

CAUSE NO. 06-00857

UDO BIRNBAUM
Plaintiff

v.

PAUL BANNER
Defendant

RON CHAPMAN
Defendant

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

DEP
KAREN VAN ZANDT CO. TX
DIST. CLERK

FILED FOR RECORD
09 JUL 24 PM 2:41

NOTICE OF DEPOSITION OF JUDGE PAUL BANNER

Plaintiff hereby notices that the deposition of **Judge Paul Banner** is set for Tuesday, Aug. 11, 2009 at 10:00 a.m. in the jury room of the county court, Van Zandt Courthouse, Canton, Texas, and continuing that day as may be necessary.

Said deposition upon the **factual claims** and **facts contested** in this cause by *Affidavit of the Honorable Judge Paul Banner* of June 24, 2009, and *Affidavit of the Honorable Judge Ron Chapman* of July 10, 2009, **Exhibits "A" and "B"**, respectively, to *Defendants' Plea to the Jurisdiction*, dated July 14, 2009.

Deposition by videotape ONLY. Any party wanting additional recording, so arrange, but please notify.

Per the Rules, should you not be agreeable to this setting, please provide another setting that is reasonable to which you will agree.

Sincerely,

Udo Birnbaum

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

CERTIFICATE OF SERVICE

A true and correct copy of this document was today provided by CERTIFIED MAIL 7008 1300 0001 4353 5099 to **Jason T. Contreras**, Office of the Attorney General of Texas, P.O. Box 12548, Capitol Station, Austin, Texas 78711-2548.

This the 24th day of July, 2009.

Udo Birnbaum
UDO BIRNBAUM

CAUSE NO. 06-00857

UDO BIRNBAUM

Plaintiff

v.

PAUL BANNER

Defendant

RON CHAPMAN

Defendant

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IN THE DISTRICT COURT

294th JUDICIAL DISTRICT

VAN ZANDT COUNTY, TEXAS

FILED FOR RECORD
09 JUL 24 PM 2:41
KAREN MILBURN
CLERK VAN ZANDT CO. TX
DEP

NOTICE OF DEPOSITION OF JUDGE RON CHAPMAN

Plaintiff hereby notices that the deposition of **Judge Ron Chapman** is set for Tuesday, Aug. 11, 2009 at 10:00 a.m. in the jury room of the county court, Van Zandt Courthouse, Canton, Texas, and continuing that day as may be necessary.

Said deposition upon the **factual claims** and **facts contested** in this cause by *Affidavit of the Honorable Judge Paul Banner* of June 24, 2009, and *Affidavit of the Honorable Judge Ron Chapman* of July 10, 2009, **Exhibits "A" and "B"**, respectively, to *Defendants' Plea to the Jurisdiction*, dated July 14, 2009.

Deposition by videotape ONLY. Any party wanting additional recording, so arrange, but please notify.

Per the Rules, should you not be agreeable to this setting, please provide another setting that is reasonable to which you will agree.

Sincerely,

Udo Birnbaum

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

CERTIFICATE OF SERVICE

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This the 24th day of July, 2009.

Udo Birnbaum
UDO BIRNBAUM

COPY

CAUSE NO. 06-00857

UDO BIRNBAUM,
Plaintiff,

v.

PAUL BANNER AND
RON CHAPMAN,
Defendants.

§ IN THE DISTRICT COURT
§
§
§ VAN ZANDT COUNTY, TEXAS
§
§
§
§ 249TH JUDICIAL DISTRICT

AMENDED NOTICE OF HEARING

PLEASE TAKE NOTICE that Defendants' Plea to the Jurisdiction has been reset for hearing on **August 28, 2009 at 11:00 a.m.** in the 249th Judicial District Court of Van Zandt County, Texas.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

C. ANDREW WEBER
First Assistant Attorney General

DAVID S. MORALES
Deputy Attorney General for Civil Litigation

ROBERT B. O'KEEFE
Chief, General Litigation Division



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

*Attorneys for Judge Paul Banner and
Judge Ron Chapman*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been sent via Certified Mail Return Receipt Requested and Regular Mail on July 29, 2009:

Udo Birnbaum
540 VZ CR 2916
Eustace, TX 75124


JASON T. CONTRERAS
Assistant Attorney General



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 29, 2009

UPS OVERNIGHT

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

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

Dear Clerk:

Enclosed for filing are the original and one copy of *Defendants Motion to Quash, Motion for Protection, Motion to Stay Discovery and Objections to Plaintiff's Deposition Notices* and an *Amended Notice of Hearing*. Please return a file stamped copy to us in the enclosed envelope.

Thank you for your assistance.

Sincerely,

Suzanne Doud, Legal Assistant to
JASON CONTRERAS
MISHELL KNEELAND
Assistant Attorney General
General Litigation Division
(512) 475-4103 (phone)
(512) 320-0975 (fax)

Enclosure

cc: Mr. Birnbaum

UDO BIRNBAUM,
Plaintiff,

v.

PAUL BANNER AND
RON CHAPMAN,
Defendants.

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IN THE DISTRICT COURT

VAN ZANDT COUNTY, TEXAS

249TH JUDICIAL DISTRICT

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

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

I. BACKGROUND

Plaintiff brought this frivolous, harassing suit against Defendants for alleged federal "RICO violations" in connection with another case in which he was not happy with the outcome. But the fact that Plaintiff disagreed with the rulings and/or orders of Defendant Judges in that case is not a valid legal basis to have sued them. Because Defendants are clearly entitled to absolute judicial immunity against the claims asserted by Plaintiff in this case, a plea to the jurisdiction was filed on their behalf, which is currently pending before the court and is set for hearing on August 28, 2009 at 11:00 a.m. Plaintiff now seeks to depose Defendant Judges, and issued deposition notices without conferring with defense counsel regarding same, and without any notice whatsoever. In this manner, Plaintiff unilaterally selected August 11, 2009 at 10:00a.m. as the date and

time for their depositions. Exhibit A and B. For the reasons addressed herein, Defendants' motion to quash, motion for protective order and motion to stay discovery should be granted. Additionally, Defendants' objections to Plaintiff's notices of deposition should be sustained.

II. ARGUMENT AND AUTHORITIES

A party who resists discovery may file a motion for protective order in response to a discovery request. Tex.R.Civ.P. 192.6; see *In re Alford Chevrolet-Geo*, 997 S.W.2d 173, 180-81 (Tex. 1999). A party may ask for protection from a discovery request that is unduly burdensome, annoying to produce, and harassing. Tex.R.Civ.P. 192.4; 192.6; see *Walker v. Packer*, 827 S.W.2d 883, 843 (Tex. 1992). The trial court has broad discretion to protect a person with a protective order. Tex.R.Civ.P. 192.6; *Axelson, Inc. v. McIlhany*, 798 S.W.2d 550, 553 (Tex. 1990). To protect the movant from undue burden, unnecessary expense, harassment, annoyance or invasion of personal, constitutional, or property rights, the court may make an order that the requested discovery not be sought. *Id.*

As indicated above, Defendants' plea to the jurisdiction is currently pending before the court. The plea is based on the doctrine of absolute judicial immunity and involves the threshold issue of immunity. By way of this action, Plaintiff amazingly seeks to hold Defendants liable in the amount of "\$377,310 as treble damages" (see Plaintiff's Petition at p. 5) for judicial acts while serving in their capacities as state district court judges. The evidence in support of the plea is sufficient to establish Defendants' entitlement to absolute judicial immunity and therefore any deposition of Defendant

Judges is unnecessary. See *Clawson v. Wharton County*, 941 S.W.2d 267, 273-74 (Tex.App.-Corpus Christi 1996, writ denied) (no abuse of discretion in denying discovery request when evidence sufficient to establish affirmative defense); see also *Harris Cty. v. Sykes*, 136 S.W.3d 635, 639 (Tex.2004) (trial court may dismiss suit filed against governmental entity when it is apparent from pleadings that governmental entity is immune); see also *City of Galveston v. Gray*, 93 S.W.3d 587, 591 (Tex.App.-Houston [14th Dist.] 2002, orig. proceeding & pet. denied) (“a governmental unit’s entitlement to be free from suit is effectively lost if the trial court erroneously assumes jurisdiction and subjects the governmental unit to pre-trial discovery and the costs incident to litigation”). In this regard, Defendants’ plea addresses a preliminary question of law (i.e., whether the suit is barred by judicial immunity) to determine whether Plaintiff can properly proceed with his case against Defendants before engaging in expensive and invasive discovery. Allowing Plaintiff to depose Defendants would run contrary to the purpose of addressing such a threshold jurisdictional issue.

Further, any deposition of Defendants at this time would be premature since the Court has not yet ruled on Defendants’ Plea to the Jurisdiction, which is a dispositive plea which would result in the dismissal of this case, thereby rendering moot the depositions sought by Plaintiff. Indeed, Plaintiff’s attempt to depose Defendants at this time is not only premature, it is harassing and annoying, and, given the circumstances, the court should exercise its broad discretion in protecting Defendants from Plaintiff’s attempt to depose them.

As an additional consideration weighing in favor of Defendants' motion for protection, Plaintiff filed this action in November 2006, and waited *over two years* to finally serve Defendant Judges with process in or around February 2009. This was, of course, after Plaintiff found out the court was going to dismiss this case due to his failure to prosecute. Given these circumstances, Plaintiff should not now be allowed to depose Defendants after his own undue delay in prosecuting his purported claims, and having failed to conduct *any* discovery at an earlier date.

Further, a stay on discovery should be granted because the importance of Plaintiff's attempt to depose Defendant Judges with respect to matters involving absolute judicial immunity is minimal at best, if not entirely lacking. Tex.R.Civ.P. 192.4. Indeed, Plaintiff's discovery is simply an attempt to harass and annoy Defendants. Accordingly, any purported benefit of deposing Defendant Judges is clearly outweighed by the undue burden and expense involved in conducting such depositions. And the proposed deposition discovery sought by Plaintiff cannot be used as an attempt to overcome judicial immunity, since the Defendant Judges have already provided evidence by way of their affidavits as to why they are entitled to judicial immunity. Instead, it is Plaintiff's burden to overcome Defendants' entitlement to judicial immunity by producing independent evidence as to why this doctrine does not apply.

Accordingly, Defendants object to the time and place of the depositions because, given the pending plea, it is clear that Plaintiff's claims are barred by judicial immunity. Thus, there is no time or place for the deposition of Defendant Judges that would be convenient.

III. AUTOMATIC STAY

This motion to quash has been filed within three business days after service of the subpoena for deposition and notice of oral deposition therefore the deposition is stayed until this motion can be determined. Tex.R.Civ.P. 199.4.

IV. PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant Judges respectfully request that this motion to quash, motion for protective order and motion to stay be granted and further that they be granted all relief, both at law and in equity, to which they may be justly entitled.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

C. ANDREW WEBER
First Assistant Attorney General

DAVID S. MORALES
Deputy Attorney General for Civil Litigation

ROBERT B. O'KEEFE
Chief, General Litigation Division


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

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been sent via Certified Mail Return Receipt Requested and Regular Mail on July 29, 2009:

Udo Birnbaum
540 VZ CR 2916
Eustace, TX 75124


JASON T. CONTRERAS
Assistant Attorney General

jc

CAUSE NO. 06-00857

UDO BIRNBAUM
Plaintiff

v.

PAUL BANNER
Defendant

RON CHAPMAN
Defendant

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IN THE DISTRICT COURT

294th JUDICIAL DISTRICT

VAN ZANDT COUNTY, TEXAS

NOTICE OF DEPOSITION OF JUDGE PAUL BANNER

Plaintiff hereby notices that the deposition of **Judge Paul Banner** is set for Tuesday, Aug. 11, 2009 at 10:00 a.m. in the jury room of the county court, Van Zandt Courthouse, Canton, Texas, and continuing that day as may be necessary.

Said deposition upon the **factual claims** and **facts contested** in this cause by *Affidavit of the Honorable Judge Paul Banner* of June 24, 2009, and *Affidavit of the Honorable Judge Ron Chapman* of July 10, 2009, **Exhibits "A" and "B"**, respectively, to *Defendants' Plea to the Jurisdiction*, dated July 14, 2009.

Deposition by videotape ONLY. Any party wanting additional recording, so arrange, but please notify.

Per the Rules, should you not be agreeable to this setting, please provide another setting that is reasonable to which you will agree.

Sincerely,

Udo Birnbaum

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

CERTIFICATE OF SERVICE

A true and correct copy of this document was today provided by CERTIFIED MAIL 7008 1300 0001 4353 5099 to **Jason T. Contreras**, Office of the Attorney General of Texas, P.O. Box 12548, Capitol Station, Austin, Texas 78711-2548.
This the 24th day of July, 2009.

Udo Birnbaum
UDO BIRNBAUM



je

CAUSE NO. 06-00857

UDO BIRNBAUM
Plaintiff

v.

PAUL BANNER
Defendant

RON CHAPMAN
Defendant

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IN THE DISTRICT COURT

294th JUDICIAL DISTRICT

VAN ZANDT COUNTY, TEXAS

NOTICE OF DEPOSITION OF JUDGE RON CHAPMAN

Plaintiff hereby notices that the deposition of **Judge Ron Chapman** is set for Tuesday, Aug. 11, 2009 at 10:00 a.m. in the jury room of the county court, Van Zandt Courthouse, Canton, Texas, and continuing that day as may be necessary.

Said deposition upon the **factual claims** and **facts contested** in this cause by *Affidavit of the Honorable Judge Paul Banner* of June 24, 2009, and *Affidavit of the Honorable Judge Ron Chapman* of July 10, 2009, **Exhibits "A" and "B"**, respectively, to *Defendants' Plea to the Jurisdiction*, dated July 14, 2009.

Deposition by videotape ONLY. Any party wanting additional recording, so arrange, but please notify.

Per the Rules, should you not be agreeable to this setting, please provide another setting that is reasonable to which you will agree.

Sincerely,

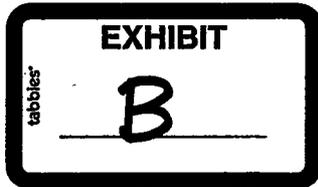
Udo Birnbaum

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

CERTIFICATE OF SERVICE

A true and correct copy of this document was today provided by CERTIFIED MAIL 7008 1300 0001 4353 5099 to **Jason T. Contreras**, Office of the Attorney General of Texas, P.O. Box 12548, Capitol Station, Austin, Texas 78711-2548.
This the 24th day of July, 2009.

Udo Birnbaum
UDO BIRNBAUM



UDO BIRNBAUM,
Plaintiff,

v.

PAUL BANNER AND
RON CHAPMAN,
Defendants.

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IN THE DISTRICT COURT

VAN ZANDT COUNTY, TEXAS

249TH JUDICIAL DISTRICT

ORDER

ON THIS DAY CAME TO BE CONSIDERED Defendant Judge Paul Banner and Defendant Judge Ron Chapman's Motion to Quash, Motion for Protection, Motion to Stay Discovery and Objections to Plaintiff's Deposition Notices. Having carefully considered said motions and objections by Defendants, and any applicable response thereto by Plaintiff, the Court is of the opinion that Defendants' Motion to Quash, Motion for Protection, and Motion to Stay Discovery are meritorious and therefore are **GRANTED** in their entirety.

ACCORDINGLY, it is **ORDERED, ADJUDGED AND DECREED** that Plaintiff's deposition notices served onto Defendants are hereby **QUASHED**.

It is **ORDERED, ADJUDGED AND DECREED** that Plaintiff shall not depose Defendants at this time, and may only do so upon proper motion by Plaintiff and after receiving permission from the Court to do so.

It is also **ORDERED, ADJUDGED AND DECREED** that all discovery in this action is hereby **STAYED** until further notice from the Court.

ADDITIONALLY, Defendants' objections to Plaintiff's deposition notices are hereby **SUSTAINED**.

SIGNED on this _____ day of _____, 2009.

PRESIDING JUDGE

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

July 29, 2009

NOTICE OF COURT SETTING

CAUSE # 06-00857

UDO BIRNBAUM

VS

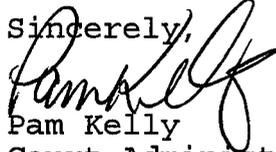
PAUL BANNER

The above referenced cause has been set for hearing on
August 28th 2009 AT 11:00 AM.

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

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

Sincerely,


Pam Kelly
Court Administrator

CC: BIRNBAUM, UDO ✓
540 VZ CR 2916

EUSTACE, TX 75124

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

AUSTIN, TX 78711-2548



I can't sign.
Who says no
judge appointed.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 3, 2009

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Udo Birnbaum
540 VZ 2916
Eustace, Texas 75124

RE: *Udo Birnbaum v. Paul Banner & Ron Chapman*; In the 249th Judicial
District Court of Van Zandt County, TX; Cause No. 06-00857

Dear Mr. Birnbaum:

Based on Defendants' recently filed Motion To Quash, Motion For Protection, Motion To Stay Discovery And Objections To Plaintiff's Deposition Notices, it is my position that any deposition of either Judge Banner or Judge Chapman is not appropriate. In a reasonable effort resolve this matter without the necessity of court intervention, please advise me if you are agreeable to staying all discovery in this case. In the event you are not agreeable to this, please advise me as to the reasons why.

If I do not hear from you by Monday, August 10, 2009, I will assume that you are opposed to the aforementioned motions and objections. Should you have any questions regarding this matter feel free to contact me.

Regards,

JASON CONTRERAS
Assistant Attorney General

Enclosure

cc: Paul Banner (*via facsimile*)
Ron Chapman (*via facsimile*)



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 6, 2009

VIA FAX 972-548-0454

The Honorable Judge John L. McCraw, Jr.
1415 Harroun St.
McKinney, TX, 75069

RE: *Udo Birnbaum v. Paul Banner & Ron Chapman*; In the 249th Judicial
District Court of Van Zandt County, TX; Cause No. 06-00857

Dear Judge McCraw:

A hearing on Defendants' plea to the jurisdiction has been set on August 28, 2009 in the above-referenced matter and I understand you have been assigned to preside at said hearing. I provided the August 28th date in error and am not available on that date, and also am not available on August 26 or 27. My apologies for any inconvenience this has caused. Accordingly, I would respectfully request to re-schedule the hearing date to August 24 or 25, 2009. If you are not available on either of these dates, please advise me of same so that an alternate date can be selected.

If you have any questions regarding this matter feel free to contact me.

Regards,

JASON CONTRERAS
Assistant Attorney General

cc: Paul Banner (*via facsimile*)
Ron Chapman (*via facsimile*)

~~Udo Birnbaum - via certified mail return receipt requested~~

540 VZ 2916
Eustace, Texas 75124

COPY

CAUSE NO. 06-00857

UDO BIRNBAUM,
Plaintiff,

v.

PAUL BANNER AND
RON CHAPMAN,
Defendants.

§ IN THE DISTRICT COURT
§
§
§ VAN ZANDT COUNTY, TEXAS
§
§
§ 249TH JUDICIAL DISTRICT

SECOND AMENDED NOTICE OF HEARING

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

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

C. ANDREW WEBER
First Assistant Attorney General

DAVID S. MORALES
Deputy Attorney General for Civil Litigation

ROBERT B. O'KEEFE
Chief, General Litigation Division


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

*Attorneys for Judge Paul Banner and
Judge Ron Chapman*

CERTIFICATE OF SERVICE

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

Udo Birnbaum
540 VZ CR 2916
Eustace, TX 75124



JASON T. CONTRERAS
Assistant Attorney General



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 10, 2009

Via Regular U.S. Mail

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

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

Dear Ms. Wilson:

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

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

Thank you for your assistance with this matter.

Sincerely,

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

Enclosures

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

FILED 09 AUG 10 PM 1:31
CAUSE NO. 06-00857

UDO BIRNBAUM
Plaintiff

v.

PAUL BANNER
RON CHAPMAN
Defendants

09 AUG 10 PM 1:31 IN THE DISTRICT COURT
§
KAREN WILSON
DIST CLERK VAN ZANDT CO. TX
§
BY _____ § DEP
§
VAN ZANDT COUNTY, TEXAS
§
294th JUDICIAL DISTRICT

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
RCP RULE 166a(i) "NO EVIDENCE"
re ABSOLUTE JUDICIAL IMMUNITY DEFENSE

Punishment – on Birnbaum – *“sought by the Court”* – is NOT **adjudication**

Punishment – on Birnbaum – to stop *“others like him”* – is NOT **adjudication**

Punishment – for a *“completed act”* – by **civil process** – is **UNLAWFUL**

Punishment – for First Amendment **Right to file** – is **OFFICIAL OPPRESSION**

*“11. The [\$125,770.00] award of exemplary/punitive damages is an appropriate amount to seek to gain the relief sought by the Court which is to stop Birnbaum and others like him from filing similar frivolous motions and other frivolous lawsuits.” Order on Motion for Sanctions, page7. (signed by JUDGE RON CHAPMAN Oct. 24, **2006**)*

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

These judges NOT “in function” of adjudicating – i.e. the rights of the parties
But punishing – NOT adjudicating -- NOT entitled to Absolute Judicial Immunity

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now Plaintiff, UDO BIRNBAUM, moving for a “no evidence” summary judgment under Rule 166a(i) of the Rules of Civil Procedure, against Defendants, JUDGE PAUL BANNER and JUDGE RON CHAPMAN, on their claim of Absolute Judicial Immunity, to show as follows:

INTRODUCTION

1.

Plaintiff's Appearance

Plaintiff, UDO BIRNBAUM, complains under 18 U.S.C. § 1964(c), "civil RICO", of injury in property of \$62,885.00 and \$125,770.00 by unlawful assessment by Defendants, JUDGE PAUL BANNER and JUDGE RON CHAPMAN, by a "*pattern of racketeering activity*", such term as defined in 18 U.S.C. § 1961, such conduct as outlawed in 18 U.S.C. § 1962(c). Original Petition.

2.

Defendants' Appearance -- (first appearance)

Defendants made a general appearance on Mar. 18, 2009, to "*demand strict proof thereof*", asserting SEVEN (7) affirmative defenses, and in their Prayer, seeking affirmative relief, "*that they recover all such other and further relief, etc ... including, but not limited to attorney's fees and costs incurred herein.*" Defendants' Answer and Affirmative Defenses to Plaintiff's Original Petition.

3.

Plaintiff's Cause

Plaintiff comes under 18 U.S.C. § 1964(c) "civil RICO", for injury in his property by reason of Defendant Judges' conduct in violation of their oaths of office, to "protect, preserve, and defend" the laws of the Land, and specifically for their violation of 18 U.S.C. § 1341 ("mail fraud") under 18 U.S.C. § 1346, "*a scheme to deprive of the intangible right of honest services*", the use of the mails being the "*predicate acts*", and the connection to an "*enterprise*" (294th District Court) and the "*scheme to deprive*"

constituting the outlawed “*pattern of racketeering activity*”, all as defined and outlawed by 18 U.S.C. § 1961 et seq., “RICO”. See Original Petition.

4.

Discovery – or rather attempt at it

On May 20, 2009, Plaintiff sent First Interrogatories to Judge Paul Banner, and First Interrogatories to Judge Ron Chapman, focusing entirely on the **jurisdiction** and **legal basis** for assessing the \$62,885.00 and \$125,770.00 punishment of Oct. 24, **2006**, considering Final Judgment was entered July 30, **2002**. Plaintiff received back **lengthy objections, but no ANSWER, and not sworn, and no reference, whatsoever, to those huge fines at issue.**

On June 18, 2009, Plaintiff sent Request for Disclosure to Judge Paul Banner, and Request for Disclosure to Judge Ron Chapman, regarding the **factual bases** of each of their enumerated **affirmative defenses**, to wit 1) sovereign immunity, 2) statute of limitations, 3) absolute judicial immunity, 4) failure to mitigate damages, 5) official immunity, and 6) res judicata and collateral estoppel. Plaintiff received back **lengthy wordage, but no factual bases of their defenses, and no reference, whatsoever, to those huge fines at issue.**

5.

Defendants’ Un-Appearance and Second Coming!

Despite having, by Answer of Mar. 18, 2009, waived special appearance objecting to the jurisdiction under RCP Rule 120, Defendants nevertheless attempt a second bite at the apple, with re-appearance as Defendants’ Plea to the Jurisdiction, dated

July 14, 2009, with Exhibit "A", Affidavit by the Honorable Judge Paul Banner, and Exhibit "B", Affidavit by the Honorable Judge Ron Chapman.

6.

Exhibit "A". Affidavit of Judge Paul Banner

(NO EVIDENCE HERE OF THE \$ 62,885.00 SANCTION, OR THE \$125,770.00 ASSESSMENT BY JUDGE RON CHAPMAN, BEING "ADJUDICATION")

Judge Banner's affidavit makes no reference, whatsoever, to his [\$62,885.00] Order on Motion for Sanctions he signed on Aug. 8, 2002, or his Findings and Conclusions thereon signed Sept. 30, 2003:

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

Judge Paul Banner's Affidavit:

"My rulings and orders made in the underlying lawsuit were ones that I normally make and perform in my **capacity as judge**, including the Final Judgment issued on July 30, 2002."

7.

Exhibit "B". Affidavit of Judge Ron Chapman

(NO EVIDENCE HERE OF THE \$ 62,885.00 SANCTION, OR THE \$125,770.00 ASSESSMENT BY JUDGE RON CHAPMAN, BEING "ADJUDICATION")

"My rulings and orders made in the underlying lawsuit were ones that I normally make and perform in my **role as a judge**, including the order on motion for sanctions issued on October 24, 2006."

(NOTE: "**role as a judge**", not "**capacity as judge**", as Judge Banner)

However, Judge Chapman's affidavit conceals, that he signed this Order on Motion for Sanctions, for \$125,770.00 – against a Pro Se – must be some sort of record – more than **FOUR (4) YEARS after Judge Paul Banner – see above -- signed Final Judgment on July 30, 2002** – again must be some sort of record, and why:

“11. The [\$125,770.00] award of exemplary/punitive damages is an appropriate amount to seek to gain the relief sought by the Court which is to stop Birnbaum and others like him from filing similar frivolous motions and other frivolous lawsuits.” Order on Motion for Sanctions, page 7. (signed by JUDGE RON CHAPMAN Oct. 24, 2006)

AGAIN, NO EVIDENCE THE \$ 62,885.00 SANCTION, OR THE \$125,770.00 ASSESSMENT BY JUDGE RON CHAPMAN, BEING “ADJUDICATION”.

Again note, did not swear to “capacity as judge”, just “role as a judge”

8.
ARGUMENT
(“The Emperor has no Clothes!”)

The seminal point of this motion is that Defendants have offered no evidence – nor can they – to show that the huge assessments of \$62,885.00 and \$125,770.00 were imposed in the course of adjudicating the rights of the parties – “in the capacity as judge” – to which “function”, and only function -- to which absolute judicial immunity attaches.

Rather, the evidence, as found in the public records of the documents themselves, as signed by Judge Paul Banner (Order on Motion for Sanctions, Findings of Fact and Conclusions of Law), and by Judge Ron Chapman (Order on Motion for Sanctions), clearly show that this was punishment, both in dollars and in tone and tenor of language, “sought by the Court”, “which the Court seeks”, “to stop Birnbaum and

*others like him”, “to stop Defendant/Counter-Plaintiff and others similarly situated”,
“from filing similar frivolous motions and other frivolous lawsuits”, “from filing
frivolous lawsuits”. Etc., ad nauseam*

Unconditionally – not “coercive” – no “keys to your own release” – imposed for a
“completed act” – the “*filing*” – also unlawfully imposed by civil process.

What and Why?

What were they thinking on April 1, 2004, TWO YEARS after Final Judgment?

What were they thinking in signing this stuff on Oct. 24, 2006?

Why are they thinking they can get by with this kind of stuff, then and now?

Their “attorney”, the Attorney General of Texas? On which side of the law?

PRAYER

“Let his net that he hath hid catch himself.”

WHEREFORE, premises considered, Plaintiff prays, that this Motion for
Summary Judgment RCP Rule 166a(i) “no evidence” be granted, and that Defendants’
Plea to the Jurisdiction be stricken, as waived and untimely.

Udo Birnbaum

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

Att:

Exhibit “A”: [\$125,770] “*Order on Motion for Sanctions*” – Judge Chapman

Exhibit “B”: [\$62,885] “*Findings of Fact and Conclusions of Law*” – Judge Banner

CERTIFICATE OF SERVICE

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

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

Judge John McCraw
1415 Harroun
McKinney, TX 75069

Udo Birnbaum

UDO BIRNBAUM

It is therefore, **ORDERED, ADJUDGED, and DECREED** that the motion by the defendant, Udo Birnbaum, that Judge Paul Banner be recused from further matters effecting this cause of action is denied.

It is therefore, **FURTHER ORDERED, ADJUDGED, and DECREED** that the Plaintiff, G. David Westfall, P.C., and Counter-Defendants, Christina Westfall and Stefani Podvin, are awarded damages as a sanction against and to be paid by defendant, Udo Birnbaum, to G. David Westfall, P.C., Christina Westfall, and Stefani Podvin as follows:

A. A monetary sanction in the amount of \$1,000.00 as actual damages, representing the reasonable value of the legal services rendered to the Sanctions Movants by their attorney for the defense of Birnbaum's Motion to Recuse and the prosecution of the Sanctions Movants' Motion for Sanctions.

B. A monetary sanction in the amount of \$124,770.00 as exemplary and/or punitive damages to serve as a deterrent to prevent Birnbaum from committing further similar acts again in the future.

IT IS FURTHER ORDERED THAT the judgment here rendered shall bear interest at the rate of five percent (5%) from the date of the signing of this order, until paid.

All other relief regarding any motions for relief on file in this cause of action not expressly granted in this order is hereby denied.

With regard to the award of sanctions, the Court makes the following findings and conclusions in support of the Court's award of sanctions and in support of the type and dollar amount of the sanctions imposed:

Findings of Fact

1. Birnbaum's claims regarding the attempt to have Judge Paul Banner recused were groundless, vacuous, manufactured, and totally unsupported by any credible evidence whatsoever.
2. Birnbaum's claims regarding the attempt to have Judge Paul Banner recused were without merit and brought for the purpose of harassment and/or delay.
3. The testimony of Birnbaum regarding the attempt to have Judge Paul Banner recused was biased, not credible, and totally uncorroborated by any other evidence.
4. The sole purpose of Birnbaum filing the motion regarding the attempt to have Judge Paul Banner recused was an attempt to harass, intimidate, and inconvenience the Sanctions Movants.
5. Birnbaum has a track record and history of filing lawsuits, motions, and writs of mandamus against judges that rule against him in litigation.
6. Birnbaum filed a pleading containing a completely false and outrageous allegation that Judge Paul Banner had conducted himself in a manner that showed bias and a lack of impartiality.
7. Birnbaum's difficulties with judges and the repeated allegations of a lack of impartiality have had nothing at all to do with the conduct of the judges that Birnbaum has appeared before, but instead, is a delusional belief held only inside the mind of Birnbaum.
8. Birnbaum will seemingly go to any length, even filing new lawsuits in State and Federal courts in an attempt to re-litigate issues which a court has already ruled upon and which all appropriate courts of appeal have affirmed.
9. Birnbaum's filing of this Motion to recuse Judge Banner was consistent with a proven pattern and practice of behavior engaged in by Birnbaum over many years and currently ongoing now in this court and in other federal courts.

10. Birnbaum has a track record and history of bickering and quarreling with judges that have ruled against him in litigation.

11. Birnbaum has a track record and history of filing lawsuits without merit against judges, attorneys, and other individuals in an attempt to gain tactical advantage in other ongoing litigation.

12. Prior to this hearing, Birnbaum filed in March 2004, new legal action in Federal District Court against Judge Paul Banner, G. David Westfall, Christina Westfall, and Stefani Podvin. This new Federal lawsuit attempts to re-litigate the same issues Birnbaum unsuccessfully raised in this lawsuit.

13. Prior to this hearing, Birnbaum has initiated a lawsuit against the attorney for the Sanctions Movants, Frank C. Fleming. Birnbaum admitted in open court that he has never had any dealings with Frank C. Fleming other than in connection with Mr. Fleming's representation of the Plaintiff and the counter-defendants in this cause of action. Birnbaum admitted in open court that the legal basis of his lawsuit against Mr. Fleming, civil RICO, is the same basis Birnbaum was previously sanctioned in this lawsuit for attempting to bring against Christina Westfall and Stefani Podvin.

14. The behavior of Birnbaum himself in prosecuting the Motion to recuse Judge Banner has been vindictive, unwarranted, mean-spirited, frivolous, and totally without substantiation on any legally viable theory for the recusal of Judge Banner.

15. The Motion itself to Recuse Judge Banner without any ounce of evidence to support it, was frivolous, vindictive, and brought for the purpose of harassment.

16. The conduct of Birnbaum giving rise to the award of exemplary and/or punitive damages was engaged in by Birnbaum willfully and maliciously with the intent to harm the Sanctions Movants, Judge Paul Banner, and the attorney for the Sanctions Movants, Mr. Fleming.

17. Prior to the hearing on the Motion to Recuse, the Court admonished Birnbaum that if his Motion to Recuse Judge Banner was not withdrawn, that if it became appropriate, the Court would hear the Motion for Sanctions. In response to this admonition, Birnbaum unequivocally elected to move forward with a hearing on his Motion in an attempt to have Judge Banner recused.

18. The type and dollar amount of the sanctions award is directly related to the harm done. The Court has not been presented with any evidence to believe that the amount of the sanctions award is excessive in relation to the net worth of Birnbaum.

19. The type and dollar amount of the sanctions award is appropriate in order to gain the relief which the Court seeks, which is to stop this litigant and others similarly situated from filing frivolous motions, frivolous lawsuits, frivolous defenses, frivolous counter-claims, and new lawsuits which attempt to re-litigate matters already litigated to a conclusion.

20. The amount of the exemplary and/or punitive damage award is an amount narrowly tailored to the amount of harm caused by the offensive conduct to be punished.

21. The Sanctions Movants have suffered damages as a result of Birnbaum's frivolous counter-claims and Birnbaum's motion to recuse. These damages include expenses (in addition to taxable court costs), attorney's fees, harassment, inconvenience, intimidation, and threats.

Conclusions of Law

1. On the issue of the recusal of Judge Paul Banner, Birnbaum wholly failed to provide any credible evidence to substantiate any of his claims.

2. All of Birnbaum's claims were as a matter of law unproved and untenable on the evidence presented at the hearing.

3. The court concludes as a matter of law that Birnbaum's claim that Judge Paul Banner acted biased and with a lack of impartiality, was brought for the purpose of harassment. The Court makes

Order on Sanctions

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this conclusion based upon the fact that Birnbaum was not a credible witness, that other credible
witnesses totally contradicted Birnbaum's version of the facts, and that evidence was presented establishing that Birnbaum has had a track record and history of harassment towards other opposing litigants, opposing counsels, and other judges before whom Birnbaum has appeared.

4. The Plaintiffs behavior in bringing and prosecuting this frivolous motion to recuse Judge Banner was a violation of one or more of the following: §§10.001, et seq., Tex. Civ. Prac. & Rem. Code, Rule 13, T.R.C.P., and/or the common law of Texas.

5. The Court has the power to award both actual and exemplary (and/or punitive) damages against Birnbaum for the filing and prosecution of a frivolous motion. This authority stems from one or more of the following: §§10.001, et seq., Tex. Civ. Prac. & Rem. Code, Rule 13, T.R.C.P., and/or the common law of Texas.

6. The behavior and attitude of Birnbaum in filing and prosecuting this Motion to Recuse claim against Judge Paul Banner calls out for the award of both actual and exemplary (and/or punitive) damages to be assessed against Birnbaum.

7. The appropriate award for actual damages as a result of the filing and prosecution of the frivolous Motion to Recuse, is an award of \$1,000.00 in attorney's fees. The Court makes this award under power granted to the Court by §§10.001, et seq., Tex. Civ. Prac. & Rem. Code, Rule 13, T.R.C.P., and/or the common law of Texas.

8. The appropriate exemplary and/or punitive sanction for the filing and full prosecution of the frivolous Motion to Recuse is an award of \$124,770.00 to be paid by Birnbaum to the Sanctions Movants.

9. The award of exemplary and/or punitive damages is directly related to the harm done.

10. The award of exemplary and/or punitive damages is not excessive.

11. The award of exemplary and/or punitive damages is an appropriate amount to seek to gain

the relief sought by the Court which is to stop Birnbaum and others like him from filing similar frivolous motions and other frivolous lawsuits.

12. The amount of the exemplary and/or punitive damage award is narrowly tailored to the harm done.

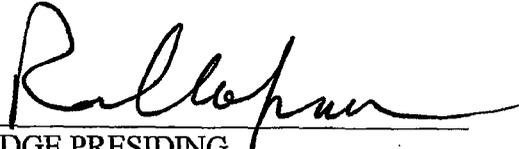
13. The amount of the exemplary and/or punitive damages is narrowly tailored to exactly coincide with the amount (in total) assessed against Birnbaum to date in this litigation. This amount was selected by the Court deliberately and on purpose to send a clear message to Birnbaum. The message this award of damages is intended to relay to Mr. Birnbaum is that this litigation is over, final, and ended. The message is that further attempts to re-open, re-visit, and re-litigate matters which have already been decided in court, reduced to judgment, and affirmed on appeal will not be tolerated; and that further attempts by this litigant to engage in such activity will not be conducted without the imposition of very serious and substantial monetary sanctions imposed upon Mr. Birnbaum.

14. Authority for an exemplary and/or punitive damage award is derived from §§10.001, et seq., Tex. Civ. Prac. & Rem. Code, Rule 13, T.R.C.P., and/or the common law of Texas.

Any finding of fact herein which is later determined to be a conclusion of law, is to be deemed a conclusion of law regardless of its designation in this document as a finding of fact. Any conclusion of law herein which is later determined to be a finding of fact, is to be deemed a finding of fact regardless of its designation in this document as a conclusion of law.

THIS JUDGMENT RENDERED ON APRIL 1, 2004, AND SIGNED THIS

24 day of Oct, 2006.


JUDGE PRESIDING

in response to a request from the Defendant/Counter-Plaintiff, the Court makes its findings of fact and conclusions of law as follows:

Findings of Fact

1. The Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy claims against Christina Westfall and Stefani Podvin (the wife and daughter of the Defendant/Counter-Plaintiff's former attorney, David Westfall) were groundless and totally unsupported by any credible evidence whatsoever.
2. The Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy claims against Christina Westfall and Stefani Podvin were without merit and brought for the purpose of harassment, delay, and to seek advantage in a collateral matter by attempting to cause the original Plaintiff, David Westfall to drop his claim for un-reimbursed legal services provided to the Defendant.
3. The Defendant/Counter-Plaintiff was afforded numerous opportunities to marshal his evidence and present any facts to support his allegations concerning RICO civil conspiracy claims against the wife and daughter of the Defendant/Counter-Plaintiff's attorney, David Westfall. The Defendant/Counter-Plaintiff wholly failed to provide any such credible evidence at either the summary judgment phase of the lawsuit or at the hearing on the motion for sanctions.
4. The attempt to provide testimony by the Defendant/Counter-Plaintiff concerning RICO civil conspiracy claims were his own opinions and totally uncorroborated by any other evidence.
5. The Defendant/Counter-Plaintiff never established that he had suffered any economic damages as a result of an alleged conspiracy. The Defendant/Counter-Plaintiff was sued by his former counsel to collect money for legal work which had been performed for the Defendant/Counter-Plaintiff for which the Defendant/Counter-Plaintiff had not paid his attorney in

full. The jury found that the work had been performed by the attorney, the amount charged to the client was reasonable, and that there was an amount owed by the Defendant/Counter-Plaintiff to the Plaintiff. The Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy claims had no bearing on whether or not the Defendant/Counter-Plaintiff received the legal services and owed the balance of the outstanding attorney's fees.

6. The filing of the Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy was a blatant and obvious attempt to influence the outcome of the Plaintiff's legitimate lawsuit against the Defendant/Counter-Plaintiff and to cause harassment to the Plaintiff and his family members.

7. The behavior of the Defendant/Counter-Plaintiff in filing claims concerning RICO civil conspiracy in this lawsuit have been totally without substantiation on any cause of action pled.

8. The conduct of the Defendant/Counter-Plaintiff giving rise to the award of punitive damages was engaged in willfully and maliciously by the Defendant/Counter-Plaintiff with the intent to harm the Plaintiff and the Counter-Defendants.

9. The amount of actual damages, attorney's fees, suffered by the Counter-Defendant was proven to be reasonable and necessary by a preponderance of the evidence and not challenged by the Defendant/Counter-Plaintiff at the hearing on sanctions. The amount of actual damages awarded was in an amount that was proven at the hearing.

10. The amount of damages for inconvenience awarded by the court was proven at the hearing by a preponderance of the evidence and not challenged by the Defendant/Counter-Plaintiff at the hearing on sanctions. The court awarded damages for inconvenience in an amount the Court found to be reasonable and necessary, supported by evidence, and appropriate considering the circumstances.

11. The amount of punitive damages awarded by the Court were found to be supported by the evidence and necessary under the circumstances to attempt to prevent similar future action on the part of the Defendant/Counter-Plaintiff.
12. The sanctions award is directly related to the harm done.
13. The sanctions award is not excessive in relation to the harm done and the net worth of the Defendant/Counter-Plaintiff.
14. The sanctions award is an appropriate amount in order to gain the relief which the Court seeks, which is to stop the Defendant/Counter-Plaintiff and others similarly situated from filing frivolous lawsuits.
15. The amount of the punitive damage award is an amount narrowly tailored to the amount of harm caused by the offensive conduct to be punished.
16. The Counter-Defendants suffered both economic and emotional damages as a result of the Defendant/Counter-Plaintiff's lawsuit and specifically the frivolous nature of the lawsuit caused damages which included expenses (in addition to taxable court costs), attorney's fees, harassment, inconvenience, intimidation, and threats.
17. The Counter-Defendants established a prima facie case that this lawsuit was filed by the Defendant/Counter-Plaintiff without merit and for the purpose of harassment. The prima facie case was made by the testimony and documents introduced as evidence by the Counter-Defendants at the summary judgment proceedings as well as at the hearing on sanctions on July 30, 2002.
18. After the Counter-Defendants established their prima facie case, the Defendant/Counter-Plaintiff failed wholly to provide any credible evidence to support the legal theories of the Defendant/Counter-Plaintiff.

Conclusions of Law

1. The Defendant/Counter-Plaintiff wholly failed to provide any credible evidence to substantiate any of his claims concerning a RICO civil conspiracy claim.
2. An essential element of each of Defendant/Counter-Plaintiff's claim was damages.
3. The Defendant/Counter-Plaintiff failed to prove any damage as a direct result of any action or inaction caused by the Plaintiff or the Counter-Defendants.
4. All of Defendant/Counter-Plaintiff's claims were as a matter of law unproved and untenable on the evidence presented to the Court.
5. Based upon the facts presented to support Defendant/Counter-Plaintiff's claim concerning RICO civil conspiracy charges, the Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy were completely untenable.
6. The Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy charges were not based upon the law, were not a good faith extension of existing law, and were brought and continued to be urged for the purpose of harassment.
7. The court concludes as a matter of law that Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy were brought for the purpose of harassment.
8. The Defendant/Counter-Plaintiff's behavior in bringing and prosecuting this frivolous lawsuit was a violation of one or more of the following: §9.000 et seq. Civ. Prac. & Rem. Code, §10.000 et seq. Civ. Prac. & Rem. Code, and/or Rule 13, T.R.C.P.
9. The Court has the power to award both actual and punitive damages against the Defendant/Counter-Plaintiff for the filing and prosecution of a frivolous lawsuit. This authority stems from one or more of the following: §9.000 et seq. Civ. Prac. & Rem. Code, §10.000 et seq. Civ. Prac. & Rem. Code, Rule 13, T.R.C.P., and/or the common law of Texas.

10. The behavior and attitude of the Defendant/Counter-Plaintiff in filing and prosecuting this claim against the Counter-Defendants calls out for the award of both actual and punitive damages to be assessed against the Defendant/Counter-Plaintiff.
11. The Counter-Defendants were successful in presenting a prima facie case to the Court on the issue of sanctions. After the prima facie case was made, the burden of proof shifted to the Defendant/Counter-Plaintiff and the Defendant/Counter-Plaintiff failed in its effort to prove good faith in the filing of the RICO civil conspiracy claims.
12. The appropriate award for actual damages as a result of the filing and full prosecution of this frivolous lawsuit is an award of \$50,085.00 in attorney's fees. The Court makes this award under power granted to the Court by §9.000 et seq. Civ. Prac. & Rem. Code, §10.000 et seq. Civ. Prac. & Rem. Code, Rule 13, T.R.C.P., and/or the common law of Texas.
13. The appropriate sanction for the inconvenience suffered by the Counter-Defendants for the filing and full prosecution of this frivolous lawsuit is an award of \$1,000.00 to Christina Westfall and \$1,800.00 to Stefani Podvin, to be paid by the Defendant/Counter-Plaintiff to the Counter-Defendants.
14. The appropriate punitive sanction for the filing and full prosecution of this frivolous lawsuit is an award of \$5,000.00 to Christina Westfall and an award of \$5,000.00 to Stefani Podvin, to be paid by the Defendant/Counter-Plaintiff to the Counter-Defendants.
15. The award of punitive damages is directly related to the harm done.
16. The award of punitive damages is not excessive.
17. The award of punitive damages is an appropriate amount to seek to gain the relief sought which is to stop this Defendant/Counter-Plaintiff, and others like him, from filing similar frivolous lawsuits.

- 18. The amount of the punitive damage award is narrowly tailored to the harm done.
- 19. Authority for the punitive damage award is derived from §10.000 et seq. Civ. Prac. & Rem. Code, Rule 13, T.R.C.P., and/or the common law of Texas.

Any finding of fact herein which is later determined to be a conclusion of law, is to be deemed a conclusion of law regardless of its designation in this document as a finding of fact. Any conclusion of law herein which is later determined to be a finding of fact, is to be deemed a finding of fact regardless of its designation in this document as a conclusion of law.

SIGNED THIS 30 day of September, 2003.



JUDGE PRESIDING