

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

proceeds of the pattern of racketeering activity into "G. David Westfall Family Limited Partnership", allowing him to continue the ongoing pattern of racketeering.

THE SCHEME

19. Although the exact details of the alleged extortion scheme and the scheme to defraud of honest service are not known and await 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. Mathew Chitty ultimately fired G. David Westfall for lying to him and moved. G. David Westfall thereupon tried to have him arrested upon the criminal matter he had left "unfinished".

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.

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

- (a) In an amount not less than \$100,000
- (b) For the costs of suit, including reasonable attorney's fees, if any
- (c) Pre-judgment interest at the maximum rate allowed by law
- (d) Post-judgment interest at the maximum rate allowed by law
- (e) Punitive damages in an amount as the jury may award at its discretion
- (f) All such other relief, legal and equitable, special or general, as the Court deems proper and just

BIRNBAUM HEREBY DEMANDS A TRIAL BY JURY

Respectfully submitted,

Udo Birnbaum

Udo Birnbaum, Pro Se

540 VZ 2916

Eustace, Texas 75124

(903) 479-3929

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this document has been served via CMRR on this the 30 day of ~~May~~ ^{APRIL}, 2001 upon G. David Westfall, 5646 Milton, Suite 520, Dallas, Texas 75206 and Frank C. Fleming, Law Office of Frank C. Fleming, 6611 Hillcrest, Suite 305, Dallas, Texas 75205-1301.

APRIL

Udo Birnbaum
UDO BIRNBAUM

