ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 10, 2009

Via Regular U.S. Mail

Karen Wilson, Clerk
Van Zandt County Courts
121 E Dallas St, Rm 302
Canton, Texas 75103-1465

RE: *Udo Birnbaum v. Paul Banner & Ron Chapman*;
Cause No. 06-00857

Dear Ms. Wilson:

Enclosed for filing in the above-referenced cause please find the original and one copy of ***2nd Amended Notice of Hearing***.

Please *file-stamp* the enclosed and return the *file-marked copy* to us in the enclosed envelope provided for your convenience.

Thank you for your assistance with this matter.

Sincerely,

Lynne Erdek

Lynne Erdek
Legal Secretary to
JASON CONTRERAS
Assistant Attorney General
General Litigation Division
(512) 475-4261

Enclosures
cc: Udo Birnbaum (*via CMRRR & regular mail*)
Paul Banner (*via facsimile*)
Ron Chapman (*via facsimile*)

COPY

CAUSE NO. 06-00857

UDO BIRNBAUM, Plaintiff,	§	IN THE DISTRICT COURT
v.	§	VAN ZANDT COUNTY, TEXAS
PAUL BANNER AND RON CHAPMAN, Defendants.	§	249TH JUDICIAL DISTRICT

SECOND AMENDED NOTICE OF HEARING

PLEASE TAKE NOTICE that Defendants' Plea to the Jurisdiction has been reset for hearing on **August 25, 2009 at 11:00 a.m.** in the 249th Judicial District Court of Van Zandt County, Texas.

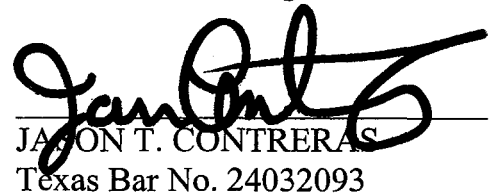
Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

C. ANDREW WEBER
First Assistant Attorney General

DAVID S. MORALES
Deputy Attorney General for Civil Litigation

ROBERT B. O'KEEFE
Chief, General Litigation Division



JASON T. CONTRERAS
Texas Bar No. 24032093
Assistant Attorney General
General Litigation Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 463-2120
(512) 320-0667 FAX

Attorneys for Judge Paul Banner and Judge Ron Chapman

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been sent via Certified Mail Return Receipt Requested and Regular Mail on August 10, 2009:

Udo Birnbaum
540 VZ CR 2916
Eustace, TX 75124

JASON T. CONTRERAS
Assistant Attorney General

TERESA A. DRUM
294th Judicial District Judge
121 East Dallas Street, Room 301
Canton, Texas 75103
Tel:(903)567-4422 Fax:(903)567-5652

August 11, 2009

NOTICE OF COURT SETTING

CAUSE # 06-00857

UDO BIRNBAUM

VS

PAUL BANNER AND
RON CHAPMAN

The above referenced cause has been set for hearing on
August 25th 2009 AT 11:00 AM.

ACTION: DEF.PLEA TO JURIS.,DISMISSAL OR DOCKET CONTROL

By copy of this notice, I am notifying all the parties listed below.

Sincerely,

Pam Kelly
Court Administrator

CC: BIRNBAUM,UDO
540 VZ CR 2916

EUSTACE, TX 75124

JASON T. CONTRERAS
P.O. BOX 12548,CAPITAL STATION

AUSTIN, TX 78711-2548

ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 11, 2009

Via Regular U.S. Mail

Karen Wilson, Clerk
Van Zandt County Courts
121 E Dallas St, Rm 302
Canton, Texas 75103-1465

RE: *Udo Birnbaum v. Paul Banner & Ron Chapman*;
Cause No. 06-00857

Dear Ms. Wilson:

Enclosed for filing in the above-referenced cause please find the original and one copy of ***1st Supplemental to Defendants' Motion to Quash, Motion for Protection, Motion to Stay Discovery & Objections to Plaintiff's Deposition Notices***.

Please *file-stamp* the enclosed and return the *file-marked copy* to us in the enclosed envelope provided for your convenience.

Thank you for your assistance with this matter.

Sincerely,

Lynne Erdek

Lynne Erdek
Legal Secretary to
JASON CONTRERAS
Assistant Attorney General
General Litigation Division
(512) 475-4261

Enclosures
cc: Udo Birnbaum (*via CMRRR & regular mail*)
Paul Banner (*via facsimile*)
Ron Chapman (*via facsimile*)

COPY

CAUSE NO. 06-00857

UDO BIRNBAUM, Plaintiff,	§ § §	IN THE DISTRICT COURT
v.	§ §	VAN ZANDT COUNTY, TEXAS
PAUL BANNER AND RON CHAPMAN, Defendants.	§ § §	249TH JUDICIAL DISTRICT

FIRST SUPPLEMENT TO DEFENDANTS' MOTION TO QUASH, MOTION FOR PROTECTION, MOTION TO STAY DISCOVERY AND OBJECTIONS TO PLAINTIFF'S DEPOSITION NOTICES

Defendants Judge Paul Banner and Judge Ron Chapman ("Defendant Judges") respectfully file this First Supplement to their Motion to Quash, Motion for Protection, Motion to Stay Discovery and Objections to Plaintiff's Deposition Notices, and in support, would show as follows:

CERTIFICATE OF CONFERENCE

In a reasonable effort to resolve Defendants' Motion to Quash, Motion for Protection, Motion to Stay Discovery and Objections to Plaintiff's Deposition Notices without the necessity of court intervention, defense counsel sent Plaintiff, Mr. Udo Birnbaum, a written communication on August 3, 2009. To date, Plaintiff has not responded to this written communication thus defense counsel's effort to resolve this matter failed.

JASON T. CONTRERAS
Assistant Attorney General

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

C. ANDREW WEBER
First Assistant Attorney General

DAVID S. MORALES
Deputy Attorney General for Civil Litigation

ROBERT B. O'KEEFE
Chief, General Litigation Division

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Texas Bar No. 24032093
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General Litigation Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 463-2120
(512) 320-0667 FAX
Attorneys for Judge Paul Banner and Judge Ron Chapman

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been sent via Certified Mail Return Receipt Requested and Regular Mail on August 11, 2009:

Udo Birnbaum
540 VZ CR 2916
Eustace, TX 75124

JASON T. CONTRERAS
Assistant Attorney General

CAUSE NO. 06-00857

UDO BIRNBAUM	§	IN THE DISTRICT COURT
Plaintiff	§	
v.	§	
	§	VAN ZANDT COUNTY, TEXAS
PAUL BANNER	§	
RON CHAPMAN	§	
Defendants	§	294th JUDICIAL DISTRICT

RESPONSE TO DEFENDANTS' PLEA TO THE JURISDICTION CLAIMING ABSOLUTE JUDICIAL IMMUNITY

Such not available for doing administrative function – a recusal hearing

Not for doing $62,885 and $125,770 unconditional FINES "*sought by the Court*"

Not for doing punishment by civil process -- requires "full criminal process"

Not for punishment to keep "from filing" a lawsuit – a First Amendment Right!

Not FOUR (4) YEARS after Final Judgment – absence of ALL jurisdiction

TO THIS HONORABLE COURT:

COMES NOW Plaintiff, UDO BIRNBAUM, in response to ***Defendants' Plea to the Jurisdiction***, by Defendant JUDGE PAUL BANNER and Defendant JUDGE RON CHAPMAN, through their attorney JASON T. CONTRERAS, with the TEXAS ATTORNEY GENERAL, their document dated July 14, 2009, claiming entitlement to **ABSOLUTE JUDICIAL IMMUNITY**:

In Judge Banner and Judge Chapman OWN WORDS!

Alternative Reality? Time runs BACKWARDS? Nothing FINAL?

"All other relief not expressly granted in this order is hereby denied. THIS JUDGMENT RENDERED ON APRIL 11, 2002, AND SIGNED THIS 30 day of July, 2002. Paul Banner, JUDGE PRESIDING." ***FINAL JUDGMENT***, July 30, **2002**.

"On April 1, ***2004****,* ***came on to be heard****, defendant, Udo Birnbaum's ("Birnbaum")* ***Motion for Recusal*** *of Judge Paul Banner."* Order on Motion for Sanctions, page1 (signed by Judge Ron Chapman Oct. 24, **2006**)

*"11. The [$125,770.00] award of exemplary/****punitive*** *damages is an appropriate amount to seek to gain the relief* ***sought by the Court*** *which is to stop Birnbaum* ***and others*** *like*

*him **from filing** similar frivolous motions and other frivolous lawsuits."* Order on Motion for Sanctions, page7. (signed by Judge Ron Chapman Oct. 24, **2006**)

*"14. The [$62,885.00] **Sanctions** award is an appropriate amount in order to gain the relief **which the Court seeks**, which is to stop the Defendant/Counter-Plaintiff **and others** similarly situated **from filing** frivolous lawsuits."*, Findings of Fact and Conclusions of Law, page4. (signed by Judge Paul Banner Sept. 30, **2003**)

All AFTER Final Judgment signed July 30, **2002**! OUTRAGEOUS!

*"**In assessing** the [$62,885,00] **sanctions**, the Court has taken into consideration that although Mr. Birnbaum may be **well-intentioned** and may believe that he had some kind of real **claim as far as RICO** there was nothing presented to the court in any of the proceedings since I've been involved that suggest he had any basis in law or in fact to support his suits against the individuals, and I think – can find that such [$62,885.00] sanctions as I've determined are appropriate. And if you will provide me with an appropriate sanctions order, I will reflect it." Hearing **transcript**, July 30, 2002.*

Was of course a **jury case**. Why was Judge Paul Banner **weighing the evidence**? And a $62,885 Sanction ***"which the Court seeks"***? **NOT ADJUDICATING!**

THE LAW – clearly established!

"It is the **nature of the function** performed -- **adjudication** -- rather than the identity of the actor who performed it -- a judge -- that determines whether **absolute immunity** attaches to the act".
US Supreme Court, Forrester v. White, 484 U.S. 219 (1988).

"However, absent extraordinary circumstances, a presiding judge's **order appointing** a judge to hear a recusal motion **is administrative**—it **simply transfers the power** to decide the recusal motion **to another judge".**
Texas Supreme Court, In Re Edgar McGeer, No. 06-0055, Nov. 30, 2007

Stated another way, **"honest services"** contemplates that in rendering some particular service or services, the defendant was conscious of the fact that his actions were something less than in the best interests of the employer--or that he consciously contemplated or intended such actions.
US Fifth Circuit, U.S. vs Brumley, 116 F.3d 728, 1997 (en banc)

The "nature of the function"

Official oppression -- by retaliation **for filing** a **civil RICO** counter-claim.

Obstruction in the administration of justice -- by fraudulent documents --

"Defendants' Plea to the Jurisdiction" -- and fraudulent affidavits thereto by Judge Paul Banner and Judge Ron Chapman (their Exhibits. A, B) and their attorney, Jason T. Contreras, as detailed below.

Again, these criminals do not qualify!

$125,770.00 Punishment – ***"sought by the Court"*** – is NOT "adjudication"

$62,885.00 Punishment – ***"which the Court seeks"*** – is NOT "adjudication"

Unconditional (not "coercive") punishment – by CIVIL process is **UNLAWFUL**!

Deprivation of **"honest services"** -- by a "state actor" – violates the law – U.S. vs. Brumley:

> "Brumley contends that Congress did not intend to reach schemes to deprive an entity of state government of the intangible right of **honest services** in its 1988 enactment of § 1346. That statute provides:
>
> > For the purposes of this Chapter, the term "scheme or artifice to defraud" includes a scheme or artifice to deprive another of the intangible right of **honest services**."
>
> "Stated another way, "honest services" contemplates that in rendering some particular service or services, the defendant was conscious of the fact that his actions were something less than in the best interests of the employer--or that he consciously contemplated or intended such actions. United States vs. Brumley, 116 F.3d 728. 1997, Fifth Cir. (en banc)"

Exhibit "A"

www.OpenJustice.US

"*Happy April Fools Day*"

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

For having filed (out of desperation) a ONE page motion, SIX (6) MONTHS AGO!

A masterpiece of accomplishment? or April fools?

*"If there is insanity **around**, well, some of us gotta **have it**!"*

OBVIOUSLY, not written as a formal court document. It does, however, point to the issue of the DEAD CASE, and what were the mental processes, if any, of these clowns on April 1, 2004, and more so as they officially signed on Oct. 24, 2006.

"Happy April Fools Day", Exhibit "A" – understandable by anyone.

These criminals are pulling the wool over this Court's eyes

Their document, ***"Defendants' Plea to the Jurisdiction"*** of July 14, 2009 **purports** a RCP Rule 120a **"special appearance":**

- But, they long ago already made a **general appearance** on Mar. 18, 2009! (*Defendants' Answer and Affirmative Defenses to Plaintiff's Original Petition*)

- They **already made accusations**! (*"that Plaintiff take nothing by way of this frivolous and harassing lawsuit".* Defendants' Answer etc.)

- They already **counter-claimed**! (*"all such other and further relief, special or general, at or in equity, to which they may show themselves justly entitled, including but not limited to attorney's fees and costs incurred herein".* Defendants' Answer etc)

- They **even now**, in their *"Plea to the Jurisdiction"*, ask for **adjudication**! (*" ORDERED, ADJUDGED AND DECREED that all claims asserted by Plaintiff against Judge Banner and Judge Chapman in this action are hereby dismissed with prejudice thereby dismissing this action in its entirety with prejudice."* Their proposed ORDER submitted with this "Plea")

- Their so-called "Plea" – is NOT **"prior to** motion to transfer venue or **any other plea, pleading or motion**:

  Rule 120a. SPECIAL APPEARANCE.

  > "a special appearance may be made by any party either in person or by attorney for the purpose of objecting to the jurisdiction of the court over the person or property of the defendant on the ground that such party or property is not amenable to process issued by the courts of this State."
  >
  > "Such **special appearance** shall be made by sworn motion filed **prior to** motion to transfer venue or **any other plea, pleading or motion**."
  >
  > "Every appearance, prior to judgment, **not in compliance** with this rule is a **general appearance**."

So, what all skeletons lie below?

See www.OpenJustice.US

My web site www.OpenJustice.US details exactly how this fraud has been going on upon me ever since 1995. Even been counter-sued over it for "libel", "slander",

"intentional infliction of emotional distress", and causing a lawyer to suffer from "stress, anxiety, loss of confidence", and loss of "social intercourse", saying everything I am saying is not so. Birnbaum v. Ray, No. 07-00168, 294th.

Judge Andrew Kupper is the judge on it, and in the process of his three hearings, and his own-initiative-outside-of-the-courtroom examination of all the files in all the thereto underlying cases – not his No. 07-00168 cause – he obtained full knowledge that everything in the court was skeleton under skeleton under skeleton – including the stuff **Judge Paul Banner** and **Judge Ron Chapman** had done to me – these huge $62,885 and $125,770 sanctions.

The Code of Judicial Conduct of course requires Judge Andrew Kupper to report the fraud by the **lawyer** and **judges** in the 14 year old "beaver dam" case, and the **fraud** and **retaliation** as he found by Judge Banner and Judge Chapman with those huge $62,885.00 and $125,770.00 **unlawful** sanctions, but Judge Kupper chose to do NOTHING.

Short – very short - summary of the skeletons

Details in files in court. Also www.OpenJustice.US

In 1995 I get sued because **beavers built a dam** on a creek on my farm. Jones vs. Birnbaum, No. 95-63. Suit on me is filed as violation of the **Texas Water Code**, filed by attorney **Richard Ray**. I complain of fraud to **Judge Tommy Wallace**. Judge Wallace gets off the case. **Judge James Zimmermann** tries it to the jury. Judge Zimmermann gives fraudulent questions to jury, but verdict of ZERO nevertheless. Attorney Ray claims entitlement to injunction. Injunction issue never submitted to jury.

> **SIDELINE:** Judge Chapman gets assigned to beaver case. Issues screwy injunction – not authorized because he was NOT the trial judge. Not in his Affidavit. Judge Kupper also assigned.

Next I get conned by Attorney **G. David Westfall**, Dallas, to file a civil RICO suit on everybody, including **Judge Tommy Wallace**, **Judge James B Zimmermann**, **Judge Pat McDowell**, **Judge Richard Davis**, Attorney Richard Ray, **District Attorney Leslie Dixon**. Dallas Federal Court, Birnbaum vs. Ray, et al, No 3-99CV0696-R.

I ultimately fire my attorney David Westfall. Westfall fraudulently sues me for unpaid "Open Account", when was $20,000 non-refundable "prepaid". **Judge Paul Banner** assigned. Judge Banner gives fraudulent questions to jury. Fines me $62,885.00. **Judge Ron Chapman** assigned to recusal hearing. Judge Chapman fines me $125,770.000.

I sue attorney Richard Ray for having gotten me into all this mess with his frivolous "beaver dam" case. Birnbaum vs. Ray, No. 03-00460, 294th . **Judge Ron Chapman** assigned. **Judge Ron Chapman** at same time also assigned to Jones vs. Birnbaum, No. 95-63, the original "beaver dam" case. (Judge Ron Chapman also heard earlier recusal hearing re **Judge Paul Banner** in Oct. 2001 in Westfall vs. Birnbaum, No. 00-619, 294th).

Judge Ron Chapman's $125,770.00 sanction on April 1, 2004, in Westfall vs. Birnbaum (Judge Banner case in which Banner imposed earlier $62,885 sanction) makes me "non-suit". I later re-file as Birnbaum vs. Ray, No. 07-00168. **Judge Andrew Kupper** assigned. Richard Ray counter-sues for libel and slander, claiming "anxiety, stress, and loss of confidence".

Judge Ron Chapman assigned to "beaver dam" case. Judge Chapman conceals this in his Affidavit (Exhibit B). Judge Chapman "looses it" on that case also.

Also several bouts to the appeals courts – Tyler, Dallas, US Fifth in New Orleans,

Texas Supreme Court, U.S. Supreme Court – TWO cases, including regarding the unlawful $62,885 sanction by Judge Banner – strange rulings, but NO LUCK.

Before that fraudulent "beaver dam" suit on me, I was peaceably retired on my farm, tending to my cows and invalid 90 year old mother, and had only known the courthouse from getting license plates.

THE FRAUD IN THEIR DOCUMENT

I.
I can't even come up with a heading for this nonsense!

"It is without question that Judge Banner had jurisdiction to adjudicate Plaintiff's original suit, and Judge Chapman had jurisdictional authority to hear motion to recuse. Exhibit A (Affidavit of the Honorable Judge Paul Banner): Exhibit B (Affidavit of Honorable Judge Ron Chapman)". Defendants' Plea to the Jurisdiction, page 5 line 8.

As Plaintiff Birnbaum's court documents attached as exhibits to his ***Original Petition*** show, Judge Banner rendered **Final Judgment** on April 11, **2002**, Judge Chapman appeared for recusal hearing on April 1, **2004**, and issued $125,770 unconditional sanction on October 24, **2006**, "THIS **JUDGMENT** RENDERED ON APRIL 1, 2004, AND SIGNED THIS 24 DAY OF Oct, **2006**". FRAUD, FRAUD, FRAUD.

- What the hell was there to **adjudicate** after **Final Judgment**?
- A **THIRD** judgment in the **same case**? (Banner managed to do a **SECOND**, "THIS JUDGMENT RENDERED JULY 30, 2002, AND SIGNED THIS _9_ day of _*August*_ , 2002, Paul Banner, JUDGE PRESIDING)
- A $125,770 **unconditional** (not "coercive") sanction by CIVIL PROCESS?
- *"**to stop** Birnbaum and others like him **from filing** frivolous lawsuits"* – that is **RETALIATION** for **First Amendment Right** of access to the courts!

II.
How stupid do you think we are?

"The actions complained of are, without question, judicial acts under Bradt. Although Plaintiff claims "there was nothing to adjudicate", he requested adjudication through his motion to recuse Judge Banner." Defendants' Plea to the Jurisdiction, page 6 line 9. HORSEFEATHERS!

- Doing a recusal hearing, is NOT **adjudication**! Stop digging yourself a deeper hole, you KNOW that doing a recusal is NOT adjudication!
- **"Motion to recuse"** is NOT **"requested adjudication"**! Just get the judge off.
- Judge Ron Chapman was assigned **only** to do a recusal, **denied** the recusal, then did not get **off the bench** to let Judge Paul Banner, who was in the courtroom as a **witness**, to take over from there. But letting Judge Paul Banner back on the bench TWO (2) YEARS after Banner had signed **Final Judgment**, would have been JUST AS CRAZY! Oh what tangled webs we weave, when first we practice to deceive. What were these two clowns thinking?
- Judge Ron Chapman having been assigned solely to do a **recusal** hearing, Judge Chapman did not have jurisdiction to hear a motion for sanctions **in the case**! (which of course was DEAD)
- A **recusal hearing** TWO (2) YEARS after **Final Judgment**! CRAZY!
- $125,770 sanction signed FOUR (4) YEARS after **Final Judgment**? CRAZY

III.
You KNOW at issue is "capacity as a judge" – NOT whether "normal"

"Plaintiff cannot dispute the fact that an order for sanctions is within normal judicial activity". Defendants' Plea to the Jurisdiction, page 7 line 6.

BUT NOT **THIS** ONE!

- FOUR (4) YEARS after **Final Judgment** -- also not "adjudicating"
- An "unconditional" punishment by **civil process** – not "adjudicating"
- And not in the amount of **$124, 770** as "**punitive sanction**"!
- And not for exercising a **First Amendment** Right of access to the courts!
- And not at a **recusal hearing** – a purely **administrative** function.

IV.
Just more "stuff"

"Plaintiff asserts Judge Banner's participation as a witness in the recusal motion, failure to protect Birnbaum during the recusal hearing, and failure to report the actions of Judge Chapman are actionable. This is utter non-sense" Defendants' Plea to the Jurisdiction, page 7 line 13.

- Plaintiff of course said no such thing. Filed suit under 18 U.S.C. 18 § 1964(c) "civil RICO" for damage "by reason of" a scheme by the Defendants to **defraud the State of Texas** and the people of Texas of the "**honest services**" of Judge Paul Banner and Judge Ron Chapman. ("honest services" fraud, somewhat paraphrased)

THE FRAUD IN JUDGE PAUL BANNER AFFIDAVIT

Affidavit does not mention his $62,885 FINE – NOT "adjudication"!

V.

"My rulings and orders made in the underlying lawsuit were ones I normally make and perform in my capacity as a judge, including the Final Judgment issued on July 30, 2002". **Affidavit of the Honorable Judge Paul Banner**, Exhibit A, page 1 paragraph 2.

- Affidavit does not mention the $62,885.00 unconditional FINE ***"which the Court seeks"***, signed by Judge Paul Banner, Aug. 8, 2002.
- How *"normal"* is a $62,885 Order on Motion for Sanctions, signed Aug. 8, 2002, AFTER Final Judgment "rendered April 11, 2002", which stated that ***"All other relief not expressly granted in this order is hereby denied"***.
- How *"normal"* is an Order on Motion for Sanction, imposing a **second judgment** ("THIS JUDGMENT RENDERED"), bearing interest at 10%?
- How *"normal"* is a $62,885 punishment for exercising a **First Amendment Right** of access to the courts? PLUM UNLAWFUL

VI.

WHAT JUDGE BANNER'S AFFIDAVIT CONCEALS

The Affidavit does not mention a $62,885 assessment!

Judge Paul Banner's **Affidavit** conceals a **$62,885 sanction** he signed on Aug. 8, **2002**, after **Final Judgment**, and the **reason he imposed such sanction**.

From Judge Paul Banner's belated CYA ***Findings of Fact and Conclusions of Law***, signed Sept. 30, **2003**, while the matter was on appeal and not in the Texas 294th at all, to cover up for what he had done – namely assessed damages on a supposed "counterclaim" –which did not exist – and that he had done it **without a jury** – and this was a **jury case** – and Birnbaum, Plaintiff in this case, was insisting on Findings and Conclusions, so Judge Paul Banner and attorney Frank C. Fleming made up all this "stuff", and put it into Banner's ***Findings of Fact and Conclusions of Law.***.

But they **got caught** in the pit they were digging for Birnbaum. Hidden among all the other "stuff", that attorney Frank C. Fleming made up for Judge Paul Banner – Judge Paul Banner had been caught by the court reporter – ***"although Mr. Birnbaum may be well-intentioned, I did not see a RICO case, and I'm going to impose this sanction"*** – exact wording in the record – but not all this stuff about "vindictive", "harassing", "out of spite", "to harm", and all this other **verbal venom** that wound up in his ***Findings and Conclusions***.

Judge Paul Banner "sanitized" what attorney Frank C. Fleming had concocted, but what slipped through is the **true reason for Judge Paul Banner's $62,885 sanction**:

- *"14. The [$62,885.00] **Sanctions** award is an appropriate amount in order to gain the relief **which the Court seeks**, which is to stop the Defendant/Counter-Plaintiff **and others** similarly situated **from filing** frivolous lawsuits."*
  Findings and Conclusions, page 4, Judge Paul Banner, signed Sept. 30, **2003**.

- *"17. The [$62,885.00] award of **punitive** damages is an appropriate amount to seek to gain the relief sought which is to stop this Defendant/Counter-Plaintiff, **and others** like him, **from filing** similar frivolous lawsuits".*
  Findings and Conclusions, page 4, Judge Paul Banner, signed Sept. 30, **2003**.

THIS IS OFFICIAL OPPRESSION – an adverse action taken by a public official for having exercised a First Amendment Right of access to the courts!

To stop ***"others"***. This is NOT "adjudication between the parties"!

VII.

WHAT JUDGE CHAPMAN'S AFFIDAVIT CONCEALS

Conceals this UNLAWFUL $125,770 FINE as being "normal"

"My rulings and orders made in the underlying lawsuit were ones that I normally make and perform in my role as a judge, including the order on motions for sanctions issued on October 24, 2006. I issued this order on motions for sanctions either in the courtroom or in the appropriate adjunct." Affidavit of Honorable Judge Ron Chapman, Exhibit B, page 1 paragraph 2.

- *" THIS JUDGMENT RENDERED ON APRIL 1, **2004**, AND SIGNED THIS THE 24 day of Oct. **2006**."* Judge Ron Chapman, Order on Motion for Sanctions, end.

  A THIRD judgment in the same case? Over FOUR (4) YEARS between! NOT "normal". Plum CRAZY!

- *"IT IS FURTHER ORDERED THAT the judgment here rendered shall bear interest at the rate of five percent (%) from the date of the signing of this order, until paid"*. Order on Motion for Sanctions, page 2.

  A THIRD judgment in the same case? **Final Judgment** been signed July 30, 2002. NOT "normal". Plum CRAZY!

- *"7. Birnbaum's difficulties with judges and the repeated allegations of lack of impartiality have had nothing at all to do with the conduct of the judges that Birnbaum has appeared before, but instead, is **a delusional belief held only inside the mind of Birnbaum**."* Order – Findings of Fact, page 2.

  From the bench, a **medical diagnosis** of **"delusional belief"**? And then PUNISH for it. NOT "normal". CRAZY, MAN, CRAZY.

- *"2. The court concludes **as a matter of law** that Birnbaum's claim that Judge Paul Banner acted biased and with a lack of impartiality, was brought for the purpose of harassment."* Order - Conclusions of Law, page 5.

  As a matter **of law**? CRAZY, MAN, CRAZY.

- *"11. The award of exemplary and/or punitive damages is an appropriate amount to seek to gain the relief **sought by the Court** which is to stop Birnbaum **and***

others *like him* ***from filing*** *similar frivolous motions and other frivolous lawsuits."* Order – Conclusions of Law. Page 5.

A **"conclusion of law"**? And ***"sought by the Court"***? And ***"and others"***?

Unconditional sanction of $125,770.00 by **civil process**? PLUM UNLAWFUL.

VIII.

INSIDE THE MIND OF JUDGE RON CHAPMAN

"3. The underlying lawsuit was filed in the district court of Van Zandt County, Texas and I had ***subject-matter jurisdiction over the rulings and orders*** *I made in that case, including the order on motions for sanctions issued on October 24, 2006. Accordingly, I had* ***jurisdiction*** *necessary to issue rulings and orders* ***in the underlying lawsuit****."* Affidavit Ron Chapman. July 10, 2009.

- **Your ONLY assignment was to do a RECUSAL HEARING!**
- *"****subject-matter*** *jurisdiction* ***over the rulings and orders****"*? What kind of mumbo-jumbo is this.
- How about **personal jurisdiction** over the **person** of Udo Birnbaum. You were assigned **only** to hear a motion to recuse!

  The **"subject-matter"** was whether Judge Banner needed to go, and **no more**.
- *"because I had jurisdiction etc .... Accordingly, I had jurisdiction"*???
- Jurisdiction ***"in the underlying lawsuit"*** on October 24, **2006**? **Final Judgment** had been signed on July 30, **2002**!

A delusional belief held only inside the mind of Chapman.

(response to Chapman's No. 7, above, *"only inside the mind of Birnbaum"*)

IX.

JUDGE CHAPMAN'S BEAVER DAM CASE!

"4. I have had no involvement or interaction, personal or otherwise, with Udo Birnbaum with the exception of 1) serving as presiding judge in the recusal hearing of the underlying lawsuit and, 2) being sued by Mr. Birnbaum." Affidavit Chapman.

A BIG, BIG, BIG LIE:

- Judge Ron Chapman makes no mention of the **$125,770** unconditional punishment he put on Birnbaum!
- Judge Ron Chapman makes not mention of him being on that stupid **"beaver dam"** case. Even hearing a motion for his **own recusal** in that one!
- Makes no mention of attorney Richard Ray chasing after him in **2008** for a "judgment" in the "beaver dam" case. Then coming up with "something", supposedly signed **July 31, 2004**, trial in **1998**, but Chapman's "judgment" not showing up to have it "journalized with the clerk" till **Mar. 3, 2009**!
- Also conceals that he was the judge in Birnbaum vs. Ray, No. 03-460, Ray being the lawyer that is still perpetrating that stupid **"beaver dam"** case.
- Judge Chapman signed said screwy judgment of injunction – in the "beaver dam" case, despite not having been the trial judge – despite a verdict of **ZERO** damages – and the issue of an injunction never submitted to the jury – and that was a jury case – and Plaintiff deceased long ago!
- Judge Chapman omits that he had heard an **earlier** motion to recuse Judge Banner on Oct. 1, 2001, and "lost it" at that one also.

X.
Plum uncorked
("*Happy April Fools Day*", Exhibit "A")

- Judge Ron Chapman had gotten plum uncorked at Birnbaum earlier, as he did again when he found himself on **April 1, 2004**, hearing a **recusal in a dead case**, and as he did again in his Findings of Fact, No. 7, ***"a delusional belief held only inside the mind of Birnbaum"***. Signed **Oct. 24, 2006**.

- And then Judge Chapman went around the courthouse, asking if they could **abstract** his $125,770 Order!

This man has problems! But Banner is surreptitious.

Summary

A $62,885 **unconditional** – not "coercive" -- sanction *"in order to gain the relief **which the Court seeks**"* , is NOT adjudication – and absolute judicial immunity does not attach -- besides such being plum UNLAWFUL by **civil** process.

A $125,770 **unconditional** – not "coercive" -- exemplary/**punitive** sanction *"to gain the relief **sought by the Court**"*, is NOT adjudication – and absolute judicial immunity does not attach – besides being plum UNLAWFUL by **civil** process.

And to keep a US citizen ***"from filing"*** in a court of law – that takes the cake – a first order violation of a First Amendment Right!

These criminals are not entitled to "absolute judicial immunity", but a place in the pen.

PRAYER

WHEREFORE, Plaintiff moves that the court DENY Defendants' Plea to the Jurisdiction, seeking **absolute judicial immunity**, because the matters at issue, those huge fines of $62,885 and $125,770, do not qualify a "adjudicating the rights of the parties", but was something, in their own words, that was ***"sought by the court"*** – never mind that it was also UNLAWFUL

Besides, they long ago **waived such appearance** with their *Answer and Affirmative Defenses* and all their demands for **adjudication**, as shown above.

Then there are also all these misrepresentations to this Court, both in the motion and the sworn affidavits, and the violation of clearly established First Amendment and Due Process Rights.

They may be entitled to an "official immunity" ("qualified immunity") defense, but no more, defending that their conduct was not "objectively unreasonable".

Plaintiff strongly urges this Court to take judicial notice of the First Amendment and Due Process violations by Judge Paul Banner and Judge Ron Chapman in imposing those $62,885 and $125,770 HUGE UNCONDITIONAL (not "coercive) SANCTIONS by CIVIL PROCESS, and the fraud and obstruction in the administration of justice they and their attorneys are bringing into this case, and refer this whole matter to the criminal authorities.

Udo Birnbaum

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

Att: "Happy April Fools Day", Exhibit. "A"
Defendants' Plea to the Jurisdiction, Exhibit "B"

AFFIDAVIT OF UDO BIRNBAUM

My name is Udo Birnbaum. I am over the age of twenty-one (21). I am competent to make this affidavit and have personal knowledge of all the facts stated in this document, the document this Affidavit is a part of, and attached Exhibit "A", titled "Happy April Fools Day", which I wrote in mid 2004, which are all true and correct. I am in all respects qualified to make this affidavit.

The document I am responding to, titled Defendants' Plea to the Jurisdiction, is false, misleading, and not "the whole truth", as are the thereto attached affidavits "A" and "B" by Judge Paul Banner and Judge Ron Chapman, as indicated in this Response thereto.

This the 7 day of Aug. 2009.

Udo Birnbaum

Udo Birnbaum

SUBSCRIBED and SWORN BEFORE ME, the undersigned authority, on this the 7 day of Aug., 2009, to certify which, witness my hand and seal of office.

Ruthie M. Abee

Notary Public In and for the State of Texas

CERTIFICATE OF SERVICE

A true and correct copy of this document, including attachments, was on this the 12 day of Aug., 2009, provided by CERTIFIED MAIL as follows:

Jason T. Contreras
Attorney General of Texas
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548.

7008 3230 0003 4126 7088

Judge John McCraw
1415 Harroun
McKinney, TX 75069

7008 3230 0003 4126 7095

Udo Birnbaum

UDO BIRNBAUM

"A"

www.OpenJustice.US

Courthouse Vignettes —*"Tales from the Hive"*

Just like "court TV" — except <u>real</u> and in <u>writing</u> and in OUR courthouse

From a <u>fresh</u> and <u>personal</u> perspective — go turn off judge Judy!

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

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

For having filed (out of desperation) a ONE page "motion to recuse", SIX (6) MONTHS AGO!

*"If there is insanity **around**, well, some of us gotta **have it**!"*

APPEARANCES

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

1.

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

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

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

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

2.

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

But today's hearing was on a case where ... ... (continued page 2)

More
"Tales from the Hive"
All from public records

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

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

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

At w

Exhibit A

pol. adv. Udo Birnbaum 540 VZCR 2916 Eustace TX 75124

2.

"Legal fees" and "legal fees" for collecting on "legal fees"

"Smoke Old Mold -- The ONLY cigarette that is ALL filter!"

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

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

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

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

Yet a year later he comes back to file this $18,121.10 "open account" suit against me in Judge Wallace's court, to collect on "legal fees" for suing this very judge! There was of course method in this apparent madness, for if I had not made what is called a "mandatory counterclaim", under oath, denying the "account", it would have been "deemed" true, and the lawyer would have gotten by with it, lest the judge were honest, instead of going strictly by the letter of the Rules of Civil Procedure.

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

3.

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

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

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

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

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

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

4.

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

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

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

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

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

No judge should of course been assigned to "hear" a recusal, because the case was DEAD, and Judge Banner certainly signed no order asking another judge to come "hear" if he should be allowed to stay on the case. But here we were, on April 1, having just such "hearing"!

5.

Ready, get set, GO -- but WHERE?

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

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

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

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

6.

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

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

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

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

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

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

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

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

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

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

7.

Small-talk in the halls

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

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

fluence on the jurors in that trial.

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

8.
Finally, the "real thing"
Into an actual courtroom!

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

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

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

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

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

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

9.
$125,770 in "sanctions"
In a DEAD case?

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

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

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

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

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

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

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

10.
On "finality of litigation"
The case was DEAD!

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

"Our jurisprudence envisions finality of litigation after the parties have availed themselves of the remedies available under our law, "You now have the keys on whether there are any further proceeding in this case in the future. Please be aware that any further actions might result in further sanctions."

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

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

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

Judge Ron Chapman.

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

11.
" Déjà vu all over again"

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

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

VS. No.

$125,770 total

Date of Orders Month	Day	Year	ORDERS OF COURT CONTINUED	Minute Book Vol.	Page
4	8	02	C/R All present; Jury selected; sworn in struck; Open Stmts, Evid Recd		
4	10	02	C/R All present; Evid contd		
4	11	02	C/R All present; Evid contd Jury Verdict		
4	30	02	C/R All present Jdmt signed	156	228
3	17	03	Order for 5th Court of Appeals - clerk's Record		
4	1	04	~~[illegible]~~ Movant Birnbaum pro se and atty Fleming representing Π are present. Hearing conducted on Birnbaum's Motion to Recuse filed 9/30/03. Testimony presented. Both sides rest. Arguments presented. Motion to recuse is in all things denied. Hearing held of Π's Motion for Sanctions filed this date. Testimony presented. Both sides rest. Arguments presented. Ct finds based on the arguments, testimony, and pleadings that grounds for sanctions do exist and the Ct assesses said sanctions for Δ's violations of Rule 13 of the TRCP and/or Section 10.001 et seq TCPRC in the amount of $1,000 for actual damages and $124,770 for exemplary damages against Δ Birnbaum who is ordered to pay said same to Π. Π's atty is instructed to draft a proposed order for Judge [illegible] and submit a copy of same to Δ.		

2004

Exhibit (2nd page)

Complete & full access to cts

~~Sanctions are for conduct outside of~~

Our jurisprudence envisions finality of litigation after the parties have availed themselves of the remedies available under our laws

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

62885 × 2 = 125770

124770

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

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

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

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

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

12.
When in doubt -- PUNT

But this time, with Judge Chapman also assigned to hear the case I had filed against the lawyer who had started it all with his BEAVER dam case, and also assigned to the BEAVER dam case against me, and with Fleming laying the groundwork at this "motion to recuse Judge Banner" for more sanctions against me because of my suit against Fleming, and Judge Chapman threatening more sanctions against me, I decided I have but one choice, that they are after me, "To hell with the law, this man is rocking our boat, and has to be stopped, never mind the Constitution!"

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

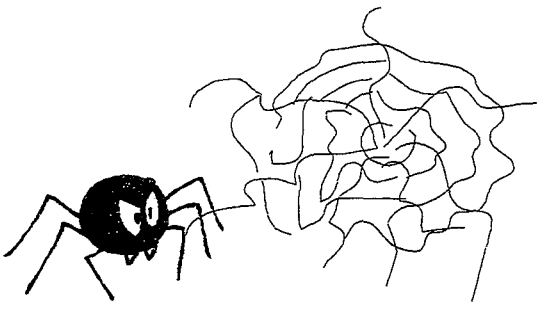
Judge Donald Jarvis has signed my non-suit against Fleming. Judge Chapman has not signed my non-suit against the beaver dam lawyer, nor the **$125,770 FINE** he pronounced on April 1, 2004.

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

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

Epilogue

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



CAUSE NO. 06-00857

UDO BIRNBAUM, *Plaintiff,*	§	IN THE DISTRICT COURT
v.	§	VAN ZANDT COUNTY, TEXAS
PAUL BANNER AND RON CHAPMAN, *Defendants.*	§	249TH JUDICIAL DISTRICT

DEFENDANTS' PLEA TO THE JURISDICTION

NOW COMES Defendants Judge Paul Banner and Judge Ron Chapman and file this Plea to the Jurisdiction. In support, Judges Banner and Chapman respectfully offer the following for consideration by this Court:

I. STATEMENT OF THE CASE

Defendant Judge Paul Banner sat by special assignment in the 294th District Court of Van Zandt County, Texas, in a case brought by the Law Offices of G. David Westfall, P.C., ("Westfall") against Plaintiff Udo Birnbaum ("Birnbaum") for unpaid legal services.[1] Not to be outdone, Birnbaum counter-claimed alleging fraud, violation of the DTPA, and civil RICO claims. Westfall had previously represented Birnbaum in a civil lawsuit brought against 294th District Court Judge Tommy Wallace and another state judge pursuant to federal RICO statute (18 U.S.C. §1964). That lawsuit, much like the instant action, accused the defendant judges of engaging in racketeering.

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[1] *See The Law Offices of G. David Westfall, P.C. v. Udo Birnbaum*, Cause No. 00-00619, 294th District Court, Van Zandt County, Texas.

After a hearing in the *Westfall* case, Judge Banner granted Westfall's motion for summary judgment concerning Birnbaums's fraud, DTPA, and RICO allegations. After a second hearing, Judge Banner granted Westfall's motion for sanctions and awarded damages in the amount of $62,885.00. Plaintiff then filed yet another harassing lawsuit (this time in federal court) against Judge Banner and individuals associated with Westfall, which was ultimately dismissed.[2]

On April 8, 2002, the suit for unpaid legal services proceeded to a trial by jury, resulting in final judgment in favor of Westfall.[3] The third party defendants to the suit filed a motion for sanctions which was granted in part and denied in part. Of course, Plaintiff appealed, but the Dallas Court of Appeals affirmed the judgment and orders of the trial court.[4] Plaintiff then filed a petition for review with the Texas Supreme Court, which was flatly denied on March 26, 2004.[5]

On April 1, 2004, Birnbaum's second motion to recuse Judge Banner came to be heard by Judge Chapman, as well as a motion for sanctions filed by Westfall and the individual defendants. Judge Chapman denied Plaintiff's motion to recuse and granted the

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[2]*See Udo Birnbaum v. Paul Banner, David Westfall, Christina Westfall, and Stefani (Westfall) Podvin*, Civil Action No. 6:04 CV 114, United States District Court for the Eastern District of Texas Tyler Division.

[3]*See* Exhibit B of Pl.'s Original Petition.

[4]*See Birnbaum v. The Law Offices of G. David Westfall*, 120 S.W.3d 470 (Tex. App.—Dallas 2003, pet. denied).

[5]*See Birnbaum v. The Law Offices of G. David Westfall*, 2004 Tex. LEXIS 268 (Tex. 2004).

motion for sanctions, and subsequently issued an order sanctioning Plaintiff for repeatedly filing frivolous motions and lawsuits.[6] This next harassing lawsuit followed shortly thereafter.

II. STANDARD OF REVIEW

Subject matter jurisdiction cannot be presumed and cannot be waived. *Cont'l Coffee Prods. v. Cazarez*, 937 S.W.2d 444, 449 n.2 (Tex. 1996). Whether a trial court has subject matter jurisdiction is a question of law for the court. *See Michael v. Travis County Hous. Auth.*, 995 S.W.2nd 909, 912 (Tex. App.—Austin 1999, *no pet.*). The plaintiff must allege facts affirmatively showing the trial court has subject-matter jurisdiction. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 446 (Tex. 1993); *Tex. Dep't of Criminal Justice v. Miller*, 48 S.W.3d 201, 203 (Tex. App.—Houston [1st Dist.] 1999), *rev'd on other grounds*, 51 S.W.3d 583, 589 (Tex. 2001)).

The plaintiff bears the burden of demonstrating the statute which waives the government's immunity from suit. *Tex. Dep't Criminal Justice v. Miller*, 51 S.W. 3d 583, 587 (Tex. 2001). Immunity from suit is properly raised through a plea to the jurisdiction. *Tex. Dep't of Transp. v. Jones*, 8 S.W.3d 636, 638 (Tex.1999). A plea to the jurisdiction challenges the court's authority to determine the subject matter of the controversy. *Axtell v. Univ. of Tex.*, 69 S.W.3d 261, 263 (Tex. App.—Austin 2002, *no pet.*). When reviewing a plea to the jurisdiction, a court should limit itself to the jurisdictional issue and avoid considering

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[6] *See* Exhibit A of Plaintiff's Original Petition.

the merits of the claims. *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 552 (Tex. 2000). Judicial immunity involves immunity from suit, not just immunity from liability. *Mireles v. Waco*, 502 U.S. 9, 11, 112 S.Ct. 286 (1991). Therefore, it makes no difference what specific causes of action are brought against a judge, as judicial immunity dictates that a judge *is immune from being sued at all. Mireles v. Waco*, 502 U.S. 9, 11, 112 S.Ct. 286, 288 (1991) (emphasis added). Most Texas opinions discussing judicial immunity do not address whether it involves immunity from suit or immunity from liability; the opinions simply assume the issue was properly raised as an affirmative defense. *See, e.g., Sw. Guar. Trust Co. v. Providence Trust Co.*, 970 S.W.2d 777, 782 (Tex. App.—Austin 1998, *pet. denied*).

III. ARGUMENT AND AUTHORITIES

The Court lacks subject matter jurisdiction over the controversy between Plaintiff and Defendants Judge Banner and Judge Chapman because they enjoy judicial immunity from suit for acts arising from the discharge of their duties as state district court judges. Judges have broad immunity through both common law, *Baker v. Story*, 621 S.W.2d 639, 644 (Civ. App.—San Antonio 1981, *writ ref'd n.r.e.*), and statute, *see* TEX. CIV. PRAC. & REM. CODE § 101.053(a). A judge is not liable when acting in the course of a judicial proceeding in which he has subject-matter jurisdiction and colorable jurisdiction over the person of the complainant, even if acting in bad faith or with malice. *Twilligear v. Carrell*, 148 S.W.3d 502, 504–05 (Tex. App.—Houston [14th Dist.] 2004, *pet. denied*); *Spencer v. City of Seagoville*, 700 S.W.2d 953, 957–58 (Tex. App.—Dallas 1985, *no writ*); *Tedford v.*

McWhorter, 373 S.W.2d 832, 836 (Civ. App.—Eastland 1963, *writ ref. n.r.e.*); *Morris v. Nowotny*, 323 S.W.2d 301, 304 (Civ. App.—Austin 1959, *writ ref. n.r.e.*). Jurisdiction is to be construed broadly for immunity purposes, focusing on whether the judge had the jurisdiction necessary to perform the act, not whether the judge's action was proper. *Guerrero v. Refugio County*, 946 S.W.2d 558, 572 (Tex.App.—Corpus Christi 1997, *no writ*), *overruled on other grounds*, *NME Hosps., Inc. v. Rennels*, 994 S.W.2d 142, 147 (Tex.1999); *Bradt v. West*, 892 S.W.2d 56, 68 (Tex. App.—Houston [1st Dist.] 1994, *writ denied.*). It is without question that Judge Banner had jurisdiction to adjudicate Plaintiff's original suit, and Judge Chapman had jurisdictional authority to hear the motion to recuse. Exhibit A (Affidavit of the Honorable Judge Paul Banner); Exhibit B (Affidavit of the Honorable Judge Ron Chapman).[7]

Judicial immunity shields judges and other persons acting in a judicial capacity from suit when a claim is based on actions they made while performing a judicial act in question, *Bradt,* 892 S.W.2d at 69; *see also Turner v. Pruitt*, 342 S.W.2d 422 (Tex. 1961) (holding a judge is immune whether act was judicial or ministerial). The court considers the following when determining whether judicial immunity applies to the judge's act: (1) whether the act is one normally performed by a judge, (2) whether the act occurred in the courtroom or an appropriate adjunct, such as the judge's chambers, (3) whether the controversy centered

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[7]Exhibit A (Affidavit of the Honorable Judge Paul Banner) and Exhibit B (Affidavit of the Honorable Judge Ron Chapman) are incorporated by reference as if fully stated herein and for all purposes.

around a case pending before the judge, and (4) whether the act arose out of a visit to the judge, in his or her judicial capacity. *Bradt*, 892 S.W.2d at 67. The factors are to be construed broadly in favor of immunity. Moreover, immunity may exist if *any* of the factors are present, *Id.* at 67 (stating "immunity may exist even if three of the four factors are not met"); *Garza v. Morales*, 923 S.W.2d 800, 802–03 (Tex. App.—Corpus Christi 1996, *no writ*), and are to be weighted according to the facts of the particular case. *Hawkins v. Walvoord*, 25 S.W.3d 882, 890 (Tex. App.—El Paso 2000, *pet. denied*).

Judges Paul Banner and Judge Ron Chapman are without question judicial officers of the state of Texas.[8] The actions complained of are, without question, judicial acts under *Bradt*. Although Plaintiff claims "there was nothing to adjudicate,"[9] he requested adjudication through his motion to recuse Judge Banner. When a judge denies a motion to recuse, they must request the presiding judge to assign another judge to hear the motion. TEX. R. CIV. P. 18a(d). The movant in a recusal motion is entitled to a hearing. *Id.* Judge Chapman's actions in hearing and ruling on the recusal motion occurred in a courtroom and were actions normally performed by him as a judge in his judicial capacity. Exhibit B. Plaintiff also complains that Judge Chapman's sanctions order was not proper.[10] Nevertheless, a judge hearing a motion to recuse may impose sanctions if "a motion to recuse is brought solely for the purpose of delay and without sufficient cause." TEX. R. CIV. P.

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[8]*See* Pl.'s Original Pet. at 1; Exhibit A; and Exhibit B.

[9]Pl.'s Original Pet. at 1, ¶ 2.

[10]Pl.'s Original Pet. at 3, ¶ 10.

18a(h). Judge Chapman found the motion to recuse was "groundless, vacuous, manufactured, and totally unsupported by any credible evidence" and was brought "to harass, intimidate and inconvenience." Plaintiff's Original Petition, Exhibit A at 3, ¶ ¶ 1, 4 (Order on Motions for Sanctions). Additionally, Judge Chapman found that Plaintiff has "a track record and history of filing lawsuits without merit against judges, attorneys, and other individuals in an attempt to gain tactical advantage in other ongoing litigation." *Id.* at 4, ¶ 11. Plaintiff cannot dispute the fact that an order for sanctions is within normal judicial activity, *see, e.g. Enterprise-Laredo Assocs. v. Hachar's Inc.*, 839 S.W.2d 822, 841 (Tex. App.—San Antonio 1992) (sanctions available if there is sufficient cause), and therefore Judge Chapman is protected by judicial immunity. The proper remedy, if Plaintiff desired to contest the denial of recusal and order for sanctions, was to appeal. *In re Union Pac. Res.*, 969 S.W.2d 427, 428–29 (Tex. 1998); TEX. R. CIV. P. 18a(f).

Plaintiff asserts Judge Banner's participation as a witness in the recusal motion, failure to protect Birnbaum during the recusal hearing, and failure to report the actions of Judge Chapman are actionable. This is utter non-sense. Judge Banner's actions are protected by judicial immunity. Immunity is possible if any of *Bradt* factors are present, *Bradt*, 892 S.W.2d at 67 (stating "immunity may exist even if three of the four factors are not met"); *Garza v. Morales*, 923 S.W.2d 800, 802–03 (Tex. App.—Corpus Christi 1996, *no writ*), and are to be weighed according to the facts of the particular case, *Hawkins v. Walvoord*, 25 S.W.3d 882, 890 (Tex. App.—El Paso 2000, *pet. denied*). All actions complained of in

regard to Judge Banner occurred in a courtroom and arose out of actions pending before him and are therefore actions protected by judicial immunity. Exhibit A.

Even if either Judge Banner or Judge Chapman acted in bad faith or with malicious intent, they are still protected by judicial immunity. *Guerrero*, 946 S.W.2d at 572. In this regard, the fact that it is alleged that Judges Banner and Chapman acted pursuant to "racketeering activity" is not sufficient to avoid absolute judicial immunity. *Mitchell v. McBryde*, 944 F.2d 229, 230 (5th Cir. 1991).

In regard to Judge Banner's alleged testimony, it is improper for a judge to voluntarily participate in a recusal hearing when he has a pecuniary interest in the outcome. *Blanchard v. Krueger*, 916 S.W.2d 15, 19 n.9 (Tex. App.—Houston [1st Dist.] 1995). However, Judge Banner had no pecuniary interest in the recusal hearing, or in any other court proceeding involving Plaintiff, and neither did Judge Chapman. Exhibit A; Exhibit B. All interactions between Judge Banner (and Judge Chapman for that matter) and Plaintiff arose out of Judge Banner's role as a judge, for which he is protected by judicial immunity. *Id.* The proper remedy to contest a denial of recusal and order of sanctions is appeal, and Plaintiff did in fact exercise that remedy. *In re Union Pac. Res.*, 969 S.W.2d at 428–29; TEX. R. CIV. P. 18a(f); *Birnbaum v. The Law Offices of G. David Westfall*, 120 S.W.3d 470 (Tex. App.—Dallas 2003, pet. denied). Thus, no legal basis exists for Plaintiff to sue either Judge Banner or Judge Chapman in connection with those proceedings.

The Court is without jurisdiction to hear the claims because the conduct complained of occurred while Judge Banner and Judge Chapman were discharging their duties as a district court judges. Exhibit A; Exhibit B. In this regard, Judge Banner and Judge Chapman were carrying out their judicial obligations and are therefore immune from suit as a matter of law. Thus, the Court should grant Judge Banner and Judge Chapman's plea to the jurisdiction and dismiss all claims asserted against them by Plaintiff.

IV. PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendants Judge Banner and Judge Chapman respectfully pray that this Court grant their Plea to the Jurisdiction thereby dismissing all claims against them asserted by Plaintiff and dismiss this action with prejudice. Judges Banner and Chapman further request all other relief, both at law and in equity, to which they may be justly entitled.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

C. ANDREW WEBER
First Assistant Attorney General

DAVID S. MORALES
Deputy Attorney General for Civil Litigation

ROBERT B. O'KEEFE
Chief, General Litigation Division

JASON T. CONTRERAS
Texas Bar No. 24043967
General Litigation Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 463-2120
(512) 320-0667 FAX

Attorneys for Judge Paul Banner and Judge Ron Chapman

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been sent via Certified Mail Return Receipt Requested and Regular Mail on July 14, 2009:

Udo Birnbaum
540 VZ CR 2916
Eustace, TX 75124

JASON T. CONTRERAS
Assistant Attorney General

CAUSE NO. 06-00857

UDO BIRNBAUM, *Plaintiff,*	§	IN THE DISTRICT COURT
v.	§	VAN ZANDT COUNTY, TEXAS
PAUL BANNER AND RON CHAPMAN, *Defendants.*	§	249TH JUDICIAL DISTRICT

AFFIDAVIT OF THE HONORABLE JUDGE PAUL BANNER

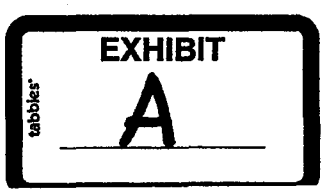
THE STATE OF TEXAS §
§
COUNTY OF VAN ZANDT §

BEFORE ME, the undersigned authority, on this day personally appeared The Honorable Judge Paul Banner, who being first duly sworn by me, says and deposes as follows:

1. My name is Paul Banner. I am over the age of twenty-one (21). I am competent to make this affidavit and have personal knowledge of all the facts stated herein, which are true and correct. I am in all respects qualified to make this affidavit.

2. I had previously served by special assignment as the presiding judge over the following case: *The Law Office of G. David Westfall, P.C. v. Udo Birnbaum*; Cause No.00-00619, 294th Judicial District Court of Van Zandt County, Texas; In the 294th Judicial District Court, Van Zandt County, Texas (the "underlying lawsuit"). My rulings and orders made in the underlying lawsuit were ones that I normally make and perform in my capacity as a judge, including the Final Judgment issued on July 30, 2002.

3. The underlying case was filed in the district court of Van Zandt County, Texas and I had subject-matter jurisdiction over the rulings and orders I made in that case, including the



Final Judgment issued on July 30, 2002.

4. I have had no involvement or interaction, personal or otherwise, with Udo Birnbaum with the exception of 1) serving as a judge in the underlying case, 2) being the subject of Birnbaum's motions to recuse in the underlying case, and 3) being sued by Mr. Birnbaum.

5. I had no pecuniary interest in any hearing or court proceeding involving Udo Birnbaum, including but not limited to the recusal hearing or final judgment entered in the following case: *The Law Office of G. David Westfall, P.C. v. Udo Birnbaum*; Cause No.00-00619, 294th Judicial District Court of Van Zandt County, Texas.

Further affiant sayeth not.

EXECUTED this 24 day of JUNE 2009.

PAUL BANNER

SUBSCRIBED and SWORN TO BEFORE ME, the undersigned authority, on this 24 day of June 2009, to certify which, witness my hand and seal of office.

DEANNA TOWNSEND
State of Texas
My Commission Expires
07-20-2010
NOTARY PUBLIC

Notary Public In and for the State of Texas

CAUSE NO. 06-00857

UDO BIRNBAUM, *Plaintiff,*	§	IN THE DISTRICT COURT
v.	§	VAN ZANDT COUNTY, TEXAS
PAUL BANNER AND RON CHAPMAN, *Defendants.*	§	249TH JUDICIAL DISTRICT

AFFIDAVIT OF THE HONORABLE JUDGE RON CHAPMAN

THE STATE OF TEXAS §
§
COUNTY OF VAN ZANDT §

BEFORE ME, the undersigned authority, on this day personally appeared The Honorable Judge Ron Chapman, who being first duly sworn by me, says and deposes as follows:

1. My name is Ron Chapman. I am over the age of twenty-one (21). I am competent to make this affidavit and have personal knowledge of all the facts stated herein, which are true and correct. I am in all respects qualified to make this affidavit.

2. I served as a judge presiding over the 294th Judicial District Court of Van Zandt County, Texas in a recusal hearing in the following case: *The Law Office of G. David Westfall, P.C. v. Udo Birnbaum*; Cause No.00-00619; In the 294th Judicial District Court, Van Zandt County, Texas (the "underlying lawsuit"). My rulings and orders made in the underlying lawsuit were ones that I normally make and perform in my role as a judge, including the order on motions for sanctions issued on October 24, 2006. I issued this order on motions for sanctions either in the courtroom or in the appropriate adjunct.

3. The underlying lawsuit was filed in the district court of Van Zandt County, Texas and I

EXHIBIT
B

had subject-matter jurisdiction over the rulings and orders I made in that case, including the order on motions for sanctions issued on October 24, 2006. Accordingly, I had the jurisdiction necessary to issue rulings and orders in the underlying lawsuit.

4. I have had no involvement or interaction, personal or otherwise, with Udo Birnbaum with the exception of 1) serving as presiding judge in the recusal hearing of the underlying lawsuit and, 2) being sued by Mr. Birnbaum.

5. I had no pecuniary interest in any hearing or court proceeding involving Udo Birnbaum, including but not limited to the recusal hearing in the following case: *The Law Office of G. David Westfall, P.C. v. Udo Birnbaum*; Cause No.00-00619, 294th Judicial District Court of Van Zandt County, Texas.

Further affiant sayeth not.

EXECUTED this 10th day of July, 2009.

Ron Chapman

RON CHAPMAN

SUBSCRIBED and SWORN TO BEFORE ME, the undersigned authority, on this 10th day of July, 2009, to certify which, witness my hand and seal of office.

AMY DE'ANN BASS
Notary Public, State of Texas
My Commission Expires
November 27, 2011

Notary Public In and for the State of Texas

CAUSE NO. 06-00857

UDO BIRNBAUM, *Plaintiff*,	§	IN THE DISTRICT COURT
v.	§	VAN ZANDT COUNTY, TEXAS
PAUL BANNER AND RON CHAPMAN, *Defendants*.	§	249TH JUDICIAL DISTRICT

ORDER GRANTING DEFENDANTS' PLEA TO THE JURISDICTION

ON THIS DAY came to be considered Defendant Judge Paul Banner and Defendant Ron Chapman's Plea to the Jurisdiction. After careful consideration of Defendants' plea, and any applicable response thereto by Plaintiff, this court is of the opinion that Defendants' plea is with merit and is therefore **GRANTED**.

ACCORDINGLY, it is **ORDERED, ADJUDGED AND DECREED** that all claims asserted by Plaintiff against Judge Banner and Judge Chapman in this action are hereby dismissed with prejudice thereby dismissing this action in its entirety with prejudice.

SIGNED on this _____ day of _____, 2009.

_____
JUDGE PRESIDING

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

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

Honorable Ron Chapman ,

Senior Judge of The 5th Court Of Appeals
To The 294th District Court of Van Zandt County, Texas.

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

CONDITION(S) OF ASSIGNMENT:

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

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

ORDERED this 3 day of Oct, 20 03

John Ovard, Presiding Judge
First Administrative Judicial Region

ATTEST:

Administrative Assistant

Assgn# 14797

65

VS. No.

Date of Orders			ORDERS OF COURT CONTINUED	Minute Book	
Month	Day	Year		Vol.	Page
4	8	02	C/R All present; Jury selected, sworn in [illegible]; Open Stmts, Evid Recess		
4	10	02	C/R all present; Evid contd		
4	11	02	C/R All present; Evid contd Jury Verdict		
7	30	02	C/R all present Jdmt signed	156	228
3	17	03	Order for 5th Court of Appeals - clerks Record		
4	1	04	Movant Birnbaum pro se and atty Fleming representing π are present. Hearing conducted on Birnbaum's Motion to Recuse filed 9/30/03. Testimony presented. Both sides rest. Arguments presented. Motion to recuse is in all things denied. Hearing held on π's Motion for Sanctions filed this date. Testimony presented. Both sides rest. Arguments presented. Ct finds, based on the arguments, testimony, and pleadings that grounds for sanctions do exist and the Ct assesses said sanctions for Δ's violation of Rule 13 of the TRCP and/or Section 10.001 et seq. TCPRC in the amount of $1,000- for actual damages and $124,770- for exemplary damages against Δ Birnbaum who is Ordered to pay said sums to π. π's atty is instructed to draft a proposed Order for Judge Rallofson and submit a copy of same to Δ.		

Complete & full access to the

~~Sections are for conduct outside of~~

Our jurisprudence favors finality of litigation after the parties have ~~had~~ availed themselves of the remedies ~~of~~ available under our laws

Now
You have the keys or whether there are any further proceedings in this case in the future. Please be aware that any further action might result in further remedies.

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Exhibit
2

CIVIL DOCKET

CASE NO. 00-00619

BARNES, DALLAS FORM CD

NUMBER OF CASE	STYLE OF CASE	ATTORNEYS	KIND OF ACTION	DATE OF FILING Month	Day	Year
00-00619	The Law Offices of G. David Westfall	G. David Westfall, Plaintiff.	dvbt	09	21	00
	VS.					
FEE BOOK Vol. / Page	Udo Birnbaum			Jury Demanded by		
		Defendant.		Jury Fee, $		
				Paid by		

DATE OF ORDERS Mo.	Day	Year	ORDERS OF COURT	Minute Book Vol.	Page	PROCESS
1	26	2001	Judge Baron Appointed			
6	20	01	PT - PPR			
9	7	01	X Def's M/Summary Jdmt.			
10	1	01	all parties present. Evidence presentation Δ's Motion to Recuse. Both sides rest & close. Arguments presented. Δ's motion to recuse is insufficient at law and is untimely, and if it is not, Δ's evidence fails to establish any grounds in its favor, and therefore, the Ct. denies the motion on its merits. Ct. takes issue of Sanctioning Movant Birnbaum under advisement			
			Judge Ron Chapman			

Exhibit (1st page)

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

Pursuant to Article 74.056, Texas Government Code, I hearby assign the:

Honorable Ron Chapman ,

Senior Judge of The 5th Court Of Appeals

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

This assignment is for the period of 1 days beginning 2/13/04, providing that the assignment shall continue after the specified period of time as may be necessary for the assigned Judge to complete trial of any case or cases begun during this period, and to pass on motions for new trial and all other matters growing out of cases tried by the Judge herein assigned during this period, or the undersigned presiding judge has terminated this assignment in writing, whichever occurs first.

CONDITION(S) OF ASSIGNMENT [IF ANY]:

To hear Cause No. 95-00063; Jones vs. Birnbaum and Cause No. 0300460; Birnbaum vs. Ray.

the 1995 Beaver Dam case

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

ORDERED this 13 day of Jan, 2004

2004

John Ovard, Presiding Judge
First Administrative Judicial Region

ATTEST:

Administrative Assistant

Assign# 15090

Exhibit 4

RAY & ELLIOTT

ATTORNEYS AT LAW
A Professional Corporation
Established in 1974

RICHARD L. RAY
JOEL C. ELLIOTT
~~~
VICTORIA RAY THATCHER

Canton: 903. 567. 2051
Dallas: 214. 954.0200
Fax: 903. 567. 6998
rayelliottfirm@aol.com


March 31, 2008

Hon. Ron Chapman
108 Ellen Lane
Trinidad, Texas 75163

RE: Cause No. 95-0063;
*William B. Jones vs. Udo Birnbaum*

Dear Judge Chapman:

Udo Birnbaum has sued me again under RICO and Judge Andrew Kupper has been assigned to hear the matter. In the midst of hearing matters in this new RICO case, Judge Kupper indicated that the old *Jones vs. Birnbaum* case, Cause No. 95-0063, did not have a final judgment in it (this was the jury trial over the beaver dam).

As I recall, you entered judgment in 2006-2007.

I enclose a copy of the docket sheet indicating your pronouncement of judgment from the bench on July 19, 2004 and my letter of July 20, 2004, sending the proposed judgment to you in accordance with your instructions. Unfortunately, I can not find my copy of the entered judgment, although I do recall it. If you retained a copy, then the clerk needs it.

In the alternative, I have again enclosed multiple copies of my proposed judgment in accordance with your docket entry. If you have any questions, please do not hesitate to contact me.

Sincerely,

Richard L. Ray

RLR/pl
Enclosures
cc: Judge Andrew Kupper (with enclosures)
Udo Birnbaum (with enclosures)
Ray & Elliott, P.C. (with enclosures)
~~~

RAY & ELLIOTT

ATTORNEYS AT LAW
A PROFESSIONAL CORPORATION

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

RICHARD L. RAY
JOEL C. ELLIOTT

Telephone: 903-567-2051
Facsimile: 903-567-6998
rayelliottfirm@aol.com

July 20, 2004

Judge Ron Chapman
P.O. Box 191167
Dallas, Texas 75219

Re: Cause No.95-63
William B. Jones vs. Udo Birnbaum

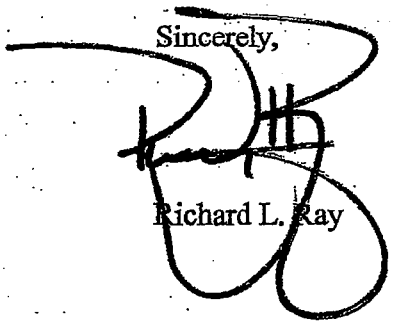
Dear Judge Chapman:

Please find herewith enclosed the Judgment which I have prepared in the above referenced cause.

Please sign the Judgment and return to me in the self-addressed, self-stamped envelope, enclosed for your convenience. Upon receipt, we will file the same with the clerk's office.

If you have questions, do not hesitate to contact my office.

Sincerely,



Richard L. Ray

RLR/pl
Enclosure

CAUSE NO. 95-63

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

JUDGMENT

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

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

It is therefore adjudged that:

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

SIGNED on this the _____ day of July, 2004.

JUDGE RON CHAPMAN

903-87-6998

Day of Orders	Year	ORDERS OF COURT CONTINUED	Minute Book Vol.	Minute Book Page
29	98	Jury charged; Args of Counsel. Jury retired at 11:10 AM this date. Verdict at 2:10 PM as reflected in Cts Charge.	119	188
28	98	Hrng (?) held all requisites for Setting 10.6.98 at 9:00 AM		
-19	98	All parties and attys present. Ct notes no motion to recuse in the file. Ct has been informed that Judge John Doak, presiding judge of the 1st Administrative Judicial Region, has overruled a motion to Recuse Judge Ray Chapman, due to the fact that said motion is insufficient at law and fails to properly request Judge Chapman's Recusal, or, in the alternative, is denied on its merits due to Δ Bernhauer's abuse of the judicial process by filing repeated frivolous motions to Recuse in this		

NUMBER OF CASE	NAMES OF PARTIES	ATTORNEYS	KIND OF ACTION AND PARTY DEMANDING JURY
95-63	Wm. B. Jones	PLTF.	
	VS		
FEE BOOK VOL. / PAGE	Ulo Birnbaum	DEFT.	

DATE OF FI... MONTH ...
JURY FEE $...
PAID IN ...
JURY NO. ...

DATE OF ORDERS MONTH	DAY	YEAR	ORDERS OF COURT	MINUTE BOOK VOL.	PAGE	PROCESS
7	19	04	(cont'd.) case and having twice been previously sanctioned by this Court for such actions Ct. notes Π's request to abandon any claims for atty's fees. Ct finds that Jury Verdict rendered in May of 1993 requires a permanent injunction to be entered in this case. Π to prepare Written Order for Ct's signature and provides copy to Δ. Judge Ron Chapman			

FILED FOR RECORD
2009 MAR -3 PM 4:20
KAREN WILSON
DISTRICT CLERK
VAN ZANDT COUNTY, TEXAS
BY _____ DEP.

CAUSE NO. 95-63

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

JUDGMENT

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

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

It is therefore adjudged that:

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

SIGNED on this the 31st day of July, 2004.

JUDGE RON CHAPMAN

County of Van Zandt

KAREN WILSON
294th Judicial District Clerk
121 East Dallas, Room 302
Canton, Texas 75103

August 26th, 2009

UDO BIRNBAUM
540 VZ CR 2916
EUSTACE, TX 75124

JASON T. CONTRERAS
P.O. BOX 12548,
CAPITAL STATION
AUSTIN, TX 78711-2548

RE: Cause No. 06-00857
STYLED: UDO BIRNBAUM vs. PAUL BANNER AND RON CHAPMAN

In accordance with the provisions of Rule 306A of the Texas Rules of Court, you are hereby notified of the entry of the following:

ORDER GRANTING DEFENDANTS' PLEA TO THE JURISDICTION

Said Final Orders were signed on the **25th of August , 2009**, and filed in this office on the **25th day of August , 2009.**

Karen Wilson, District Clerk
Van Zandt County, Texas

BY: _____
Deputy Clerk