

No. 00-00619

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

v.

UDO BIRNBAUM

§ IN THE DISTRICT COURT  
§  
§  
§ 294<sup>th</sup> JUDICIAL DISTRICT  
§  
§ VAN ZANDT COUNTY, TEXAS

PLAINTIFF'S REQUESTED JURY QUESTIONS

**QUESTION NO. 1:**

Did the Defendant, Udo Birnbaum, fail to comply with the terms of the attorney-client agreement, between the Law Offices of G. David Westfall, P.C. and Udo Birnbaum?

Answer "Yes" or "No "

Answer \_\_\_\_\_

If you have answered "Yes" to Question No. 1, then answer the following question. Otherwise, do not answer the following question and proceed to answer Question No. 3.

**QUESTION NO. 2:**

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate the Law Offices of G. David Westfall, P.C., for its fees and expenses, if any, that resulted from Udo Birnbaum's failure to comply with the attorney-client agreement between the Law Offices of G. David Westfall, P.C., and Udo Birnbaum?

Answer in dollars and cents:

Answer: \_\_\_\_\_

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If you have answered "yes" to Question No. 1, then answer the following question. Otherwise, do not answer the following question.

**QUESTION NO. 3:**

What is a reasonable fee for the necessary services of the Law Offices of G. David Westfall, P.C.'s attorneys in this case, stated in dollars and cents?

Answer in dollars and cents for each of the following.

- A. For preparation and trial in this matter. \$ \_\_\_\_\_
- B. For an appeal to the Court of Appeals, if necessary: \$ \_\_\_\_\_
- C. For making or responding to a petition for review to the Supreme Court of Texas \$ \_\_\_\_\_
- D. If petition for review is granted by the Supreme Court of Texas \$ \_\_\_\_\_

Respectfully submitted.  
LAW OFFICE OF FRANK C. FLEMING

*Frank C. Fleming*  
 \_\_\_\_\_  
**FRANK C. FLEMING**  
 State Bar No. 00784057  
 PMB 305, 6611 Hillcrest Ave  
 Dallas, Texas 75205-1301  
 (214) 373-1234  
 (fax) 373-3232

**ATTORNEY FOR PLAINTIFF**

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

Vs.

UDO BIRNBAUM

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IN THE DISTRICT COURT  
294<sup>TH</sup> JUDICIAL DISTRICT  
VAN ZANDT COUNTY, TEXAS

**DEFENDANT BIRNBAUM'S OBJECTIONS TO  
PLAINTIFF'S REQUESTED JURY QUESTIONS**  
(Case Filed Sept. 20, 2000. Trial set for Apr. 8, 2002)

To this Honorable Court:

1. Defendant Udo Birnbaum provides the following question to be answered by the jury **immediately after Plaintiff's Question 1** ("failure to comply"). **A finding of "Yes"** of course precludes the jury from ever reaching Plaintiff's Question 2 ("damages") and Question 3 ("attorney fees"), and **excuses Udo Birnbaum from any and all off Plaintiff's claims.**

2. Defendant Birnbaum also objects to Plaintiff's Question 3 being submitted upon an Affirmative finding to **Question 1**. Plaintiff's Question 3 should be contingent to an answer of "Yes" to Plaintiff's **Question 2**.

3. Birnbaum's requested **Question** is as follows:

**INSTRUCTION**

If your answer to [Plaintiff's] Question 1 is "Yes", then answer the following question. Otherwise, do not answer the following question.

**QUESTION**

**Was Udo Birnbaum's failure to comply excused?**

a. Failure to comply by *Udo Birnbaum* is **excused** by *The Law Offices of G. David Westfall, P.C.*'s previous failure to comply with a material obligation of the same agreement.

b. Failure to comply by *Udo Birnbaum* is excused if all the following circumstances occurred:

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

- a. by words or conduct made a false representation or concealed material facts,
- b. with knowledge of the facts or with knowledge or information that would lead a reasonable person to discover the facts, and
- c. with the intention that *Udo Birnbaum* would rely on the false representation or concealment in acting or deciding not to act; and

2. *Udo Birnbaum*

- a. did not know and had no means of knowing the real facts and
- b. relied to *his* detriment on the false representation or concealment of material facts

c. Failure to comply by *Udo Birnbaum* is excused if the agreement was made as the result of undue influence by *The Law Offices of G. David Westfall, P.C.*

"Undue influence" means that there was such dominion and control exercised over the mind of the person executing the agreement, under the facts and circumstances then existing, as to overcome his free will. In effect, the will of the party exerting undue influence was substituted for that of the party entering the agreement, preventing him from exercising his own discretion and causing him to do what he would not have done but for such dominion and control.

Answer "Yes" or "No"

ANSWER: \_\_\_\_\_

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 today been delivered to G. David Westfall and Frank C. Fleming, by facsimile transmission on this the 4<sup>th</sup> day of April, 2002.

*Udo Birnbaum*  
UDO BIRNBAUM

No 00-619

Law Office

v.

Birnbaum

~~Law Office of Westel~~  
284th Oval Ct

Van Zee

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Birnbaum's Objections to  
Today's Plaintiff's  
Court charge.

1. ~~The New~~ Elimination of Pl's Intrinsic  
question & with current phraseology  
does not allow for Defendant's  
Question as to whether he is  
excused by Plaintiff's prior  
failure to abide by a material  
issue in the same contract (FAILURE  
TO BILL MONTHLY), Not get HIS  
APPROVAL BEFORE LARGE EXPENSE)

Served today, 4-11-02  
by hand to Fleming

Exhibit  
"D"