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CAUSE NO. 00-00619

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

* * * * *

EXHIBITS TO THE
VIDEOTAPED DEPOSITION OF DAVID WESTFALL

* * * * *

COPY

July 3, 2001

Canton, Texas

April L. Struck

E X H I B I T I N D E X

VIDEOTAPED DEPOSITION OF DAVID WESTFALL
Taken on July 3, 2001

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E X H I B I T I N D E X

VIDEOTAPED DEPOSITION OF DAVID WESTFALL
Taken on July 3, 2001

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

VS:

UDO BIRNBAUM

No.: 00-00619, 294TH DISTRICT COURT

DEPOSITIONS JULY 3, 2001 10:00 A.M.

**COUNTY COURTROOM
VAN ZANDT COURTHOUSE, CANTON, TEXAS**

Deposition of Udo Birnbaum

Deposition of The Law Offices of G. David Westfall

Deposition of G. David Westfall

Examination by the parties:

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DEPOSITIONS JULY 3, 2001 10:00 A.M.

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

Vs.

Udo Birnbaum

Cause 00-619, 294th District Court

Birnbaum, in answers and examination, hereby makes the following documents a part of this deposition:

- 1. Udo Birnbaum's Third Party Civil RICO Claim**
- 2. Fifth Circuit Pattern Jury Instructions**
- 3. May 5, 1999 Contract**
- 4. May 3, 1999 Contract**
- 5. July 31, 2000 "billing statement"**
- 6. Nov. 11, 1999 fax**
- 7. Nov. 17, 1999 fax**
- 8. Jan. 21, 2000 letter**
- 9. Mar. 3, 2000 letter**
- 10. Mar. 17, 2001 "Motion to Withdraw"**
- 11. March 20, 2000 letter**
- 12. September 20, 2000 Law Office Pleading**
- 13. First Interrogatory to Law Office**
- 14. "Billing Statement December 31, 2000"**
- 15. Proceedings on September 20, 2000**
- 16. Defendant's Answer, Counterclaim, and Cross-Complaint**
- 17. "Final Judgment"**
- 18. "Judgment"**
- 19. "Order" Sept. 27, 1999**
- 20. "Exhibit 2"**
- 21. "Order" July 26, 2000**
- 22. "Order" Mar. 26, 2001**

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

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

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

INTRODUCTION

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

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

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

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

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

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

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

THE ENTERPRISE

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

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

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

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

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

THE PURPOSE OF THE SCHEME

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

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

Partnership", allowing him to continue the ongoing pattern of racketeering.

THE SCHEME

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

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

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

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

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

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

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

PATTERN OF RACKETEERING ACTIVITIES

The pattern upon Udo Birnbaum:

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

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

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

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

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

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

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

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

The pattern upon Michael Collins:

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

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

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

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

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

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

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

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

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

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

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

The pattern upon Kathy Young:

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

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

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

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

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

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

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

The pattern upon Jeryl Cockerham

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

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

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

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

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

The pattern upon Mathew Chitty:

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

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

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

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

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

The pattern upon Glen Cox:

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

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

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

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

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

The pattern upon Margie Phelps:

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

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

Summary of the Pattern of Racketeering

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

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

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

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

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

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

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

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

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

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

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

COUNT TWO--RICO

For violation of 18 U.S.C. §1962(a)

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

G. David Westfall, Christina Westfall, and Stefani Podvin

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

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

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

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

81. At all relevant times, the above-named derived income derived from a "pattern of racketeering activity" within the meaning of RICO, 18 U.S.C. § 1961(5).

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

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

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

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

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

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

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

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

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

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

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

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

Summary

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

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

PRAYER FOR RELIEF

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

8. RICO

8.1

RICO CLAIMS

The plaintiff has brought claims against each defendant for alleged violations of the Racketeer Influenced and Corrupt Organizations Act, commonly referred to as RICO. Specifically, the plaintiff claims that each defendant violated Section 1962 [(a) (b) (c) or (d)] of RICO.

The plaintiff must establish by a preponderance of the evidence every element of a RICO claim. You should consider each and every element of a RICO cause of action only in the precise way that I will define them in these instructions. You must avoid confusing any of the elements of a RICO claim with your prior conceptions of the meaning of the terms that are used to describe the elements of a RICO claim.

SECTION 1962(a)

I. The plaintiff has alleged that each defendant violated Section 1962(a) of the RICO Act. To establish that a defendant violated Section 1962(a), the plaintiff must prove by a preponderance of the evidence each of the following four elements:

1. That there was an "enterprise";
2. That the enterprise engaged in or had some effect "on interstate commerce";
3. That the defendant derived income, directly or indirectly, from a "pattern of racketeering activity"; and
4. That some part of that income was used in acquiring an interest in or operating the enterprise.

A "person" under the law includes but is not limited to any person or entity that is capable of holding a legal or beneficial interest in property. A corporation is a legal entity that, like a person, is capable of holding a legal or beneficial interest in property.

The term "enterprise" includes any individual, partnership, corporation, association, or other legal entity. An enterprise "affects interstate or foreign commerce" if the enterprise either engages in, or has an effect on commerce between the states or between the states and foreign countries.

A "racketeering activity" means an act in violation of [(the federal mail fraud statute) (the federal wire fraud statute) (securities fraud statutes).] You will be instructed on the law pertaining to this (these) statute(s) to guide you in determining whether the plaintiff proved by a preponderance of the evidence that a defendant committed one or more violations of these statutes. A "racketeering activity" may also be referred to as a "predicate offense".

A "pattern of racketeering activity" requires that the plaintiff prove that a defendant committed at least two acts of "racketeering activity" within ten years of each other [and that both of the acts occurred after October 15, 1970.] The proof of two or more predicate acts does not in and of itself establish a "pattern" under RICO. The two acts need not be of the same kind. For example, the acts may be one act of mail fraud and one act of wire fraud. However, you must find by a preponderance of the evidence that the two acts occurred within the time specified and that each was connected with the other by some common scheme, plan or motive so as to constitute a "pattern". A series of wholly separate, isolated or disconnected acts of racketeering activity does not constitute a pattern.

In other words, two or more otherwise unrelated acts of "racketeering activity" do not constitute a "pattern" of racketeering activity under RICO unless the acts all relate to a common scheme by the defendant to continually conduct the affairs of the alleged enterprise for illicit personal benefit, whether monetary or otherwise, for himself or for another, by committing the predicate offenses.

As I instructed you, "racketeering activity" means an act in violation of [the mail fraud and/or wire fraud and/or securities fraud statutes.] However you may not consider just any racketeering act allegedly committed by a defendant in violation of one of these statutes as bearing on the question of whether a defendant has committed two

or more predicate offenses as a pattern of racketeering activity. In making this determination, you are to consider only those specific racketeering acts alleged by the plaintiff against a particular defendant. Furthermore, you cannot find that the defendant has engaged in a "pattern of racketeering activity" unless you unanimously agree to which of the alleged predicate offenses, if any, make up the pattern. Thus, it would not be sufficient if some of you should find that a defendant committed a violation of two or more predicate offenses under one particular statute as a pattern and the rest of you should find that a defendant committed a violation of two or more predicate acts under another statute as a pattern. In other words, you may not find that the defendant has engaged in a pattern of racketeering activity unless you [1] find a "pattern" of predicate offenses and [2] find that the plaintiff has proved by a preponderance of the evidence that a defendant committed each of the two or more predicate offenses that you find are necessary to make up the pattern.

You should note that the pattern must be one in which the defendant has participated as a "principal." Thus in order to satisfy the second element, the plaintiff must prove the defendant was a "principal" by showing by a preponderance of the evidence:

1. That the defendant knowingly and willfully committed, or knowingly and willfully aided and abetted in the commission of two or more alleged predicate offenses that constitute the alleged pattern of racketeering activity, and
2. That the defendant knowingly and willfully received income derived, directly or indirectly, from that alleged pattern of racketeering activity.

The word "knowingly," as that term has been used in these instructions, means that the action was done voluntarily and intentionally and not because of mistake or accident.

The word "willfully," as that term has been used in these instructions, means that the action was committed voluntarily and purposely, with the specific intent to do something the law forbids. The action must be done with a bad purpose: either to disobey or disregard the law.

The plaintiff has alleged that each of the defendants has committed two or more predicate acts including violations of the mail fraud and wire fraud statutes. It is your function to decide whether the plaintiff has proved by a preponderance of the evidence as to each defendant whether that defendant violated either or both of those statutes on one or more occasions, if at all. To establish that mail fraud has been committed, the plaintiff must prove each of the following by a preponderance of the evidence as to each defendant so charged:

1. Some person or persons willfully and knowingly devised a scheme or artifice to defraud, or a scheme for obtaining money or property by means of false pretenses, representations or promises, and
2. Some person or persons used the United States Postal Service by mailing, or by causing to be mailed, some matter or thing for the purpose of executing the scheme to defraud.

To act with "intent to defraud" means to act knowingly and with the specific intent to deceive. The words "scheme" and "artifice" in the mail fraud statute include any plan or course of action intended to deceive others, and to obtain property by false or fraudulent pretenses, representations, or promises, from the persons so deceived.

A statement or representation is "false" or "fraudulent" within the meaning of the mail fraud statute if it relates to a material fact and is known to be untrue or is made with reckless indifference as to its truth or falsity, and is made or caused to be made with intent to defraud. A statement or representation may also be "false" or "fraudulent" if it constitutes a half truth, or effectively conceals a material fact, with intent to defraud. A material fact is a fact that would be important to a reasonable person in deciding whether to engage in a particular transaction.

Good faith constitutes a complete defense to mail fraud. Good faith means the actor had a genuine belief that the information which was sent or given was true.

The plaintiff must prove by a preponderance of the evidence that one or more of the defendants knowingly and willfully devised or intended to devise a scheme to defraud which was substantially the same as the one alleged by the plaintiff and that the use of the United States Mail was closely related to the scheme in that one or more of the defendants either mailed something or caused it to be mailed in an attempt to execute or carry out the scheme. One causes the mails to be used if he does an act with knowledge that the use of the mails will follow in the ordinary course of business, or if he can reasonably foresee such use.

To establish that wire fraud has been committed, the plaintiff must prove by a preponderance of the evidence that the defendant used the telephone (telegraph) for the purpose of executing the scheme to defraud.

To establish wire fraud, it must be found that when the defendant performed an act, he knew, or reasonably could foresee, that the telephone or telegraph would be used to further a scheme or artifice to defraud.

With respect to the fourth element of Section 1962(a) of the RICO Act—use of income to acquire an interest in, establish or operate an enterprise—you must decide whether a defendant, directly or indirectly, used any part of the income derived from a pattern of racketeering activity to acquire an interest in, to establish, or to operate the alleged enterprise. The plaintiff must prove by a preponderance of the evidence that a defendant, or any of them, invested income in a specific enterprise and that income was acquired through the scheme in which they illegally used the mails (telephone) with respect to that particular alleged enterprise.

The plaintiff claims that each of the following is an enterprise which affects interstate or foreign commerce, and that each defendant participated in each alleged enterprise through a separate and distinct pattern of racketeering activity:

[Describe enterprise allegations here]

SECTION 1962(b)

II. The plaintiff also claims that the defendants have violated Section 1962(b) of RICO. To establish a violation of Section 1962(b), the plaintiff must prove by a preponderance of the evidence each one of the following four elements:

1. That an enterprise existed;
2. That the enterprise engaged in or had some effect upon interstate or foreign commerce;
3. That the defendant engaged in a pattern of racketeering activity; and
4. That through the pattern of racketeering activity the defendant acquired or maintained an interest in, or controlled the alleged enterprise.

[I have already instructed you about the first three elements of Section (b) in the previous discussion of Section (a). If you find that the alleged enterprise existed and engaged in or had some effect upon interstate or foreign commerce, and that the defendant engaged in a pattern of racketeering activity, then you must consider the fourth element.]

This fourth element that plaintiff must prove by a preponderance of the evidence is that the defendants, or any of them, through the pattern of racketeering activity, acquired or maintained an interest in, or control of one or more of the alleged enterprises. To find that the plaintiff established this fourth element, you must find by a preponderance of the evidence not only that the defendants, or any of them, had some interest in or control over one or more of the alleged enterprises, but also that this interest or control was associated with or connected to the pattern of racketeering activity.

SECTION 1962(c)

III. The plaintiff also has alleged that defendants have violated Section 1962(c) of RICO. To establish that the defendant has violated Section 1962(c), the plaintiff must prove each of the following five elements by a preponderance of the evidence:

1. That an "enterprise" existed; (footnote 31)
2. That the enterprise engaged in, or had some effect upon, interstate or foreign commerce;
3. That the defendant was employed by or associated with the alleged enterprise;
4. That the defendant knowingly and willfully conducted or participated, directly or indirectly, in the conduct of the affairs of the alleged enterprise; and
5. That the defendant did so knowingly and willfully through a pattern of racketeering activity.

"Employed by or associated with" means some minimal association with the alleged enterprise. The defendant must know something about the alleged enterprise's activities as they relate to the racketeering activity.

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

1. That the defendant participated in the operation or management of the enterprise itself in such a way, directly or indirectly, as to have played some part in directing the affairs of the enterprise. (footnote 32)
2. That the defendant in fact engaged in the pattern of racketeering activity as the plaintiff claims;
3. That the defendant's association with or employment by the enterprise facilitated his commission of the racketeering acts; and
4. That the commission of these predicate acts had some direct or indirect effect on the alleged enterprise.

A person does not violate the law by merely associating with or being employed by an otherwise lawful enterprise the affairs of which are being conducted by others through a pattern of racketeering activity in which he is not personally engaged.

SECTION 1962(d)

IV. Plaintiff also claims that the defendants violated Section 1962(d) of RICO because the defendants agreed or conspired to violate the RICO law.

A "conspiracy" in this sense is a combination or agreement of two or more persons to join together to accomplish an offense which would be in violation of Section 1962(a), (b), and/or (c) under the law that I have given you with respect to those sections.

To establish a violation of Section 1962(d), the plaintiff must prove by a preponderance of the evidence:

1. That two or more persons in some way or manner came to a mutual understanding to attempt to accomplish a common and unlawful plan, that is that while being employed by or associated with an enterprise, they engaged in activities which affected interstate or foreign commerce, or conducted the affairs of the alleged enterprise through a pattern of racketeering activity, in the manner charged; and
2. That the defendant knowingly and willfully became a member of a conspiracy by objectively indicating, through his words or actions, his agreement to conduct or participate, directly or indirectly, in the conduct of the affairs of an enterprise through a pattern of racketeering activity; and

3. That at least one of the conspirators committed at least one overt act during the existence of a conspiracy in an effort to accomplish some object or purpose of the conspiracy.

The definitions and instructions that I gave to you earlier as to "enterprise," "racketeering activity," "pattern of racketeering activity," "conduct through a pattern of racketeering activity" and "engaged in, or the activities of which affect, interstate or foreign commerce" apply here.

In regard to the first element of the claim of conspiracy, the evidence in the case need not show that the alleged members of the conspiracy entered into any express or formal agreement, or that they directly stated between themselves the details of the scheme and its object or purpose or the precise means by which the object or purpose was to be accomplished. Similarly, the evidence in the case need not establish that all of the means or methods alleged were in fact set forth in the indictment were in fact agreed upon to carry out the alleged conspiracy, or that all of the means or methods which were agreed upon were actually used or put into operation. The plaintiff is not required to prove that all of the persons charged with being members of the conspiracy were such or that the alleged conspirators actually succeeded in accomplishing their unlawful objectives.

On the other hand, it is not enough if the evidence shows only that the alleged conspirators agreed to commit the acts of racketeering alleged by the plaintiff, without more, or that they agreed merely to participate in the affairs of the same alleged enterprise. Instead, the plaintiff must prove by a preponderance of the evidence that the alleged conspirators agreed to conduct or participate in the conduct of the affairs of the alleged enterprise and that they further agreed that their individual participations would be through two or more racketeering acts in furtherance of the affairs of the alleged enterprise. It does not matter that the alleged conspirators participated in the conduct of the affairs of the alleged enterprise through different, dissimilar or otherwise unrelated acts of racketeering activity, so long as the alleged racketeering acts would, if they were actually committed, create a "pattern of racketeering activity" as I defined that phrase to you.

As to the second element of the alleged conspiracy violation—knowing and willful membership in the conspiracy—the plaintiff must prove by a preponderance of the evidence:

1. That the defendant knew that the basic object of the alleged conspiracy was conducting the alleged enterprise through a pattern of racketeering activity;
2. That the defendant knowingly and willfully agreed to personally commit, or aid and abet the commission of at least two acts of racketeering as a "pattern of racketeering activity" as I have defined it; and
3. That the defendant knowingly and willfully agreed to conduct or participate in the conduct of the affairs of the alleged enterprise through this pattern of racketeering activity.

One may become a member of a conspiracy without full knowledge of all of the details of the unlawful scheme or without knowledge of the names and identities of all of the other alleged conspirators. If the plaintiff proves by a preponderance of the evidence that the particular defendant has knowingly and willfully joined the alleged conspiracy under the three standards I have just set forth, it does not matter that the defendant may not have participated in the earlier stages of the alleged conspiracy or scheme.

However, mere presence at the scene of some transaction or event, or mere similarity of conduct among various persons and the fact that they may have associated with each other, and may have assembled together and discussed common aims and interests, does not necessarily prove the existence of a conspiracy. Also, a person who has no knowledge of a conspiracy, but who happens to act in a way which advances some object or purpose of a conspiracy, does not thereby become a conspirator.

The plaintiff need not prove that the defendant actually committed any of the acts that he may have agreed to commit in order to establish his membership in the conspiracy. You may consider only those racketeering acts alleged against the particular defendant by the plaintiff in determining whether that defendant has agreed to commit two acts of racketeering activity as a "pattern of racketeering activity." [These alleged racketeering acts are outlined as to each defendant on pages ___ of these instructions.]

To establish the third element, the plaintiff must prove by a preponderance of the evidence that at least one of the alleged conspirators committed at least one "overt act" during the existence of the alleged conspiracy. An "overt act" is a transaction or event, even one which may be entirely legal and innocent when considered alone, but which is knowingly committed by a conspirator in an effort to accomplish some object of the conspiracy. However, in accordance with my instructions during the trial, you may not consider any evidence of any alleged wrongful act, other than the alleged wrongful act which the plaintiff contends is a specific violation, as in any way bearing on the character of any defendant or as an indication that any defendant may have a propensity to commit any of the offenses charged.

In your consideration of this conspiracy claim, you should first determine whether the alleged conspiracy existed. If you conclude that a conspiracy did exist as alleged, you should next determine whether or not the defendant under consideration willfully became a member of that conspiracy.

In determining whether there was a conspiracy you may consider all the evidence in the case. If you find that there was a conspiracy then you may attribute the statements or acts of the _____, [insert names of co-conspirators] to the defendant. If you find that there was no conspiracy then you may not attribute the statements or acts of _____, [insert names of alleged co-conspirators] to the defendant.

If you find that no such conspiracy existed, then you must find for the defendants. However, if you are satisfied that such a conspiracy existed, you must determine who were the members of that conspiracy. If you find that a particular defendant is a member of another conspiracy, but not the one charged by the plaintiff, then you must find for that defendant. In other words, you cannot find that a defendant violated Section 1962(d) unless you find that he was a member of the conspiracy charged, and not some other separate conspiracy.

CAUSATION

Finally, for the plaintiff to prevail under RICO, he must prove by a preponderance of the evidence that the defendant's RICO violations were the "proximate cause" of injury to the plaintiff's business or property. Therefore you must find that the plaintiff suffered an injury to his business or property and that the injury was caused by reason of the defendants' violation of RICO.

An injury or damage is proximately caused when the act played a substantial part in bringing about or actually causing injury or damage, and that the injury or damage was either a direct result or a reasonably probable consequence of the act.

A person is injured in his business when he suffers loss of money or profits or a reduction in the value or worth of his business.

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

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

Therefore, you must find that the commission of the acts of racketeering, or the pattern of racketeering activity, or the conduct of the affairs of the enterprise through the pattern of racketeering activity directly resulted in the injury or played a substantial role in producing the injury.

In considering the issue of damages, if any, with respect to the RICO claims, you must assess the amount you find justified by a preponderance of the evidence as full, just and reasonable compensation for all of the damages to the plaintiff in his business or property. Damages may not be based on speculation because it is only actual damages (what the law calls compensatory damages) that you are to determine.

You should consider the amount of damages, if any, as to each defendant with respect to each RICO claim separately and independently from the amount of damages, if any, with respect to the other, non-RICO claims. For example, and by way of example only, if you determine that damages should be awarded to the plaintiff under his RICO claim, you should award full, just and reasonable compensation for damages under the RICO claim, without regard to the damages, if any, you might award under any other claim brought by the plaintiff.

The fact that I have given you instructions concerning the issue of the plaintiff's damages should not be interpreted in any way as an indication that I believe that the plaintiff should or should not prevail in this case. The interrogatories which you will answer contain several questions about damages under different laws and different theories of recovery. You should not draw any inference from the fact that a damage question has been asked. You must answer each Interrogatory separately and award damages, if appropriate, independently of damages which you may award under any other interrogatory.

SUGGESTED RICO JURY INTERROGATORIES

NOTE: These special interrogatories for RICO claims are provided as illustrations and guidelines to assist in preparation of special interrogatories for other claims.

SPECIAL ISSUE NO. 1

Do you find from a preponderance of the evidence that any defendant received any income derived, directly or indirectly, from a pattern of racketeering activity in which that defendant participated as a principal, and that the defendant used or invested, directly or indirectly, any part of that income, to acquire an interest in, establish, or operate an enterprise which is engaged in, or the activities of which affect, interstate commerce?
Answer as to each defendant and each enterprise.

SPECIAL ISSUE NO. 2

What sum of money, if any, do you find from a preponderance of the evidence would reasonably compensate the plaintiff for actual damages, if any, to his business or property proximately caused by the operation of an enterprise, if any you have so found, through a pattern of racketeering activity, if any you have so found?
Answer separately as to each defendant and enterprise.

SPECIAL ISSUE NO. 3

Do you find from a preponderance of the evidence that any defendant listed below, through a pattern of racketeering activity, acquired or maintained, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce?
Answer yes or no as to each defendant.

SPECIAL ISSUE NO. 4

What sum of money, if any, do you find from a preponderance of the evidence would reasonably compensate the plaintiff for actual damages, if any, to his business or property arising from any of the defendants' acquisition or maintenance of each enterprise?

Answer separately as to each defendant and enterprise.

SPECIAL ISSUE NO. 5

Do you find from a preponderance of the evidence that any defendant listed below was employed by or associated with an enterprise engaged in, or the activities of which affected, interstate or foreign commerce?
Answer as to each defendant and each enterprise.

SPECIAL ISSUE NO. 6

What sum of money, if any, do you find from a preponderance of the evidence would reasonably compensate the plaintiff for actual damages to his business or property arising from any defendant's employment by or association with each enterprise, if any you have so found?

Answer separately as to each defendant and each enterprise.

SPECIAL ISSUE NO. 7

Do you find from a preponderance of the evidence that any defendant entered into a conspiracy with any other person to accomplish any of the purposes described below?

Answer yes or no separately as to each category and defendant.

1. To receive income derived, directly or indirectly, from a pattern of racketeering activity in which at least one of the defendants participated as a principal, to use or invest, directly or indirectly any part of such income, or the proceeds of such income, in an acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in or the activities of which affects interstate or foreign commerce.
2. To acquire or maintain through a pattern of racketeering activity any interest in or control, directly or indirectly, of any enterprise which is engaged in, or the activities of which affects interstate or foreign commerce.
3. To conduct or participate, directly or indirectly, in the conduct of the affairs of an enterprise which is engaged in, or the activities of which affect, interstate commerce or foreign commerce through a pattern of racketeering activity, while employed by or associated with such enterprise.

END of "8.RICO"

31. ¹Under Section 1962(c), the RICO "person" and the RICO "enterprise" cannot be one and the same. However, under Sections 1962(a) and (b), "enterprise" and "person" may be the same and need not be separate and distinct. In re Burzynski, 989 F.2d 733 (5th Cir.1993); Landry v. Air Line Pilots Association, et al., 901 F.2d 404 (5th Cir.1990). See also, Liquid Air Corporation v. Rogers, et al., 834 F.2d 1297 (7th Cir.1987); Petro-Tech, Inc. v. The Western Company of North America, 824 F.2d 1349 (3d Cir.1987); Haroco v. American National Bank and Trust Company of Chicago, et al., 747 F.2d 384 (7th Cir.1984); Bowman v. Western Auto Supply Company, et al., 773 F.Supp. 174 (W.D.Mo.1991); Harrison v. Dean Witter Reynolds, Inc., et al., 695 F.Supp. 959 (N.D.Ill.1988).

32. ²The United States Supreme Court adopted the "operation and management" test of the Eighth Circuit in defining the scope of the meaning of "to conduct or participate ... in the conduct of such enterprise's affairs through a pattern of racketeering activity." *Reves v. Ernst & Young*, 507 U.S. 170, 113 S.Ct. 1163, 122 L.Ed.2d 525 (1993).

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

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

May 5, 1999

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

RE: Birnbaum v. Ray, et al.

Dear Mr. Birnbaum:

You have requested that I act as your attorney in the above referenced suit pending in the U.S. District Court for the Northern District of Texas. This letter sets forth the agreement concerning our representation of you. This agreement shall become effective upon our receipt of a counter-signed copy of this agreement and upon the payment of the retainer.

You agree to pay our firm a retainer fee of \$20,000.00, which is non-refundable. This retainer is paid to us for the purpose of insuring our availability in your matter. The retainer will be credited against the overall fee in your matter.

We have agreed to handle this matter on an hourly basis at the rate of \$200.00 per hour for attorney time and \$60.00 per hour for paralegal time. In addition, we have agreed that you will reimburse us for expenses incurred on your behalf, such as, but not limited to, filing fees, deposition expenses, photocopy expenses, travel expenses, and employment and testimony of expert witnesses, if necessary. I will not obligate you for any large expense without your prior approval. I would ask and you have agreed to pay expenses as they are incurred.

After the \$20,000.00 has been expended in time we will then operate on a hybrid type of agreement wherein we will lower our hourly rate to \$100.00 for

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attorney's time and \$30.00 an hour for paralegal time, but then charge as an additional fee a 20% contingency of the gross recovery in this case.

You will be billed monthly for the time expended and expenses incurred. Payment of invoices is expected within 10 days of receipt unless arrangements are made in advance. We reserve the right to terminate our attorney-client relationship for any of the following reasons:

1. Your non-payment of fees or costs;
2. Your failure to cooperate and comply fully with all reasonable requests of the firm in reference to your case; or
3. Your engaging in conduct which renders it unreasonably difficult for the firm to carry out the purposes of its employment.

Fees and costs, in most cases, may be awarded by the Judge against either party. Sometimes, the court makes no order for fees or costs. Because fees and costs awards are totally unpredictable, the court's orders must be considered merely "on account" and the client is primarily liable for payment of the total fee. Amounts received pursuant to any court order will be credited to your account.

You have represented to me that the purpose of this litigation is compensation for damages sustained and that you are not pursuing this matter for harassment or revenge. In this regard, if settlement can be reached in this case whereby you will be reimbursed for all actual damages and I will be paid for my services, you agree to accept the settlement. Notwithstanding this agreement, however, I will not settle this cause of action without your prior approval and any settlement documents must bear your signature.

Inasmuch as I am a solo practitioner, we have agreed that I at my sole discretion may hire such other attorneys to assist in the prosecution of this matter as may be reasonably necessary.

Mr. Birnbaum
May 5, 1999
Page three

I will keep you informed as to the progress of your case by sending you copies of documents coming into and going out of our office. Every effort will be made to expedite your case promptly and efficiently. I make no representations, promises or guarantees as to the outcome of the case other than to provide reasonable and necessary legal services to the best of my ability. I will state parenthetically, from what you have told me, you have a very good case. Various county officials and others involved in this matter should never have done what they apparently did. I will explain in detail the ramifications and affect of Section 1983 and Civil Rico when we next meet.

Please retain a copy of this letter so that each of us will have a memorandum of our understanding concerning fees and expenses.

Sincerely yours,



Accepted: Udo Birnbaum
Udo Birnbaum

Date: 5-5-99

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

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

May 3, 1999

Jerry Michael Collins
P.O. Box 5464
Gun Barrel City, Texas 75147

RE: Jerry Michael Collins v. Richard Lawrence, et al.

Dear Mr. Collins:

You have requested that I act as your attorney in the above referenced suit pending in the U.S. District Court for the Northern District of Texas. This letter sets forth the agreement concerning our representation of you. This agreement shall become effective upon our receipt of a counter-signed copy of this agreement and upon the payment of the retainer.

You agree to pay our firm a retainer fee of \$20,000.00, which is non-refundable. This retainer is paid to us for the purpose of insuring our availability in your matter. The retainer will be credited against the overall fee in your matter.

We have agreed to handle this matter on an hourly basis at the rate of \$200.00 per hour for attorney time and \$60.00 per hour for paralegal time. In addition, we have agreed that you will reimburse us for expenses incurred on your behalf, such as, but not limited to, filing fees, deposition expenses, photocopy expenses, travel expenses, an employment and testimony of expert witnesses, if necessary. I will not obligate you for any large expense without your prior approval. I would ask and you have agreed to pay expenses as they are incurred.

You will be billed monthly for the time expended and expenses incurred. Payment of invoices is expected within 10 days of receipt unless arrangements are made in advance. We reserve the right to terminate our attorney-client relationship

**DEPOSITION
EXHIBIT**

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Mr. Collins
May 3, 1999
Page two

for any of the following reasons:

1. Your non-payment of fees or costs;
2. Your failure to cooperate and comply fully with all reasonable requests of the firm in reference to your case; or
3. Your engaging in conduct which renders it unreasonably difficult for the firm to carry out the purposes of its employment.

Fees and costs, in most case, may be awarded by the Judge against either party. Sometimes, the court makes no order for fees or costs. Because fees and costs awards are totally unpredictable, the court's orders must be considered merely "on account" and the client is primarily liable for payment of the total fee. Amounts received pursuant to any court order will be credited to your account.

You have represented to me that the purpose of this litigation is compensation for damages sustained and that you are not pursuing this matter for harassment or revenge. In this regard, if settlement can be reached in this case whereby you will be reimbursed for all actual damages and I will be paid for my services, you agree to accept the settlement. Notwithstanding this agreement, however, I will not settle this cause of action without your approval and any settlement documents must bear your signature.

Inasmuch as I am a solo practitioner, we have agreed that I at my sole discretion may hire such other attorneys to assist in the prosecution of this matter as may be reasonably necessary.

I will keep you informed as to the progress of your case by sending you copies of documents coming into and going out of our office. Every effort will be made to expedite your case promptly and efficiently. I make no representations, promises or guarantees as to the outcome of the case other than to provide reasonable and necessary legal services to the best of my ability. I will state parenthetically, from what you have told me, you have a very good case. Various county officials and others involved in this matter should never have done what they

did. I will explain in detail the ramifications and affect of Section 1983 and Civil Rico when we next meet.

Please retain a copy of this letter so that each of us will have a memorandum of our understanding concerning fees and expenses.

Sincerely yours,



Accepted: 
Jerry Michael Collins

Date: _____

LAW OFFICES OF G. DAVID WESTFALL, P.C.
714 Jackson Street, Suite 200 Dallas, Texas 75202
(214) 741-4741

BILLING STATEMENT

July 31, 2000

Mr. Michael Collins
104 FM 316 South
Eustace, Texas 75124

RE: No. 249-159-98
Jerry Michael Collins v. Wal-Mart, Inc.

PROFESSIONAL SERVICES RENDERED:

2/14/00	Prepare Notice of Appearance; correspondence	0.4
2/21/00	Telephone conferences (3); telephone conference with court clerk	0.8
2/24/00	Prepare Motion; correspondence; telephone conferences (3)	1.3
3/6/00	Telephone conferences (2)	0.3
3/7/00	Telephone conferences (3)	0.6
3/8/00	Telephone conference with S.Brooks; telephone conference with with court coordinator, Velda Johnson	0.4
3/9/00	Telephone conferences (6); conference with local counsel; court appearance for pretrial; travel to and from Cleburne; correspondence	4.8
3/10/00	Telephone conferences (4); correspondence	0.8
3/15/00	Telephone conferences (2)	0.4
3/17/00	Telephone conference with mediator's office	0.2
3/20/00	Telephone conferences (2)	0.3
3/22/00	Receipt and review correspondence from mediator	0.2
3/29/00	Telephone conference with client	0.2
3/30/00	Review file	1.6
4/3/00	Telephone conferences with Terry White (2)	0.3

Billing.00

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Page 1

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4/4/00	Review file; conference with client	3.6
4/7/00	Prepare disclosures request to Defendant	0.3
4/10/00	Telephone conferences; correspondence	0.3
4/11/00	Review file (depos, etc.)	3.7
4/12/00	Review file and case preparation; telephone conferences (2)	3.1
4/18/00	Legal research and case preparation	1.7
4/21/00	Receipt and review deposition by W.Q. of Huguley Memorial Medical Center & Univ. of Texas Medical Branch at Galveston, correspondence (2); prepare cross-questions for medical centers	1.7
4/27/00	Conference with client, other attorney and mediator; travel to and from Fort Worth+C93	4.5
5/8/00	Receipt and review correspondence (2) and statement from mediator; correspondence	0.4
5/10/00	Receipt and review correspondence and Defendant's Response to Rule 194 Disclosures; correspondence	0.5
5/16/00	Review file and case preparation	2.7
5/19/00	Receipt and review tape from S.Brooks and Deposition by W.Q. of Dr. Shah; legal research re: cross-questions	0.9
5/22/00	Receipt and review correspondence and Defendant's 1st Supplemental Responses to Plaintiff's Rule 194 Disclosures; review tape	0.9
5/24/00	Receipt and review correspondence from client	0.2
5/25/00	Prepare discovery requests (3); correspondence; telephone conferences (3)	3.4
6/5/00	Telephone conferences (3)	0.4
6/12/00	Prepare Supplemental Petition; conference with client	3.5
6/14/00	Telephone conference with S.Brooks	0.2
6/15/00	Telephone conferences (3); court appearance for pretrial; travel to and from Cleburne	4.1
6/19/00	Telephone conferences (3); telephone conference with client	0.7
6/28/00	Receipt and review documents from Records Deposition Service from Dr. Shah; correspondence	0.6

7/1/00	Review file and case preparation	3.4
7/17/00	Prepare Motion to Withdraw As Counsel and Order; correspondence	0.4
7/19/00	Finalize Motion to Withdraw and Order; correspondence	0.2
7/26/00	Correspondence to Sikes and Glickman law office	0.1
7/31/00	Correspondence to Sikes and Glickman law office	0.1

54.2 HOURS AT \$175.00 PER HOUR \$ 9,485.00

EXPENSES:

Paralegal	5.7 x \$ 60.00	\$	342.00
Photocopies	74 x \$.25	\$	18.50
Facsimiles	24 x \$ 1.00	\$	24.00
Long Distance Telephone expense		\$	43.00
Mileage	180 x \$0.25	\$	<u>45.00</u>

Total expenses: \$ 472.50

TOTAL AMOUNT DUE: \$ 9,957.50

FAX TRANSMISSION

November 11, 1999

TO: Law Office Of
G. David Westfall, P. C.
714 Jackson Street #700
Dallas, TX. 75202 214.741.4741

FAX: 214.741.4746

FROM: Udo Birnbaum

MESSAGE: I've devoted many hours to preparing my appeal. With minor corrections, I believe it's ready to file. I also believe it is very wise to file it as soon as possible next week.

In a one-sentence summary, Buchmeyer and Stickney consciously ignored the law when they made their decision to go along with the defendants' motions to dismiss my case. The problem is - they got caught!

I'll deliver a copy of my appeal (and disc) to your office on Monday, November 15. If for any reason you are unable to look it over, prepare the final form, file it, and mail copies to all defendants, let me know so I can proceed, pro se.

Udo

**DEPOSITION
EXHIBIT**

6

11-17-99

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

FAX: (214) 741-4746

FROM: Udo Birnbaum

MESSAGE:

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

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

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

Udo



**DEPOSITION
EXHIBIT**

7

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

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

January 21, 2000

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

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

Dear Udo:

It's important that we get the Motion and Order on our withdrawing in this case. If you do not have a problem with the withdrawal I would appreciate you signing the same and returning to me as we have requested before.

If there is a problem kindly give me a call at the office at your convenience so that we can discuss it.

Sincerely yours,



GDW:hh

**DEPOSITION
EXHIBIT**

8

LAW OFFICES OF
G. DAVID WESTFALL, P.C.
A Professional Corporation
714 JACKSON STREET

NEW → 200 RENAISSANCE PLACE
DALLAS, TEXAS 75202

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

March 3, 2000

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

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

Dear Udo:

This is my final informal request that you approve our Motion to Withdraw from your case and return it to us.

Your failure to approve the Motion and Order will cause us to have a hearing on the matter and to notify all of the other parties prior to the entry of the Order. Frankly, this is not to your advantage and it is totally unnecessary. Therefore, I would urge you to approve of the Motion and Order and return it to me by return mail.

Sincerely yours,



GDW:bh

**DEPOSITION
EXHIBIT**

9

ORIGINAL

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

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
20 2000
NANCY DOHERTY, CLERK
By *[Signature]*

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

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

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

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

**DEPOSITION
EXHIBIT**

[Handwritten mark]

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

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

Respectfully submitted,



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

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served upon all counsel of record via 1st Class Mail on this the 17 day of March 2022.


G. David Westfall

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

UDO BIRNBAUM
Plaintiff,

vs.

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

X
X
X
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X
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X
X

MAR 22 2000
NATIONAL DOCKET ...
BY *[Signature]*

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

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

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

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

SIGNED this the 23 day of March, 2000

Jerry Buchmeyer
U.S. DISTRICT JUDGE PRESIDING

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

Udo Birnbaum, Plaintiff

ORIGINAL

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

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

March 20, 2000

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

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

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

Dear Udo:

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

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

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

Sincerely yours,



GDW:bh
Enclosure

**DEPOSITION
EXHIBIT**

11

No. 00-00619

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

vs.

UDO BIRNBAUM

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

FILED FOR
CO-CLERK
SEP 21 PM 4:08

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

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

I.

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

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

II.

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

III.

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

**DEPOSITION
EXHIBIT**

12

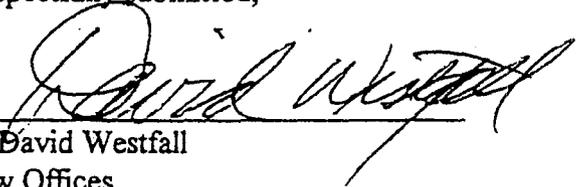
account to Plaintiff's damage in the total amount of \$18,121.10. All just and lawful offsets, payments and credits have been allowed.

IV.

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

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

Respectfully submitted,



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

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

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

September 20, 2000

Ms. Nancy Young, District Clerk
Van Zandt County
302 Courthouse
121 E. Dallas Street
Canton, Texas 75103

00-00619

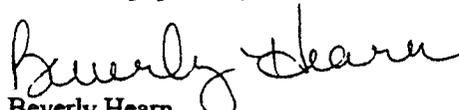
RE: Law Offices of G. David Westfall, P.C. v. Udo Birnbaum

Dear Ms. Young:

Enclosed are an original and 3 copies of Plaintiff's Original Petition to be filed in connection with the above referred to matter along with our check in the amount of \$228.00 for the filing fee, issue a citation and for process service. Please return the extra filed stamped copies of the petition in the enclosed envelope.

If you have any questions please feel free to give us a call.

Sincerely yours,


Beverly Hearn
Paralegal to G. David Westfall

GDW:hh
Enclosures

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

vs.

UDO BIRNBAUM

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

**PLAINTIFF THE LAW OFFICES OF G. DAVID WESTFALL, P.C.'S
OBJECTIONS AND ANSWERS TO
DEFENDANT'S FIRST SET OF INTERROGATORIES**

TO: Udo Birnbaum, 540 VZ 2916, Eustace, Texas 75124.

Comes Now, The Law Office of G. David Westfall, P.C., Plaintiff, in the above and numbered cause and files Plaintiff's Objections and Answers to Defendant Birnbaum's First Set of Interrogatories as specified on Exhibit "A" attached hereto and incorporated herein.

I.

GENERAL OBJECTIONS

1. The Law Office of G. David Westfall, P.C. objects to the Interrogatories on the grounds that the Interrogatories are not limited to any reasonable or relevant period of time and, therefore, are vague, overly broad, unduly burdensome and calculated to create undue expense, and seek information that is not relevant to any issue in this case nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving this or any other general or specific objection, and in the interest of facilitating reasonable and proper discovery, Plaintiff will provide information not otherwise objected to, unless otherwise noted in response to a specific request.
2. The Law Office of G. David Westfall, P.C. objects to the Interrogatories to the extent such Interrogatories seek the production of information protected by the attorney-client privilege, information that constitutes attorney work product, or other privileged communications and documents.
3. The Law Office of G. David Westfall, P.C. objects to the Interrogatories in their entirety insofar as the Interrogatories seek to impose duties beyond those required by the Texas Rules of Civil Procedure.
4. The Law Office of G. David Westfall, P.C. objects to the Interrogatories in their entirety to the extent any request is worked in a manner to which a response would constitute an admission.

**DEPOSITION
EXHIBIT**

13

Respectfully submitted,



G. David Westfall
Law Offices of G. David Westfall, P.C.
5646 Milton, Suite 520
Dallas, Texas 75206
(214) 741-4741
Facsimile (214) 741-4746

CERTIFICATE OF SERVICE

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

- | | |
|-------------------------------------|---|
| <input checked="" type="checkbox"/> | Certified Mail/Return Receipt Requested |
| <input type="checkbox"/> | Facsimile Transfer |
| <input type="checkbox"/> | First Class Mail |
| <input type="checkbox"/> | Federal Express |
| <input type="checkbox"/> | Courier |
| <input type="checkbox"/> | Hand-Delivery |

on this the 20th day of *November*, 2000.



G. David Westfall

EXHIBIT "A"

INTERROGATORY NO. 1

Identify (See Definitions) each person (a) participating in the preparation of the answers to these interrogatories or (b) supplying information used in such preparation, and indicate the interrogatories with respect to which he or she was involved.

ANSWER:

David Westfall

INTERROGATORY NO. 2

Identify the "*systematic records maintained*", as Plaintiff uses that phrase, by identifying such "records", the "system" used to input into such "records", and such persons authorized to change such records.

ANSWER:

Billing time cards

Computer

David Westfall; Beverly Hearn

INTERROGATORY NO. 3

Identify the "*accounts for services rendered*", as Plaintiff uses that phrase, by identifying those "accounts", the manner of collecting charges, and such persons authorized to post such charges into such account or change such records.

ANSWER:

Mailing notices

David Westfall; Beverly Hearn

INTERROGATORY NO. 4

Identify "*Plaintiff's demands upon Defendant for payment*", as Plaintiff uses that phrase, by identifying the manner, date, and amount of each specific "demand" made by Plaintiff, identifying the entry of such demand into Plaintiff's "systematic records", and identifying such persons as have personal knowledge of such "demands" having been made and/or entries of such demands being made into Plaintiff's "systematic records".

ANSWER:

By mailing a copy of the bill to Defendant on December 31, 1999, February 1, 2000, April 3, 2000; June 1, 2000 and July 31, 2000.

INTERROGATORY NO. 5

Identify Plaintiff's method of ensuring that "All just and lawful offsets, payments and credits as have been allowed", as Plaintiff uses that phrase, by identifying such document, records, or accounting procedure in its "systematic records maintained" system as would show that a "payment "or "credit" was not being in a current manner being posted, and identify the person responsible for such accounting.

ANSWER:

Plaintiff objects to this interrogatory for the reason that it is unintelligible and for the reason that the request is vague and unclear that it is impossible to determine the nature and scope of the information requested.

INTERROGATORY NO. 6

Identify such records by an accounting firm as would show that my \$20,000 check (dated 5-5-99, my check number 1432) was indeed credited to my retainer account, and all records as would show that charges were indeed being currently billed into my account, and as would show what demand was being at any time being made of me.

ANSWER:

Plaintiff objects to this interrogatory for the reason that it is unintelligible and for the reason that the request is vague and unclear that it is impossible to determine the nature and scope of the information requested.

Subject to the objection: copy of the bill; client's accounting page; Beverly Hearn

INTERROGATORY NO. 7

Identify "Account 0100079270", or such similarly numbered account, into which my May 5, 1999 check #1432 for \$20,000 made out to "G. David Westfall, P.C." was deposited, including the name, address, and telephone number of the bank or institution, the exact name on such account, and specifically identifying each person authorized to make withdrawals from this account as of May 1, 1999 and thereafter.

ANSWER:

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

INTERROGATORY NO. 8

Identify all accounts at financial institutions as Plaintiff "The Law Office" has used since January 1, 1999, and such persons as now have, or have had, authority to deposit into and/or withdraw from such accounts.

ANSWER:

Plaintiff objects to this interrogatory for the reason that it is not relevant nor material and is multifarious.

INTERROGATORY NO. 9

Identify such records or documents as would show that I was being wrongly charged for legal time not actually expended in my behalf, or that my "account for services rendered" was being wrongly padded by "The Law Offices".

ANSWER:

None.

INTERROGATORY NO. 10

Identify Plaintiff's evidence of ever having sent any bill or bills to Defendant other than the supposed demand "bill" (See definition) of about July 31, 2000, and such persons claiming personal knowledge of a bill or bills ever having been sent to Birnbaum.

ANSWER:

The bill

David Westfall; Beverly Hearn

INTERROGATORY NO. 11

Identify the ORIGINAL of the "[*Exhibit 'A', attached*] true and accurate photostatic copy of the accounts for services rendered" referred to in Plaintiff's Original Petition, and specifically such persons who have knowledge of such ORIGINAL or its present whereabouts.

ANSWER:

David Westfall; Beverly Hearn

INTERROGATORY NO. 12

Identify the "[*Exhibit 'A', attached*] true and accurate photostatic copy of the accounts for services rendered" referred to in Plaintiff's Original Petition, and specifically such persons who have knowledge of such COPY having previously been attached.

ANSWER:

The bill.

David Westfall; Beverly Hearn

INTERROGATORY NO. 13

Identify what action, if any, you have taken upon being informed that no such "[Exhibit 'A', attached] true and accurate photostatic copy of the accounts for services rendered" having been attached to Plaintiff's Original Petition nor having been filed with the Clerk. Please be specific.

ANSWER:

None at this time.

INTERROGATORY NO. 14

Identify such person as are and have been officers, owners, and employees of The Law Offices of G. David Westfall P.C. on and after January 1, 1999, and provide sufficient particularity so as to reveal their duties, authorities, and their share of ownership of The Law Offices of G. David Westfall P.C.

ANSWER:

David Westfall
Stefani Podvin
Beverly Hearn

INTERROGATORY NO. 15

What sum of money did Plaintiff, "The Law Offices", require of me to proceed beyond the September 20, 1999 judgment of the Court, and what was my reply as to funding Plaintiff for the appeal?

ANSWER:

\$200.00 per hour.

No. 00-00619

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

vs.

UDO BIRNBAUM

)
)
)
)
)
)

IN THE DISTRICT COURT

294th JUDICIAL DISTRICT

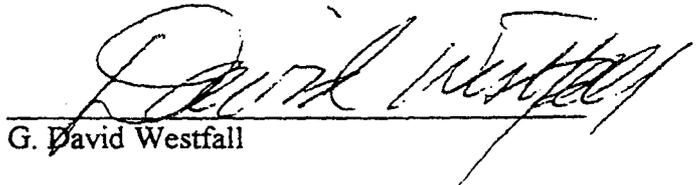
VAN ZANDT COUNTY, TEXAS

VERIFICATION

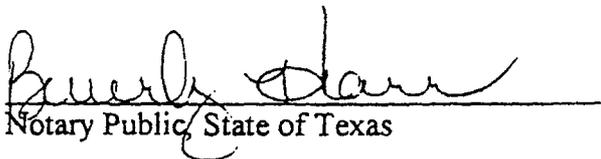
STATE OF TEXAS

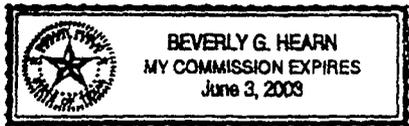
)

BEFORE ME, the undersigned authority, on this day personally appeared G. DAVID WESTFALL, known to me to be the undersigned, who after duly sworn by me stated that he is the president of the Plaintiff in the foregoing document, and the above and foregoing ANSWERS to Defendant's First Set of Written Interrogatories are true and correct.


G. David Westfall

SUBSCRIBED AND SWORN to before me on this the 20th day of November, 2000, to certify which witness my hand and seal of office.


Notary Public, State of Texas



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

714 Jackson Street, Suite 700

Dallas, Texas 75202

(214) 741-4741

BILLING STATEMENT

December 31, 1999

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

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

PROFESSIONAL SERVICES RENDERED:

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

2nd Reminder - 2-1-00
Reminder - please resubmit 4-3-00
Udo - what's the problem? DW 6-1-00
fact notice B-4
formal collection 0.1 7-31-00
certified mail 6.2 mail 7099-3220
0000-4160 9/21

DEPOSITION EXHIBIT

5/19/99	Receipt and review correspondence and Order of Stipulation signed by Richard Davis	0.2
5/21/99	Receipt and review Order of Stipulation signed by Richard Ray; court appearance to file Motion and Order; review file and amended complaint with exhibits	2.9
5/22/99	Review file and case preparation	3.3
5/24/99	Legal research; case preparation	2.7
5/25/99	Legal research; case preparation	2.3
5/26/99	Receipt and review signed Order of Stipulation; review draft of amended complaint; conference with client	2.9
5/27/99	Receipt and review Defendant Young's 1st W.I. to Plaintiff; telephone conference with A.G.'s office; correspondence	4.5
5/28/99	Legal research and case preparation	3.1
6/1/99	Telephone conference with client	0.3
6/2/99	Receipt and review correspondence and proposed Amended Complaint and proposed W.I. Answers	1.4
6/4/99	Review file; work on Amended Complaint	1.6
6/5/99	Review file; work on draft of Amended Complaint; legal research	3.8
6/8/99	Legal research; work on Amended Answer	2.6
6/9/99	Legal research re: 11(b) and 12(b) Motions	3.1
6/11/99	Receipt and review Defendant Young's 1st Request for Production; conference with staff and S.Podvin	3.8
6/12/99	Review file; legal research	1.8
6/15/99	Telephone conference	0.1
6/21/99	Review file; work on response to W.I.; telephone conferences (2)	1.9
6/24/99	Review file; review draft of Amended Complaint; review draft of responses to W.I.; telephone conferences (2)	3.9
6/25/99	Review file; conference with client; prepare and file Answers to Defendant Young's W.I.	3.5
3/29/99	Telephone conferences (8); correspondence	2.3

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

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

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

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

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

EXPENSES:

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

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

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

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

IN RE:)
) BK. NO: 300-34287-HCA-7
G. DAVID WESTFALL,)
)
ALLEGED DEBTOR)

* * * * *
TRANSCRIPT OF PROCEEDINGS
* * * * *

COPY

BE IT REMEMBERED, that on the 20th day of
September 2000, before the HONORABLE HAROLD C.
ABRAMSON, United States Bankruptcy Judge at Dallas,
Texas, the above styled and numbered cause came on
for hearing, and the following constitutes the
transcript of such proceedings as hereinafter
set forth:

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C E R T I F I C A T E

I, DIANE M. DENNIS, Acting Official Court Reporter in and for the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, certify that during the hearing of the above-entitled and numbered cause, I reported in shorthand the proceedings hereinafter set forth, and that the foregoing pages contain a full, true and correct transcript of said proceedings.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 22nd day of January, 2001.

Diane M. Dennis, CSR, RPR
DIANE M. DENNIS
Certified Shorthand Reporter #4347
Acting Official Court Reporter
United States Bankruptcy Court
Northern District of Texas
Dallas Division

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

Vs.

UDO BIRNBAUM

)
)
)
)
)
)

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

DEFENDANT'S ANSWER, COUNTERCLAIM, AND CROSS-COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

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

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

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

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

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

Plaintiff's allegation: "Plaintiff is a professional corporation with its principle office and place of business in Dallas, Dallas County, Texas." (Plaintiff's Original Petition paragraph 1)

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

**DEPOSITION
EXHIBIT**

16

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Counterclaim and Cross-complaint

1. G. David Westfall violated Texas Bar Rule 7.03 Prohibited Solicitation by soliciting me. Texas Bar Rule 7.03 unconditionally prohibits G. David Westfall from charging or billing me for such professional employment obtained in violation of this Rule.
2. G. David Westfall violated Texas Bar Rule 1.06(b)(2) Conflict of Interest. G. David Westfall promised to provide me with legal services "to the best of my ability". Instead G. David Westfall obstructed my cause in behalf of the Civil RICO defendants. G. David Westfall already had an inherent conflict of interest in signing on to this Civil Racketeering cause against some of the very same defendant judges before whom he would be practicing in the future. Such inherent conflict of interest violates Rule 1.06(b)(2) of the Texas Bar Rules.
3. G. David Westfall violated Texas Bar Rule 8.04 Misconduct by concealing the RICO enterprise from the Court, engaging in dishonesty, fraud, deceit and misrepresentation, conduct constituting obstruction of justice, and defrauding me of "the intangible right of honest service".
4. G. David Westfall violated Texas Bar Rule 1.01(b)(2) Competent and Diligent Representation, by "frequently fail[ing] to carry out completely the obligations that the lawyer owes to a client or clients".

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

17. Christina Westfall never sent me any bill, of any kind whatsoever, before about July 31, 2000.

18. The Law Offices of G. David Westfall, P.C. never sent me any bill, of any kind whatsoever, before about July 31, 2000.

19. G. David Westfall never sent me any bill, of any kind whatsoever, before about July 31, 2000.

20. Christina Westfall and Stefani Podvin assisted G. David Westfall in his unconscionable, fraudulent, and deceptive scheme.

21. Demand has been made upon G. David Westfall. (Exhibit 3)

Prayer for Relief

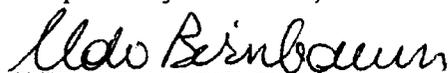
Wherefore, Defendant Udo Birnbaum respectfully requests that judgment be entered against parties THE LAW OFFICES OF G. DAVID WESTFALL, P.C., G. DAVID WESTFALL, CHRISTINA WESTFALL, and STEFANI PODVIN, by reason of fraud, conversion, breach of contract and fiduciary duty, legal malpractice, negligence,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

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

- (a) In an amount not less than \$40,000
- (b) For the costs of suit, including reasonable attorney's fees, if any
- (c) Pre-judgment interest at the maximum rate allowed by law
- (d) Post-judgment interest at the maximum rate allowed by law
- (e) Punitive damages in an amount as the jury may award at its discretion
- (f) All such other relief, legal and equitable, special or general, as the Court deems proper and just

BIRNBAUM HEREBY DEMANDS A TRIAL BY JURY

Respectfully submitted,

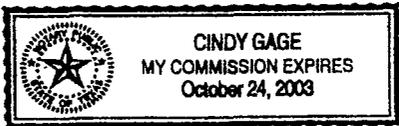


Udo Birnbaum, Pro Se
540 VZ 2916
Eustace, Texas 75124
(903) 479-3929

STATE OF TEXAS
COUNTY Hemphill

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

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



Cindy Gage
Notary in and for The State of Texas

Certificate of Service

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

Udo Birnbaum
Udo Birnbaum

000-4/26/01

IN THE UNITED STATES DISTRICT COURT EASTERN DISTRICT OF TEXAS
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
APR 25 2001
DAVID J. MALAND, CLERK
BY DEPUTY 

JERRY MICHAEL COLLINS §
Vs. § CIVIL ACTION NO. 6:00CV709
TROY L. ALLEN, ET AL. §

FINAL JUDGMENT

For the reasons stated in the order signed today, the plaintiff's RICO claims against all of the defendants are DISMISSED WITH PREJUDICE. The plaintiff's supplemental Texas state law claims are DISMISSED WITHOUT PREJUDICE. Costs are taxed against the plaintiff. Any pending motions are DENIED. This is a final judgment.

So ORDERED and SIGNED this 25th day of April, 2001.



T. JOHN WARD
UNITED STATES DISTRICT JUDGE

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

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

UDO BIRNBAUM,
Plaintiff,

vs.

RICHARD L. RAY, et al,
Defendants.

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No. 3:99-CV-0696-R

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

JUDGMENT

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

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

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

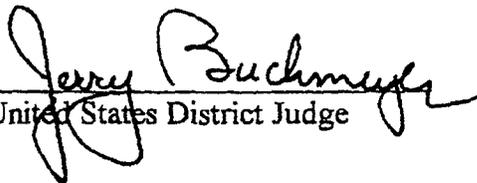
**DEPOSITION
EXHIBIT**

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

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

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

SO ORDERED this 2d day of September, 1999.


United States District Judge

2-117

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

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

UDO BIRNBAUM

Plaintiff,

VS.

RICHARD L. RAY, et. al.,

Defendants.

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3:99-CV-0696-R

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

ORDER

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

ENTERED: SEPTEMBER 24, 1999

Jerry Buchmeyer

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

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AFFIDAVIT OF UDO BIRNBAUM

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

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

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

How I came to such knowledge because of my personal experiences

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

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

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

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

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

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

David Westfall's Solicitation and Concealment of Solicitation shows collusion

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Westfall's fraudulent motion to withdraw shows collusion

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

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

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

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

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

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

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

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

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

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

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

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

Summary

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

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

Further affiant sayeth not.

Signed September 15th, 2000

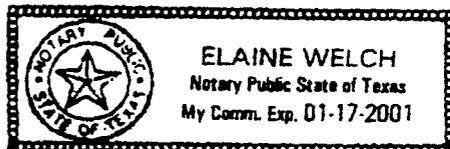
Udo Birnbaum

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

STATE OF TEXAS
COUNTY OF HENDERSON

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

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



Elaine Welch
Notary in and for The State of Texas

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

FILED

26 2000

FRANCY DOHERTY, CLERK

By _____
Deputy

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

JERRY MICHAEL COLLINS,

Plaintiff,

v.

RICHARD LAWRENCE, et al.,

Defendants.

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CIVIL ACTION NO.
3:99-CV-0641-P

ENTERED ON DOCKET
JUL 27 2000
U.S. DISTRICT CLERK'S OFFICE

ORDER

Now before the Court is Defendant Judge Louis B. Gohmert, Jr.'s Motion for Sanctions Under Rule 11(b), filed May 3, 1999 (the "Sanctions Motion"). Pursuant to this Court's March 7, 2000 Order disposing of virtually all of Plaintiff's claims in favor of the defendants, Plaintiff filed responsive papers to the Sanctions Motion on March 27, 2000. See 3/7/00 Order at 6, fn. 3. Judge Gohmert filed his reply on May 16, 2000.

For the following reasons, the Court GRANTS the Sanctions Motion but declines to make a specific award under Rule 11 until Judge Gohmert and Jerry Michael Collins and/or G. David Westfall submit proof and argument on the issues discussed herein. Furthermore, in addition to whatever sanctions are ultimately rendered under Rule 11, Collins and Westfall are hereby sanctioned \$2,500 each pursuant to the Court's inherent power.

ORDER — 1
99-0641

**DEPOSITION
EXHIBIT**

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EXHIBIT
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I. RULE 11 SANCTIONS

By the present motion, Judge Gohmert seeks to sanction plaintiff Jerry Michael Collins and Collins' attorney, G. David Westfall, pursuant to Federal Rule of Civil Procedure 11. Rule 11(b) provides:

By presenting [a pleading] to the court ... an attorney or unrepresented party is certifying that to the best of that person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of a new law; (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

The central issues in determining whether to impose sanctions against Collins or Westfall¹ are whether they abused the legal process and, if so, what sanction would be appropriate. See *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 396 (1990). The Court addresses each issue in turn.

A. Did Collins and/or Westfall Abuse the Legal Process?

Whether Plaintiff's lawsuit against Judge Gohmert constitutes sanctionable harassment under Rule 11 depends upon the objectively ascertainable circumstances rather than subjective intent. *Sheets v. Yamaha Motors Corp.*, 891 F.2d 533, 538 (5th Cir. 1990). If a reasonably clear

¹Although Collins' initial state-court lawsuit was brought pro se, he subsequently retained Westfall as counsel and continued to prosecute the case against Judge Gohmert in federal court. The Fifth Circuit has made it clear that Rule 11 applies both to pro se litigants as well as those represented by counsel. *Mendoza v. Lynaugh*, 989 F.2d 191, 195-96 (5th Cir. 1993).

legal justification can be shown for the filing of the lawsuit, no improper purpose may be found and sanctions are inappropriate. *Id.* However, sanctions are warranted if the lawsuit is found to have inadequate legal and factual support and an improper purpose. *See* Fed. R. Civ. P. 11(b). Furthermore, a litigant or attorney's subjective good faith is not enough to avoid sanctions if the initiation of the lawsuit against Judge Gohmert was objectively unreasonable. *United States v. Alexander*, 981 F.2d 250, 252 (5th Cir. 1993) ("Rule 11 demands that the actions of the attorney be objectively, not just subjectively, reasonable under the circumstances").

In this lawsuit, Collins maintained that his business was destroyed when "some El Paso lawyers conspired with two women from El Paso, who conspired with at least one east Texas lawyers [sic], who conspired with Van Zandt County law enforcement officers, the 294th district court coordinator, district judges, the county tax collector, and every lawyers [sic] Collins hired to represent him or attempted to hire to represent him."² (First Amended Compl. at 9-10). The only claim against Judge Gohmert arose from Judge Gohmert's granting a motion for summary judgment and disposing of Collins' state-court action against his former attorney. In other words, the Complaint made no specific allegation against Judge Gohmert except to say that he was involved in a far-reaching RICO conspiracy against Collins.

As discussed more fully in this Court's March 7, 2000 Order, Collins' conclusory claims against Judge Gohmert were legally untenable pursuant to the doctrine of absolute judicial immunity, and were therefore dismissed in their entirety. *See* 3/7/00 Order at 4-6. There was no reason to bring such claims, let alone continue to prosecute them over a period of years, save that

²The present action is at least the fourth suit filed by Collins stemming from the alleged conspiracy. *See* 3/7/00 Order at 2.

of harassment. The record in this case plainly demonstrates that Collins' RICO conspiracy claims against Judge Gohmert are utterly without arguable factual or legal basis and were filed maliciously and solely for the purpose of harassing, annoying and burdening Judge Gohmert.

As one court wrote, "the filing of frivolous civil lawsuits against judicial officers deserves a special place in the cornucopia of evils plaguing our judicial system because such lawsuits are not only an affront to the dignity of the courts but also an assault upon the integrity of our judicial system." *Hicks v. Bexar County, Texas*, 973 F. Supp. 653, 688 (W.D. Tex. 1997), *aff'd*, 137 F.2d 1352 (5th Cir. 1998), citing *Bogney v. Jones*, 904 F.2d 272, 274 (5th Cir. 1990) (upholding imposition of Rule 11 sanctions where plaintiff asserted civil claims against state district judge). So it is even more significant that the frivolous claims against Judge Gohmert continued to be asserted by Collins *after* G. David Westfall was retained. As reprehensible as Collins' conduct against Judge Gohmert is, he was acting pro se during many of the matters.³ But that an attorney such as Westfall could file a complaint against a state-court judge based upon the circumstances in this record leaves the Court nothing short of bewildered.

Thus, after concluding that Collins' claims against Judge Gohmert lacked legal and/or factual support and were brought for an improper purpose, the Court finds that both Collins and Westfall abused the legal process by instigating and then pursuing the lawsuit against Judge Gohmert. The Court concludes without reservation that the claims against Judge Gohmert warrant the imposition of sanctions under Rule 11.

³But again, just because it may be more understandable for an unrepresented party to pursue frivolous claims, Collins' pro se status should not, and will not, shield him from sanctions in this case. *Mendoza*, 989 F.2d at 195-96.

B. What Rule 11 Sanctions are Appropriate?

Having found a Rule 11 violation, the Court turns to the issue of appropriate sanctions. The Fifth Circuit instructs that the least severe sanction adequate to serve Rule 11's purposes should be imposed. *See Mendoza v. Lynaugh*, 989 F.2d 191, 196 (5th Cir. 1993); *Thomas v. Capital Security Svcs., Inc.*, 836 F.2d 866, 877 (5th Cir. 1988); *see also* Fed. R. Civ. P. 11(c)(2). Furthermore, the amount of Rule 11 sanctions must be limited to the expenses actually and directly caused by the filing of the pleading found to violate Rule 11. *See Jennings v. Joshua I.S.D.*, 948 F.2d 194, 199 (5th Cir. 1991), *cert. denied*, 504 U.S. 956 (1992).

Although Judge Gohmert has offered some evidence of the expenses incurred while defending against Collins' frivolous claims,⁴ the evidence is incomplete and, as yet, Collins has not been afforded the opportunity to challenge it. So, while the Court is eager to dispose of this matter, the parties have not yet presented sufficient evidence upon which to base an appropriate sanction.

Accordingly, the Court requests that within twenty (20) days from the date of entry of this Order, Judge Gohmert file and serve upon Plaintiff a properly authenticated affidavit or other proper summary judgment evidence establishing the amount of fees and costs actually incurred by Judge Gohmert and/or the State of Texas in defending against Collins' lawsuit.⁵ Then, within seven (7) days of being served with Judge Gohmert's submission, Collins and/or Westfall shall file and

⁴In his reply brief, filed May 16, 2000, Judge Gohmert states: "This Defendant has utilized a visiting judge on two different days to allow him an opportunity to deal with this suit at a cost to the State of Texas of \$327 per day. The rest of the significant burden required by this frivolous suit has been borne by the undersigned including one trip to Dallas personally to insure that filing requirements and rules were timely and appropriately met." Reply at ¶ 5.

⁵If Judge Gohmert requires additional time to assemble his evidence, he should notify this Court in writing.

serve upon Judge Gohmert any written response which they wish to make to each such statement and any arguments establishing why such fees and costs should not be imposed upon them pursuant to Rule 11. Should Plaintiff fail to file a response within the proscribed time, the Court will award sanctions without Plaintiff's input.

II. SANCTIONS UNDER THE COURT'S INHERENT POWER

Separate and apart from Rule 11, a court may use its inherent power to sanction a party who acts in bad faith, vexatiously, wantonly or for oppressive reasons. *Chambers v. NASCO*, 501 U.S. 32, 45-46 (1991); *see also Kipps v. Caillier*, 197 F.3d 765, 770 (5th Cir. 1999) (court must make specific finding that party acted in bad faith in order to impose sanctions under its inherent power). The purpose of this power is to enable the Court to ensure its own proper functioning. *Chambers*, 501 U.S. at 43 ("It has long been understood that certain implied powers must necessarily result to our Courts of justice from the nature of their institutions...because they are necessary to the exercise of all others."); *Conner v. Travis County*, 209 F.3d 794, 799 (5th Cir. 2000). The invocation of this sanctioning power should be the exception rather than the rule. *Kipps*, 197 F.3d at 770.

This case, to which the Court has devoted more time and energy than it cares to remember, falls squarely within the "exceptional" category. As discussed in more detail above, the claims first initiated by Collins and later vigorously pursued by Westfall lacked any arguable legal and/or factual support, were brought to harass Judge Gohmert and other defendants, and generally constituted a flagrant abuse of the legal process. At the bottom of this now almost five-year long fiasco, Collins initiated and Westfall subsequently ratified (by filing a complaint in federal court that violated virtually

every precept of Rule 11) wholly groundless civil rights claims against two state court judges (including Judge Gohmert), the sheriff, constable, district attorney and tax assessor-collector of Van Zandt County, and several attorneys. In fact, upon losing a law suit, it is Collins' practice simply to file a new one, adding as parties most of the participants in the old suit (such as Judge Gohmert) who are then alleged, without supporting evidence, to be part of the RICO conspiracy against him. This practice is, needless to say, intolerable.

Given the utter lack of evidence tending to demonstrate that Judge Gohmert participated in a RICO conspiracy, the Court cannot avoid the conclusion that Collins and Westfall each acted in bad faith, vexatiously, wantonly *and* for oppressive reasons. *Kipps*, 197 F.3d at 770. Consequently, it is appropriate to impose sanctions pursuant to the Court's inherent power to preserve the Court's authority, to punish and to deter future misconduct. *See, e.g., Chambers*, 501 U.S. at 45-46; *Kipps*, 197 F.3d at 770.

Any sanctions levied under a court's inherent power must be the least severe sanctions adequate to achieve the end of preserving the court's authority and punishing the misconduct. *Scaife v. Associated Air Center, Inc.*, 100 F.3d 406, 411 (5th Cir. 1996). In light of the circumstances of this case, Collins and Westfall are hereby sanctioned in the amount of \$2,500 each; any greater sanction would be excessive while a lesser sanction would fail to serve the Court's purposes.

Therefore, within twenty (20) days from the date of entry of this Order, both Jerry Michael Collins and G. David Westfall are each directed to pay \$2,500 to the Clerk of the District Court of the Northern District of Texas. Furthermore, the parties are directed to submit

Rule 11 evidence and arguments in the manner set forth at pages 6-7 of this Order.

So Ordered.

Signed this 26th day of July, 2000.



JORGE A. SOLIS
UNITED STATES DISTRICT JUDGE

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IN THE UNITED STATES DISTRICT COURT
DALLAS DIVISION

U.S. DISTRICT COURT NORTHERN DISTRICT OF TEXAS FILED 26 2001 By <u><i>[Signature]</i></u> Deputy
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JERRY MICHAEL COLLINS,

Plaintiff,

v.

RICHARD LAWRENCE, ET AL.,

Defendants.

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CIVIL ACTION NO.
3:99-CV-0641-P



ORDER

Now before the Court is Defendant Judge Louis B. Gohmert, Jr.'s Affidavit ("Affidavit"), filed August 17, 2000, in response to this Court's Order for evidence and arguments in support of Defendant's Motion for Sanctions Under Rule 11(b). Plaintiff filed responsive papers to Defendant Gohmert's Affidavit on August 25, 2000, and September 15, 2000. In addition, Plaintiff filed a Motion for Immunity from Sanctions, filed August 29, 2000, and Motion for Leave of Court to File Suit, filed October 23, 2000. For the following reasons, Defendant Gohmert's Motion for Sanctions Under Rule 11(b) is GRANTED. Furthermore, Plaintiff's Motion for Immunity from Sanctions and Motion for Leave of Court to File Suit are DENIED.

* * *

Defendant Judge Louis B. Gohmert, Jr. filed a Motion for Sanctions under Rule 11(b) on May 3, 1999. To consider the motion for Rule 11 sanctions, this Court issued an Order on July 26, 2000, directing the parties to submit Rule 11 evidence and arguments regarding the amount

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of fees and costs incurred by Judge Gohmert and/or the State of Texas in defending against Collins' frivolous lawsuit.

On August 17, 2000, Judge Gohmert submitted a properly authenticated affidavit outlining the expenses he incurred, as well as the expenses incurred by the State of Texas. In response, Collins does not dispute the propriety of such expenses; rather, he continues to argue the merits of his claims, which have already been dismissed by this Court.

The amount of Rule 11 sanctions must be limited to the expenses actually and directly caused by the filing of the pleading found to violate Rule 11. *See Jennings v. Joshua I.S.D.*, 948 F.2d 194, 199 (5th Cir. 1991), cert. denied, 504 U.S. 956 (1992). Having reviewed the parties' arguments and evidence, the Court finds that Judge Gohmert's expenses as set forth in his August 17 Affidavit were reasonable and necessary to properly defend against Collins' lawsuit and were the direct and proximate result of that lawsuit. As such, in addition to the \$2,500 already sanctioned against both Collins and Westfall, the Court hereby directs both Jerry Michael Collins and his attorney G. David Westfall to each pay \$54.30 to Judge Lewis B. Gohmert, Jr. within twenty (20) days from the date of this Order. In addition, within twenty (20) days from the date of this Order, both Collins and Westfall are each directed to pay \$189.97 to the Comptroller for the State of Texas. Both payments should be remitted to Judge Gohmert.²

¹ For a more detailed discussion of Collins' frivolous claims, see this Court's July 26, 2000 Order.

² Judge Gohmert shall forward to the appropriate office any payments owing to the Comptroller for the State of Texas.

The Court next addresses Collins' Motion for Immunity from Sanctions and Motion for Leave of Court to File Suit. Plaintiff moves this Court to allow him to file a federal lawsuit "against all of those who participated in the scheme to illegally invade his home on January 31, 2000 and those who participated in the cover-up of all illicit acts related to it." See Plf. Motion for Leave at 6. Such an action stems from the same alleged conspiracy made the basis of Collins' previous federal claims, all of which were dismissed as meritless and harassing.³ See Plf. First Am. Cmplt.; this Court's March 7, 2000 Order and July 26, 2000 Order. To the Court's dismay, it appears as though Plaintiff intends to continue the filing of baseless claims, thereby further straining the resources of the judicial system. Because Plaintiff has not demonstrated any legal or factual support as to why he should be allowed to file a lawsuit that mirrors the one previously dismissed by this Court, Plaintiff's Motion for Leave of Court to File Suit is denied.

³ Plaintiff's Complaint in the case previously dismissed by this Court provides as follows:

The Destroy Collins Ring

The pattern of the Destroy Collins Ring generally fits the following, with minor exceptions.

- a. The Law Enforcement Provider Defendants, their Agents, and Other Alleged Wrongdoers knowingly and willfully participated in the conspiracy to break-into Collins home, then they conspired to rummage through Collins' personal and private papers. Then, they knowingly and willfully participated in the actual break-in of Collins home. Then, they knowingly and willfully acted on their conspiracy by stealing hundreds of Collins' personal and private papers. Then, they knowingly and willfully participated in the conspiracy to prepare fraudulent documents. Then, they knowingly and willfully participated in the filing of those fraudulent documents and even more fraudulent documents with the court.

See Plf. Cmplt. at 15.

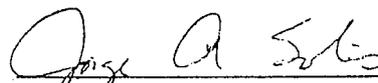
In addition, because Plaintiff has demonstrated his intent to continue filing claims on this matter in federal court, the Court finds no good cause exists to grant Plaintiff's motion for immunity from the actions he has taken and seems intent to continue to take. As a result, Plaintiff's Motion for Immunity from Sanctions is denied.

CONCLUSION

Upon thorough review of both parties' arguments, the evidence on file, and applicable law, the Court finds that Defendant Judge Louis B. Gohmert, Jr.'s Motion for Sanctions under Rule 11(b) is GRANTED. Furthermore, Plaintiff Jerry Michael Collins' Motion for Immunity from Sanctions and Motion for Leave of Court to File Suit are hereby DENIED.

So Ordered.

Signed this 26th day of March, 2001.



JORGE A. SOLIS
UNITED STATES DISTRICT JUDGE

U. S. DISTRICT COURT
 NORTHERN DISTRICT OF TEXAS
FILED
 DEC - 2 1999
 NANCY DOHERTY, CLERK
 By _____ Deputy

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

UDO BIRNBAUM)

Plaintiff)

VS.)

RICHARD L. RAY, *et al*)

Defendants)

CIVIL ACTION NO. 3:99CV0696-R

PLAINTIFF'S PRO SE APPEARANCE

Plaintiff UDO BIRNBAUM hereby again appears as a Pro Se.

Udo Birnbaum
 UDO BIRNBAUM
 PRO SE
 RT. 1, BOX 295
 EUSTACE, TX 75124
 (903) 479-3929

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document has been served upon all counsel of record via *Cert. Mail* on this the *2nd* day of December, 1999, as shown below:

- Richard Ray, 300 South Trade Days Blvd, Canton, TX 75103
- Daniel E Maeso, Leslie B Vance, Attorney General of Texas, Capitol Station, PO Box 12548, Austin, TX 78711-2548
- Richard Davis, 301 South Main Street, Canton, TX 75103
- Dolena T Westergard, Dallas County District Attorney's Office, Frank Crowley Courts Building, 133 N Industrial Blvd, Suite C4-2 LB 19, Dallas, TX 75207
- L Charles Van Cleef, Flowers Davis Fraser Derryberry & Van Cleef, 805 Rice Road, Tyler, TX 75703
- G David Westfall, 714 Jackson St, Suite 700, Dallas, TX 75202

Udo Birnbaum
 UDO BIRNBAUM

**DEPOSITION
 EXHIBIT**