall and Udo Birnbaum I know the judgment David Westfall was referring to was a take nothing judgment Udo Birnbaum had been trying since shortly after his trial in May 1998 to get Judge Zimmerman to sign in Jones vs. Birnbaum in the Texas 294th District Court of Van Zandt County in Canton, Texas. I also learned that Judge Pat McDowell is the presiding judge of the first Administrative Judicial Region.

David Westfall had told me of an incident involving Judge McDowell as follows. David had a case before District Judge Glen Ashworth. He needed Judge Ashworth to not be the presiding judge at a hearing. He discussed this with Judge Ashworth and Judge Ashworth asked if Mr. Westfall was asking him to recuse himself. Mr. Westfall said, "No, I'm just asking you to be on vacation or fishing or something, just don't be available. David Westfall said Judge Ashworth wasn't available as requested and he pulled Judge McDowell. I didn't understand what it was he wanted from Judge McDowell. But I do remember that Mr. Westfall got the ruling he wanted and was very excited about it. This took place in Kaufman, Texas. David Westfall told me that Judge McDowell was a defendant in Udo Birnbaum's case and he had recently had a favorable ruling by Judge McDowell and it would be a feather in his hat if could get Udo to release him from the Federal Lawsuit.

Further affiant sayeth not.

Kathy Young



Birnbaum's MSJ Response
EXHIBIT 9-E

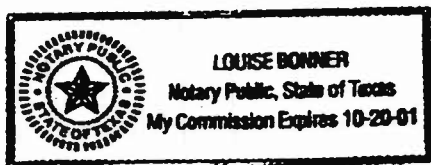
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Kathy Young
Kathy Young

STATE OF TEXAS
COUNTY OF NAVARRO

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

Given under my hand and seal of office this 23rd day of August 2000.



Louise Bonner
Notary in and for The State of Texas

Affidavit of Jan Marie First
Regarding David Westfall

My name is Jan Marie First. I am over the age of twenty-one and have never been convicted of a felony or misdemeanor in this state or any other state and am competent to make this affidavit. I have personal knowledge of the facts stated herein.

I met David Westfall in 1997 through another woman who had some similar legal issues to mine. At the time I contacted him I was facing several legal issues which required attention quickly due to limitation deadlines. The crimes that had been committed against me needed to be reported to law enforcement, administrative agencies and to be handled in the civil courts. Mr. Westfall told me that he felt that I had a good case for RJCO and civil violations. He wanted to see that evidence and legal research that I had done.

After several telephone conversations with Mr. Westfall I met with him for the purpose of giving him this paperwork, which he was suppose to look over and return to me. I also gave him some pieces of personal property such as a tape recorder to facilitats further communication and I gave him some money.

The legal research that I lent to Mr. Westfall was the result of several thousand hours of work on the statutory and case law on the issues in my case. Mr. Westfall had a case in federal court similar to mine.

After I handed this work to him, he never got in touch with me again. I called his office several times and he would not return my phone calls. Eventually he returned my evidence, but he kept everything else.

Mr. Westfall never sent me a bill for his services or a statement accounting for the funds.

Further affiant sayeth not.

Jan Marie First

Jan Marie First
August 31, 2001



I certify this to be a true and exact copy of the original on file in the District Clerk's Office, Van Zandt County, Texas.

Candi Scott

No. 00-00619

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

vs.

UDO BIRNBAUM

)
)
)
)
)
)

IN THE DISTRICT COURT
294th JUDICIAL DISTRICT
BY _____ DEP
VAN ZANDT COUNTY, TEXAS

PLAINTIFF'S FIRST AMENDED ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, THE LAW OFFICES OF G. DAVID WESTFALL, P.C., Plaintiff, complaining of UDO BIRNBAUM, hereinafter referred to as Defendant, and for cause of action would respectfully show the court the following:

I.

Plaintiff is a professional corporation with its principle office and place of business in Dallas, Dallas County, Texas.

Defendant is an individual whose residence is in Eustace, Van Zandt County, Texas and who has been previously served with process and has appeared by filing a written answer herein.

II.

On or about May 5, 1999, Defendant retained Plaintiff to perform legal services in a civil matter in Cause No. 3:99-CV-0696-R in the United District Court for the Northern District of Texas in Dallas, Dallas County, Texas.

III.

The legal and/or personal services were provided at the special instance and requested of Defendant and in the regular course of business. In consideration of such services, on which systematic records were maintained, Defendant promised and became bound and liable to pay Plaintiff the prices charged for such services and expenses in the amount of \$18,121.10, being a reasonable charge for such services. A true and accurate photostatic copy of the accounts for services rendered are attached hereto by reference for all purposes as Exhibit "A". Despite Plaintiff's demands upon Defendant for payment, Defendant has refused and failed to pay the

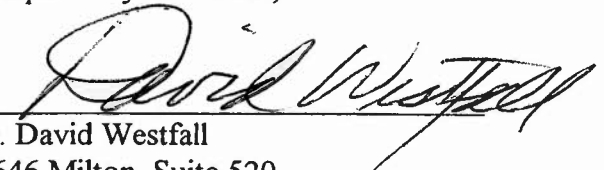
account to Plaintiff's damage in the total amount of \$18,121.10. All just and lawful offsets, payments and credits have been allowed.

IV.

Plaintiff is entitled to recover reasonable attorney's fees incurred in the filing of this suit. Demand for payment from Defendant has been made. Plaintiff requests reasonable attorney's fees as determined by the trier of fact.

WHEREFORE PREMISES CONSIDERED, Plaintiff prays that Defendant be cited to appear and answer and upon final hearing, Plaintiff have judgment against Defendant for \$18,121.10 plus prejudgment and postjudgment interest at the highest rate allowed by law, attorney's fees, costs of court and for such other and further relief, both at law and equity, to which Plaintiff may show himself to be justly entitled.

Respectfully submitted,

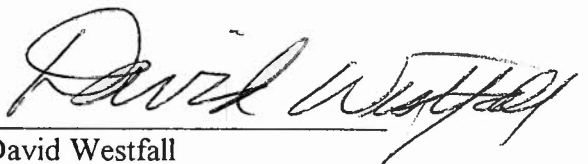

G. David Westfall
5646 Milton, Suite 520
Dallas, Texas 75206
(214) 741-4741
State Bar No. 21224000

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served upon all counsel of record:

- Certified Mail/Return Receipt Requested
- Facsimile Transfer
- First Class Mail
- Federal Express
- Courier
- Hand-Delivery

on this the 4th day of Sept, 2001.

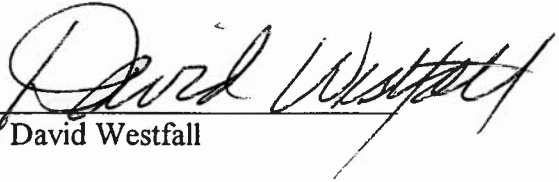

G. David Westfall

VERIFICATION

VERIFICATION

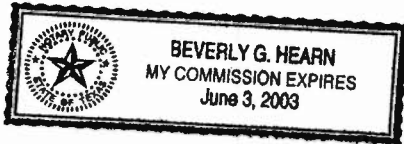
STATE OF TEXAS)(

Before me, the undersigned Notary Public in and for the State of Texas, on this day personally appeared G. David Westfall, who being by me duly sworn stated on oath that the foregoing and annexed account in favor of Plaintiff and against Udo Birnbaum for the sum stated above is within the knowledge of affiant, just and true, that it is due and unpaid, and that all just and lawful offsets, payments and credits have been allowed.


G. David Westfall

SUBSCRIBED AND SWORN to before me on this the 4th day of Sept, 2001, to certify which witness my hand and seal of office.


Notary Public, State of Texas



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

714 Jackson Street, Suite 700

Dallas, Texas 75202

(214) 741-4741

BILLING STATEMENT

December 31, 1999

Mr. Udo Birbaum
Route 1 Box 295
Eustace, Texas 75124

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

PROFESSIONAL SERVICES RENDERED:

5/3/99	Telephone conference with Kathy Young	0.1
5/5/99	Review portions of file; conference with client; telephone conferences (3)	6.1
5/6/99	Review Rule 12(b) Motions (4); telephone conferences (4)	3.1
5/7/99	Telephone conferences with client (2); legal research on Rule 12(b); Rule 56; conference with client (@ 7points)	4.9
5/8/99	Legal research and case preparation	4.3
5/10/99	Review fax (Scheduling Order); telephone conferences (3); correspondence; telephone conferences with other attorneys regarding extension of time (3)	2.4
5/11/99	Correspondence; telephone conference with office of Roxie Cluck; review file; work on amended complaint; conference with client; legal research	3.7
5/13/99	Receipt and review correspondence (2) and Davis and Malone's 12b Motions; prepare stipulations and order re: enlargement of time, motion and order to file amended complaint and motion and order for notice of appearance; correspondence; telephone conferences (14); court appearance to review file	7.1
5/14/99	Telephone conference with client	0.2
5/17/99	Review Amended Complaint with Exhibits; telephone conferences with other attorneys (3)	2.9
5/18/99	Review correspondence, Order re: Scheduling Order	0.6

2nd Reminder - please remit 2-1-00
Udo - what's the problem? 4-3-00
Just notice B-4 6-1-00
Journal collection 7-31-00
6.1 mail 7-29-2000
3.1 0000-416 9131



5/19/99	Receipt and review correspondence and Order of Stipulation signed by Richard Davis	0.2
5/21/99	Receipt and review Order of Stipulation signed by Richard Ray; court appearance to file Motion and Order; review file and amended complaint with exhibits	2.9
5/22/99	Review file and case preparation	3.3
5/24/99	Legal research; case preparation	2.7
5/25/99	Legal research; case preparation	2.3
5/26/99	Receipt and review signed Order of Stipulation; review draft of amended complaint; conference with client	2.9
5/27/99	Receipt and review Defendant Young's 1st W.I. to Plaintiff; telephone conference with A.G.'s office; correspondence	4.5
5/28/99	Legal research and case preparation	3.1
6/1/99	Telephone conference with client	0.3
6/2/99	Receipt and review correspondence and proposed Amended Complaint and proposed W.I. Answers	1.4
6/4/99	Review file; work on Amended Complaint	1.6
6/5/99	Review file; work on draft of Amended Complaint; legal research	3.8
6/8/99	Legal research; work on Amended Answer	2.6
6/9/99	Legal research re: 11(b) and 12(b) Motions	3.1
6/11/99	Receipt and review Defendant Young's 1st Request for Production; conference with staff and S.Podvin	3.8
6/12/99	Review file; legal research	1.8
6/15/99	Telephone conference	0.1
6/21/99	Review file; work on response to W.I.; telephone conferences (2)	1.9
6/24/99	Review file; review draft of Amended Complaint; review draft of responses to W.I.; telephone conferences (2)	3.9
6/25/99	Review file; conference with client; prepare and file Answers to Defendant Young's W.I.	3.5
6/29/99	Telephone conferences (8); correspondence	2.3

6/30/99	Receipt and review correspondence; telephone conferences (8); correspondence	1.7
7/1/99	Review faxes (3) and correspondence; sent 3 faxes; telephone conference with D.Maseo; R.Davis' office and C.Van Cleef	1.3
7/2/99	Receipt and review correspondence; review faxes (4); prepare and file Joint Status Report; telephone conferences (6); correspondence; conference with client	6.4
7/5/99	Telephone conferences (2); conference with client	1.8
7/9/99	Receipt and review correspondence; telephone conferences (6); legal research; work on response to 12(b) motions	3.5
7/10/99	Legal research and case preparation	4.6
7/13/99	Telephone conferences (3); legal research	2.9
7/14/99	Legal research	1.6
7/16/99	Receipt and review Original Answer of K.Young to Amended Complaint; telephone conferences (3)	0.8
7/17/99	Legal research; conference with S.Podvin; work on Response to 12(b) Motions, etc.	3.2
7/18/99	Conference with S.Podvin; legal research; work on Response to 12(b) motions, etc.	4.6
7/19/99	Conference with S.Podvin; work on Response to 12(b) motions	3.9
7/23/99	Receipt and review correspondence (3)	0.3
7/28/99	Receipt and review correspondence, Defendants' Amended Motion to Dismiss Under 12(b)(6)	2.1
8/2/99	Review file; pleadings; correspondence	1.2
8/4/99	Review file; correspondence pleadings; telephone conferences (4)	1.9
8/5/99	Telephone conferences (4)	0.4
8/6/99	Receipt and review correspondence and Davis' Objection to U.Bimbaum's Affidavit	0.4
8/18/99	Telephone conference with client	0.2
8/25/99	Supplemental response to Defendants' 12(b)	0.5

9/1/99	Receipt and review Defendant Young's Designation of Expert Witnesses; telephone conferences (3)	0.4
9/3/99	Telephone conferences with other attorneys (3)	0.6
9/9/99	Review proposed Findings and Conclusions; telephone conferences (3)	1.6
9/10/99	Review file; review rules re: reply to Findings and Conclusions	1.6
9/13/99	Review file; legal research re: Findings of Facts and Conclusions of Law; telephone conferences (2); review fax (10 pages); telephone conference with Mike Collins	5.1
9/14/99	Conference with client; legal research and work on Findings of Fact and Conclusions of Law	5.7
9/15/99	Conference with client; conference with S.Podvin; legal research; review findings of fact and conclusions	5.3
9/17/99	Conference with client; work on objections to Findings and Conclusions; legal research; conference with S.Podvin; court appearance to review file	5.5
9/20/99	Receipt and review Young's Motion to Dismiss under FRCP 12(b)(6) and Brief; correspondence; telephone conferences (3)	0.9
9/24/99	Receipt and review Order re: File Amended Complaint and 12(b) Motions; correspondence; telephone conferences (3)	0.7
9/25/99	Legal research re: prospective appeal	2.3
9/28/99	Legal research re: appeal	1.2
9/29/99	Telephone conferences (3)	0.7
9/29/99	Telephone conferences (2); conference with client	1.7
9/30/99	Legal research; work on Plaintiff's response to Young's 12(b); conference with C.McGarry and S.Bush	4.8
10/1/99	Telephone conferences (3); legal research	1.9
10/2/99	Legal research re: appeal	2.3
10/4/99	Telephone conferences with client (2)	0.4
10/6/99	Receipt and review correspondence; legal research; conference with client; conference with S.Podvin; review Plaintiff's response to Young's 12(b) Motion	4.3
10/7/99	Telephone conferences (4); conference with client and S.Podvin; to	

	courthouse to file response to Young's 12(b) motion	2.8
10/9/99	Conference with S.Podvin; legal research re: appeal	3.4
10/11/99	Conference with staff; legal research	1.3
10/13/99	Telephone conferences (7); telephone conference with client	1.6
10/14/99	Conference with client	0.6
10/15/99	Telephone conference with court clerk; legal research re: appeal	3.1
10/16/99	Legal research; conference with S.Podvin	2.6
10/18/99	Telephone conferences (3); telephone conference with 5th Circuit Clerk's office	0.6
10/19/99	Telephone conferences (2); legal research	1.9
10/22/99	Legal research and work on appeal	2.2
10/23/99	Conference with S.Podvin; additional legal research re: appeal	5.1
10/26/99	Telephone conferences (3)	0.6
10/27/99	Receipt and review correspondence; telephone conference with court clerk	0.4
10/27/99	Telephone conferences with court clerk at 5th Circuit (3)	0.6
10/28/99	Telephone conference with Judge's briefing clerk	0.3
10/29/99	Telephone conference with client	0.1
10/30/99	Conference with S.Podvin	2.4
11/1/99	Telephone conference with client and M.Collins	0.2
11/2/99	Telephone conference with court clerk; conference with client and M.Collins; legal research and conference with S.Podvin	5.8
11/4/99	Telephone conferences (2) with court clerk	0.3
11/5/99	Telephone conference with court clerk's office (3)	0.3
11/6/99	Conference with S.Podvin; legal research	2.6
11/8/99	Telephone conference with court clerk; conference with staff; legal research	2.3
11/9/99	Conference with S.Podvin; legal research	3.9

11/13/99	Conference with S.Podvin	0.6
11/16/99	Telephone conferences (3)	0.6
11/17/99	Telephone conference with court clerk	0.2
11/23/99	Telephone conferences (2)	0.2
12/1/99	Receipt and review correspondence; telephone conference with court clerk	0.3
12/6/99	Receipt and review Plaintiff's Pro Se Appearance and correspondence; telephone conference with M.Collins	0.5
12/8/99	Telephone conferences (2)	0.3
12/9/99	Telephone conference with District Clerk's office and Judge's briefing clerk	0.4
12/10/99	Receipt and review Young's Response to Plaintiff's MSJ and Brief; telephone conference with Young's attorney and court clerk	0.9
12/11/99	Draft Motion and Order to Withdraw	1.2
12/13/99	Receipt and review Order Denying Plaintiff's MSJ; telephone conference	0.3
12/14/99	Telephone conference with court clerk and other attorneys (3)	0.6
12/20/99	Telephone conference with court clerk	0.2
12/21/99	Finalize Motion and Order to Withdraw; correspondence	0.9

100	HOURS at \$200.00 per hour	\$	20,000.00
129.9	HOURS at \$100.00 per hour	\$	12,990.00

EXPENSES:

Paralegal: 68.6 at \$60.00 per hour	\$	4,116.00
Photocopies: 3,384 at \$.25 per page	\$	846.00
Facsimiles: 105 at \$1.00 per page	\$	105.00
Long Distance telephone expense	\$	<u>64.10</u>

Total expenses:	\$	<u>5,131.10</u>
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Total amount:	\$	38,121.10
Less:	\$	<u>(20,000.00)</u>

***** TOTAL AMOUNT DUE: \$ 18,121.10**



I certify this to be a true and exact copy of the original on file in the District Clerk's Office, Van Zandt County, Texas.

Candi Scott

CAUSE NO. 00-00619

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

Plaintiff.

v.

UDO BIRNBAUM,

Defendant.

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IN THE DISTRICT COURT

CLERK OF DISTRICT COURT
DIST. CLERK VAN ZANDT CO. TX.

294th JUDICIAL DISTRICT DEP.

VAN ZANDT COUNTY, TEXAS

**The LAW OFFICES OF G. DAVID WESTFALL, P.C.'S,
OBJECTIONS TO THE SUMMARY JUDGMENT EVIDENCE
OF RESPONDENT, UDO BIRNBAUM**

COMES NOW, The Law offices of G. David Westfall, P.C., (hereinafter referred to as the "P.C." or "Movant"), Plaintiff in the above-styled and numbered cause and files this its objections to the summary judgment evidence offered by Udo Birnbaum ("Respondent") in response to the Motion for Summary Judgment filed by the P. C. and would hereby show the Court as follows:

I.

1. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph IV: Birnbaum's Designated Evidence, subparagraph 1, for the reason that the same is a pleading and as such does not constitute proper summary judgment evidence. Further, Movant objects because the same is not attached to the response.

Sustain

2. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph IV: Birnbaum's Designated Evidence, subparagraph 2, for the reason that the same is a pleading and as such does not constitute proper summary judgment evidence. Further, Movant objects because the same is not attached to the response.

Sustain

3. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph IV: Birnbaum's Designated Evidence, subparagraph 3, for the reason that he refers to a deposition excerpt which is not attached to the response, not properly authenticated, and as such is not proper summary judgment evidence.
4. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph IV: Birnbaum's Designated Evidence, subparagraph 4, for the reason that he refers to a deposition excerpt which is not attached to the response, not properly authenticated, and as such is not proper summary judgment evidence.
5. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph V: Evidence in Plaintiff's Own Documents, subparagraph 1, for the reason that the allegation of evidence is overly broad and not specific, thus not allowing the Movant an adequate opportunity to respond or object. Also, none of the referred to evidence has been attached to the response, or properly authenticated.
6. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph V: Evidence in Plaintiff's Own Documents, subparagraph 2, for the reason that the allegation of evidence is overly broad and not specific, thus not allowing the Movant an adequate opportunity to respond or object, and also for the reason that the evidence is a mere conclusion on the part of the Respondent.
7. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph V: Evidence in Plaintiff's Own Documents, subparagraph 3 (a), (b), (c), (d), (e), (f), and (g), for the reasons that: the exhibits are not properly authenticated, are not attached to the response, and constitutes unsubstantiated factual and legal conclusions.

8. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph VI: Evidence in Other Documents, subparagraph 1, (a), (b), (c), (d), (e), (f), (g), (h), and (i), for the reason that: for the reasons that: the exhibits are not properly authenticated, are not attached to the response, and constitutes unsubstantiated factual and legal conclusions.

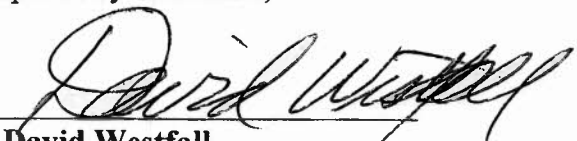
9. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph VII: Summary of Evidence to DTPA "Elements," (1), (2), and (3), for the reason that: the allegations of evidence are nothing more than unsubstantiated factual and legal conclusions and any referred to "evidence" is not properly authenticated and not properly attached to the response.

10. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph IX: Summary, for the reason that: it refers to exhibits which are not properly authenticated and not attached to the response and as such do not constitute proper summary judgment evidence.

Prayer For Relief:

WHEREFORE, PREMISES CONSIDERED, Movant request that the above objections be in all things sustained, and for such other and further relief, both at law and in equity, to which this Movant may show itself justly entitled.

Respectfully submitted,


G. David Westfall
State Bar No. 21224000
5646 Milton Street, Suite 520
Dallas, Texas 75206

(214) 741-4741
(214) 741-4746 fax

ATTORNEY FOR MOVANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above Objection to Summary Judgment Evidence has this day been served upon all parties by hand delivery.

SIGNED this 7th day of September, 2001.



G. DAVID WESTFALL



I certify this to be a true and exact copy of the original on file in the District Clerk's Office, Van Zandt County, Texas.
Candi Scott

CAUSE NO. 00-00619

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

Plaintiff.

v.

UDO BIRNBAUM,

Defendant.

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IN THE DISTRICT COURT

7 OCT 9 45
DIST. CLERK VAN ZANDT CO. TX.

294th JUDICIAL DISTRICT DEP.

VAN ZANDT COUNTY, TEXAS

**G. DAVID WESTFALL'S
OBJECTIONS TO THE SUMMARY JUDGMENT EVIDENCE
OF RESPONDENT, UDO BIRNBAUM**

COMES NOW, G. David Westfall, (hereinafter referred to as "Movant"), Plaintiff in the above-styled and numbered cause and files this his objections to the summary judgment evidence offered by Udo Birnbaum ("Respondent") in response to the Motion for Summary Judgment filed by Movant and would hereby show the Court as follows:

I.

1. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph IV: Birnbaum's Designated Evidence, subparagraph 1, for the reason that the same is a pleading and as such does not constitute proper summary judgment evidence. Further, Movant objects because the same is not attached to the response, and also for the reason that the evidence is a mere conclusion on the part of the Respondent and constitutes unsubstantiated factual and legal conclusions.

2. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph IV: Birnbaum's Designated Evidence, subparagraph 2, for the reason that

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the same refers to a deposition which is not properly authenticated and is not attached to the response, further, it contains unsubstantiated factual and legal conclusions.

3. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph IV: Birnbaum's Designated Evidence, subparagraph 3, for the reason that he refers to a deposition excerpt which is not attached to the response, not properly authenticated, and as such is not proper summary judgment evidence.

4. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph IV: Birnbaum's Designated Evidence, subparagraph 4, for the reason that he refers to a deposition excerpt which is not attached to the response, not properly authenticated, and as such is not proper summary judgment evidence.

5. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph V: Evidence in Westfall's Own Documents, subparagraph 1, for the reason that the allegation of evidence is overly broad and not specific, thus not allowing the Movant an adequate opportunity to respond or object. Also, none of the referred to evidence has been attached to the response, or properly authenticated.

6. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph V: Evidence in Plaintiff's Own Documents, subparagraph 2 (a), (b), (c), (d), (e), (f), and (g), for the reason that the allegation of evidence has not been attached to the response, or properly authenticated, further it contains unsubstantiated factual and legal conclusions.

7. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph V: Evidence in Plaintiff's Own Documents, subparagraph 3 (a), (b), (c),

(d), (e), (f), and (g), for the reasons that: the exhibits are not properly authenticated, are not attached to the response, and constitutes unsubstantiated factual and legal conclusions.

8. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph VI: Evidence in Other Documents, subparagraph 1, (a), (b), (c), (d), (e), (f), (g), (h), and (i), for the reason that: the exhibits are not properly authenticated, are not attached to the response, and constitutes unsubstantiated factual and legal conclusions.

9. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph VI: Evidence in Other Documents, subparagraph 2 for the reason that: the depositions referred to are not properly authenticated, are not attached to the response, and the statement is simply an unsubstantiated factual and legal conclusions.

10. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph VII: Summary of Evidence to Third Party Plaintiff RICO "Elements," subparagraphs A, sub (1), (2), (3), (4), and (5) for the reason that: the allegations of evidence are nothing more than unsubstantiated factual and legal conclusions and do not constitute proper summary judgment evidence.

11. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph VII: Summary of Evidence to Third Party Plaintiff RICO "Elements," subparagraphs B, sub (1), (2), (3), and (4), for the reason that: the allegations of evidence are nothing more than unsubstantiated factual and legal conclusions and do not constitute proper summary judgment evidence.

12. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph VII: Summary of Evidence to Third Party Plaintiff RICO "Elements,"

subparagraphs C, sub (1), and (2) for the reason that: the allegations of evidence are nothing more than unsubstantiated factual and legal conclusions and do not constitute proper summary judgment evidence.

13. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph VII: Summary of Evidence to Third Party Plaintiff RICO "Elements," subparagraphs D, E, F, and G for the reason that: the allegations of evidence are nothing more than unsubstantiated factual and legal conclusions and do not constitute proper summary judgment evidence.

14. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph VII: Summary of Evidence to Third Party Plaintiff RICO "Elements," subparagraphs H, sub (1), (2), and (4), for the reason that: the allegations of evidence are nothing more than unsubstantiated factual and legal conclusions and do not constitute proper summary judgment evidence.

15. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph VII: Summary of Evidence to Third Party Plaintiff RICO "Elements," subparagraphs H, sub (3) for the reason that: the allegations of evidence are nothing more than unsubstantiated factual and legal conclusions and do not constitute proper summary judgment evidence and additionally the deposition and exhibit referred to has not been properly authenticated or attached to the response and as such does not constitute proper summary judgment evidence.

16. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph VII: Summary of Evidence to Third Party Plaintiff RICO "Elements,"

subparagraphs J, sub (1) and (2) for the reason that: the allegations of evidence are nothing more than unsubstantiated factual and legal conclusions and do not constitute proper summary judgment evidence and the evidence referred to has not been properly authenticated or attached to the response and as such does not constitute proper summary judgment evidence.

17. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph VII: Summary of Evidence to Third Party Plaintiff RICO "Elements," subparagraphs K for the reason that: the allegations of evidence are nothing more than unsubstantiated factual and legal conclusions and do not constitute proper summary judgment evidence.

18. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph VII: Summary of Evidence to Third Party Plaintiff RICO "Elements," subparagraphs L for the reason that: the allegations of evidence are nothing more than unsubstantiated factual and legal conclusions and do not constitute proper summary judgment evidence and the evidence referred to has not been properly authenticated or attached to the response and as such does not constitute proper summary judgment evidence.

19. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph VII: Summary of Evidence to Third Party Plaintiff RICO "Elements," subparagraphs M and N for the reason that: the allegations of evidence are nothing more than unsubstantiated factual and legal conclusions and do not constitute proper summary judgment evidence.

20. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph VII: Summary of Evidence to Third Party Plaintiff RICO "Elements,"

subparagraphs O, subparts (1), (4), (5), (6) for the reason that: the allegations of evidence are nothing more than unsubstantiated factual and legal conclusions and do not constitute proper summary judgment evidence.

21. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph VII: Summary of Evidence to Third Party Plaintiff RICO "Elements," subparagraphs O, subparts (2) and (3) for the reason that: the allegations of evidence are nothing more than unsubstantiated factual and legal conclusions and do not constitute proper summary judgment evidence and that the depositions referred to have not been properly authenticated or attached to the response and as such does not constitute proper summary judgment evidence.

22. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph VIII: Summary of Evidence to Cross-Complaint RICO "Elements," in its entirety for the reason that: the allegations of evidence are nothing more than unsubstantiated factual and legal conclusions and do not constitute proper summary judgment evidence and that the evidence referred to has not been properly authenticated or attached to the response and as such does not constitute proper summary judgment evidence.

23. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph IX: RE: David Westfall's Representations to this Court subparagraphs 1 and 2 for the reason that: the allegations of evidence are nothing more than unsubstantiated factual and legal conclusions and do not constitute proper summary judgment evidence.

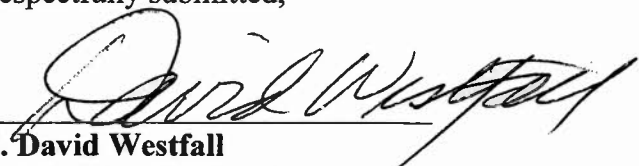
24. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph X: Summary in its entirety for the reason that: the allegations of evidence are nothing more than unsubstantiated factual and legal conclusions and do not constitute proper

summary judgment evidence and that the evidence referred to has not been properly authenticated or attached to the response and as such does not constitute proper summary judgment evidence.

Prayer For Relief:

WHEREFORE, PREMISES CONSIDERED, Movant request that the above objections be in all things sustained, and for such other and further relief, both at law and in equity, to which this Movant may show himself justly entitled.

Respectfully submitted,


G. David Westfall
State Bar No. 21224000
5646 Milton Street, Suite 520
Dallas, Texas 75206
(214) 741-4741
(214) 741-4746 fax

ATTORNEY FOR MOVANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above Objection to Summary Judgment Evidence has this day been served upon all parties by hand delivery.

SIGNED this 7th day of September, 2001.


G. DAVID WESTFALL



I certify this to be a true and exact copy of the original on file in the District Clerk's Office, Van Zandt County, Texas.

Candi Scott

CAUSE NO. 00-00619

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

Plaintiff.

v.

UDO BIRNBAUM,

Defendant.

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IN THE DISTRICT COURT

7 20 46

DAVID J. YOUNG
DIST. CLERK VAN ZANDT CO. TX.

294th JUDICIAL DISTRICT

DEP.

VAN ZANDT COUNTY, TEXAS

**STEFANI PODVIN'S
OBJECTIONS TO THE SUMMARY JUDGMENT EVIDENCE
OF RESPONDENT, UDO BIRNBAUM**

COMES NOW, Stefani Podvin's, (hereinafter referred to as "Movant"), cross-defendant in the above-styled and numbered cause and file this her objection to the summary judgment evidence offered by Udo Birnbaum ("Respondent") in response to the Motion for Summary Judgment filed by Movant and would hereby show the Court as follows:

I.

1. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph IV: Birnbaum's Designated Evidence, subparagraph 1, for the reason that the same is a pleading and as such does not constitute proper summary judgment evidence. Further, Movant objects because the same is not attached to the response, and also for the reason that the evidence is a mere conclusion on the part of the Respondent and constitutes unsubstantiated factual and legal conclusions.

2. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph IV: Birnbaum's Designated Evidence, subparagraph 2, for the reason that

the same refers to a deposition which is not properly authenticated and is not attached to the response, further, it contains unsubstantiated factual and legal conclusions.

3. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph IV: Birnbaum's Designated Evidence, subparagraph 3, for the reason that he refers to a deposition excerpt which is not attached to the response, not properly authenticated, and as such is not proper summary judgment evidence.

4. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph IV: Birnbaum's Designated Evidence, subparagraph 4, for the reason that he refers to a deposition excerpt which is not attached to the response, not properly authenticated, and as such is not proper summary judgment evidence.

5. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph V: Evidence in Plaintiff's Own Documents, subparagraph 1, for the reason that the allegation of evidence is overly broad and not specific, thus not allowing the Movant an adequate opportunity to respond or object. Also, none of the referred to evidence has been attached to the response, or properly authenticated.

6. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph V: Evidence in Plaintiff's Own Documents, subparagraph 2 (a), (b), (c), (d), (e), (f), and (g), for the reason that the allegation of evidence has not been attached to the response, or properly authenticated, further it contains unsubstantiated factual and legal conclusions.

7. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph V: Evidence in Plaintiff's Own Documents, subparagraph 3 (a), (b), (c),

(d), (e), (f), and (g), for the reasons that: the exhibits are not properly authenticated, are not attached to the response, and constitutes unsubstantiated factual and legal conclusions.

8. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph VI: Evidence in Other Documents, subparagraph 1, (a), (b), (c), (d), (e), (f), (g), (h), and (i), for the reason that: the exhibits are not properly authenticated, are not attached to the response, and constitutes unsubstantiated factual and legal conclusions.

9. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph VI: Evidence in Other Documents, subparagraph 2 for the reason that: the depositions referred to are not properly authenticated, are not attached to the response, and the statement is simply an unsubstantiated factual and legal conclusions.

10. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph VII: Summary of Evidence to Third Party Plaintiff RICO "Elements," subparagraphs A, sub (1), (2), (3), (4), and (5) for the reason that: the allegations of evidence are nothing more than unsubstantiated factual and legal conclusions and do not constitute proper summary judgment evidence.

11. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph VII: Summary of Evidence to Third Party Plaintiff RICO "Elements," subparagraphs B, sub (1), (2), (3), and (4), for the reason that: the allegations of evidence are nothing more than unsubstantiated factual and legal conclusions and do not constitute proper summary judgment evidence.

12. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph VII: Summary of Evidence to Third Party Plaintiff RICO "Elements,"

subparagraphs C, sub (1), and (2) for the reason that: the allegations of evidence are nothing more than unsubstantiated factual and legal conclusions and do not constitute proper summary judgment evidence.

13. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph VII: Summary of Evidence to Third Party Plaintiff RICO "Elements," subparagraphs D, E, F, and G for the reason that: the allegations of evidence are nothing more than unsubstantiated factual and legal conclusions and do not constitute proper summary judgment evidence.

14. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph VII: Summary of Evidence to Third Party Plaintiff RICO "Elements," subparagraphs H, sub (1), (2), and (4), for the reason that: the allegations of evidence are nothing more than unsubstantiated factual and legal conclusions and do not constitute proper summary judgment evidence.

15. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph VII: Summary of Evidence to Third Party Plaintiff RICO "Elements," subparagraphs H, sub (3) for the reason that: the allegations of evidence are nothing more than unsubstantiated factual and legal conclusions and do not constitute proper summary judgment evidence and additionally the deposition and exhibit referred to has not been properly authenticated or attached to the response and as such does not constitute proper summary judgment evidence.

16. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph VII: Summary of Evidence to Third Party Plaintiff RICO "Elements,"

subparagraphs J, sub (1) and (2) for the reason that: the allegations of evidence are nothing more than unsubstantiated factual and legal conclusions and do not constitute proper summary judgment evidence and the evidence referred to has not been properly authenticated or attached to the response and as such does not constitute proper summary judgment evidence.

17. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph VII: Summary of Evidence to Third Party Plaintiff RICO "Elements," subparagraphs K for the reason that: the allegations of evidence are nothing more than unsubstantiated factual and legal conclusions and do not constitute proper summary judgment evidence.

18. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph VII: Summary of Evidence to Third Party Plaintiff RICO "Elements," subparagraphs L for the reason that: the allegations of evidence are nothing more than unsubstantiated factual and legal conclusions and do not constitute proper summary judgment evidence and the evidence referred to has not been properly authenticated or attached to the response and as such does not constitute proper summary judgment evidence.

19. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph VII: Summary of Evidence to Third Party Plaintiff RICO "Elements," subparagraphs M and N for the reason that: the allegations of evidence are nothing more than unsubstantiated factual and legal conclusions and do not constitute proper summary judgment evidence.

20. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph VIII: Summary of Evidence to Cross-Complaint RICO "Elements," in its

entirety for the reason that: the allegations of evidence are nothing more than unsubstantiated factual and legal conclusions and do not constitute proper summary judgment evidence and that the evidence referred to has not been properly authenticated or attached to the response and as such does not constitute proper summary judgment evidence.

21. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph IX: RE: Stefani Podvin's Representations to this Court subparagraphs 1, 2, 3, 4, 5, 9, 10, 11, 12, 13, 15, and 16 for the reason that: the allegations of evidence are nothing more than unsubstantiated factual and legal conclusions and do not constitute proper summary judgment evidence.

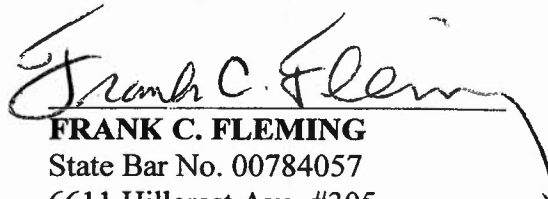
22. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph IX: RE: Christina Westfall's Representations to this Court subparagraphs 6, 7, 8, and 14 for the reason that: the allegations of evidence are nothing more than unsubstantiated factual and legal conclusions and do not constitute proper summary judgment evidence and that the evidence referred to has not been properly authenticated or attached to the response and as such does not constitute proper summary judgment evidence.

23. Movant objects to the summary judgment evidence referred to by Respondent in his response in paragraph X: Summary in its entirety for the reason that: the allegations of evidence are nothing more than unsubstantiated factual and legal conclusions and do not constitute proper summary judgment evidence and that the evidence referred to has not been properly authenticated or attached to the response and as such does not constitute proper summary judgment evidence.

Prayer For Relief:

WHEREFORE, PREMISES CONSIDERED, Movant request that the above objections be in all things sustained, and for such other and further relief, both at law and in equity, to which this Movant may show herself justly entitled.

Respectfully submitted,



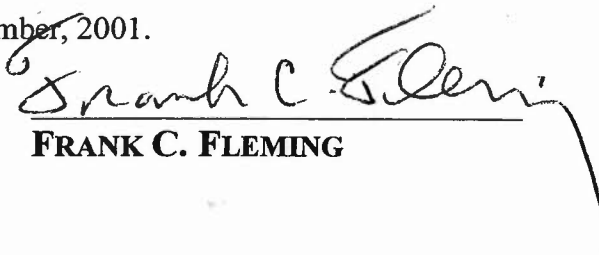
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ATTORNEY FOR MOVANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above Objection to Summary Judgment Evidence has this day been served upon all parties by hand delivery.

SIGNED this 7th day of September, 2001.



FRANK C. FLEMING