

**CAUSE NO. 95-00063**

<b>WILLIAM B JONES</b>	§	IN THE DISTRICT COURT
Plaintiff	§	
	§	
v.	§	294th JUDICIAL DISTRICT
	§	
<b>UDO BIRNBAUM</b>	§	
Defendant	§	VAN ZANDT COUNTY, TEXAS

**EMERGENCY MOTION FOR RELIEF FROM TWELVE GIANT HOGS  
INTERFERING WITH COURT ORDERED SURVEILLANCE  
OF DAMS BEING CONSTRUCTED BY STEVE'S CREEK BEAVERS**

**COMES NOW** Defendant Udo Birnbaum ("Birnbaum"), to show as follows:

**In Dec. 1994**, this matter arose out of a dispute over a beaver dam:

"Apparently beavers have dammed up a stream flowing onto your property." Attorney letter Dec. 7, 1994.

"Your nonfeasance in allowing the water build-up to invade Mr. Jones' property constitutes an indirect trespass." Attorney letter Dec. 7, 1994.

**On Feb. 6, 1995**, Defendant was sued under Section 11.06(a) of the Texas Water Code:

"During 1994, Birnbaum wrongfully built and has at all times since then wrongfully maintained a dam on his land in the natural channel of the spring creek, to the height of approximately four (4) feet, and extending along the spring creek in the channel thereof for a distance of twenty (20) feet." (Cause No. 95-63, paragraph VI)

"2. Birnbaum be perpetually enjoined from obstructing the spring creek in the full and natural flow of water therein, or permitting or causing the same to be so obstructed." (Cause No. 95-63, prayer)

**On March 26, 27, 28, and 29 of 1998**, the jury found:

"Question No. 1: Did Birnbaum allow dams upon his land to flood Jones' upstream property in October, 1994? **We Answer: YES**"

"Question No. 2: What sum of money, if paid now in cash, would fairly and reasonable compensate William B. Jones for his loss, if any, resulting from the occurrence in question? Answer in dollars and cents, if any. **We Answer: 0**"

**On July 24, 1998**, Plaintiff told the court that this entitled him to a permanent injunction: "from ... .. permitting ... .. the creek to be obstructed". Plaintiff's Amended Motion for Judgment On Verdict July 24, 1998.

**On July 19, 2004**, retired visiting judge Ron Chapman came and ruled (**Exhibit "A"**) such **permanent injunction** against Defendant Birnbaum:

"Jury Verdict rendered in May of 1998 requires a permanent injunction to be entered in this case."

**On or about August 30, 2007** TWELVE GIANT HOGS (plus piglets) had taken up residence on Steve's Creek where beavers might again be building dams violating Section 11.06 of the Texas Water Code. (see **AFFIDAVIT OF HOGS, below**)

**SUCH TWELVE GIANT HOGS** pose the threat of imminent and irreparable harm to Birnbaum in doing court mandated surveillance of beaver dams on Steve's Creek.

### **PRAYER**

WHEREFORE, Defendant Birnbaum prays for emergency relief from the hogs and this court's injunction for him to do permanent monitoring of Steve's Creek beavers, as follows:

- Temporary appointment of plaintiff's attorney, Richard L. Ray, to co-ordinate water level monitoring on Steve's Creek from plaintiff's end of the creek.
- Permanent eviction of the hogs, and if necessary, detaining them indefinitely.
- Such other relief as is just and proper under the circumstances of this case.

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Udo Birnbaum, *Pro Se*  
540 VZCR 2916  
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### **AFFIDAVIT OF HOGS**

My name is Udo Birnbaum. I am 70 years old. I speak from personal knowledge.

I am the defendant in the above titled case who is to perpetually and permanently do monitoring for beaver dams along Steve's Creek.

Steve's Creek flows for about 1800 feet through the area in question, coming off-off Plaintiff's land to the west, and flowing in an easterly direction.

Steve's Creek is heavily wooded, brushy, and extremely eroded, with the creek bed down about 12 feet from the terrain.

As I was going down to check on Steve's Creek on or about August 30, 2007 with my German Shepherd dog, we came upon a group of about 8 hogs with about 20 little piglets, all of whom fortunately ran off, rather than at us.

About a week later I counted twelve giant hogs, but no piglets with them this time.

Those hogs pose the danger of imminent and irreparable harm to me.

I, Udo Birnbaum, therefore seek emergency relief from these hogs and this court's injunction to permanently be monitoring Steve's Creek for beaver dams.

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Udo Birnbaum

STATE OF TEXAS  
COUNTY OF VAN ZANDT

Before me, a notary public, on this day personally appeared Udo Birnbaum, known to me to be the person whose name is subscribed to above, and being by me first duly sworn, declared that the matters in his *Affidavit of Hogs* are true and correct and upon personal knowledge, and that exhibit "A" attached to this *Emergency Motion for Relief from Twelve Giant Hogs* is a true copy of the docket entry in this cause.

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Udo Birnbaum

Given under my hand and seal of office this \_\_\_\_\_ day of September, 2007.

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Notary in and for The State of Texas

**Certificate of Service**

This is to certify that on this the \_\_\_\_\_ day of September, 2007 a copy of this document was mailed by regular mail to attorney Richard L. Ray, 300 South Trade Days Blvd., Canton, Texas 75103.

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Udo Birnbaum