

No. 14-00266

UDO BIRNBAUM	\$	
Plaintiff	\$	IN THE DISTRICT COURT
v.	\$	
	\$	
Christina Westfall, Stefani Podvin, and	\$	294th JUDICIAL DISTRICT
Frank C Fleming	\$	
“The Westfall Bunch”, reference only	\$	VAN ZANDT COUNTY,
	\$	TEXAS
THREE PIECES OF PAPER	\$	
At Issue (“defendants”?)	\$	

First Amended Original Petition to Declare three judgments as inconsistent with due process, unlawful, criminal, and void

Perversion of Court process - - by the Court - - “The Emperor has no Clothes!”
Cranking up a NON-CAUSE - - into \$500,000 in “judgments” – unlawful on their faces

Synopsis

This Petition is upon THREE “judgments” procured in this 294th in cause 00-00619 - - on their faces “inconsistent with due process” - - and to judge these “judgments” for what they are – mere pieces of paper, and void.

Hereby attached: Objections to Today’s Court Charge – hand-written to perverted jury charge , Review of File and Order of Voluntary Recusal - Judge Teresa Drum, “judgments”, Complaint of Official Oppression, Cease and Desist, Recusal of Judge Banner, etc. etc. at **www.OpenJustice.US**.
(just google on “damn courthouse criminals” or “presiding pumpkin”)

And especially attached, the “start” of this unholy mess – the May 5, 1999 \$20,000 **pre-paid non-refundable** attorney retainer agreement - - and the unconscionable Sept. 21, 2000 **sworn suit of Open Account** thereon.

Regarding the “judgments”: **res judicata** does NOT apply to something with “mere semblance” - - and the ONLY issue is whether these documents are in **FACT** “inconsistent with due process of law”, outright frauds, and outright criminal. Plaintiff demands determination by JURY.

the duck test

If it looks like a duck, and quacks like a duck,
we have at least to consider the possibility that it is a duck.

There are THREE judgments, in the SAME cause, No. 00-00619, The Law Offices of G.W. Westfall, P.C. vs. Udo Birnbaum, TWO by Judge Paul Banner, then yet ANOTHER, by Judge Ron Chapman – **FOUR** years later!

1. \$ 85,000 or so plus interest – Judge Paul Banner - *“This judgment rendered April 11, 2002, signed July 30, 2002”*
 2. “\$67,000 or so plus interest – Judge Paul Banner – *“This judgment rendered July 30, 2002, signed August 9, 2002”*”
 3. \$125,000 or so plus interest – Judge Ron Chapman – *“This judgment rendered April 1, 2004, signed October 6, 2006”*
- *“If there is insanity around – well, some of us gotta have it”*

re “inconsistent with due process”

Re res judicata, collateral attack, Rooker-Feldman doctrine,
plenary power, statute of limitations, one bite at the apple, etc
Randomly off the web (emphasis added) – but the concept is pretty clear:

Void judgment may be defined as one in which rendering court lacked subject matter jurisdiction, lacked personal jurisdiction, or acted in manner **inconsistent with due process of law** Eckel v. MacNeal, 628 N.E.2d 741 (Ill. App. Dist. 1993).

Void judgment under federal law is one in which rendering court lacked subject matter jurisdiction over dispute or jurisdiction over parties or acted in manner **inconsistent with due process of law** or otherwise acted **unconstitutionally** in entering judgment, U.S.C.A. Const. Amend. 5, Hays v. Louisiana Dock Co., 452 N.E.2d 1383 (Ill App. 5 Dist. 1983).

A **void judgment** is one which has a **mere semblance**, but is lacking in some of the essential elements which would authorize the court to proceed to judgment, Henderson v. Henderson, 59 S.E.2d 227, (N.C. 1950).

Judgments entered where court lacked either subject matter or personal jurisdiction, or that were otherwise entered **in violation of due process of law**, must be **set aside**, Jaffe and Asher v. Van Brunt, S.D.N.Y.1994, 158 F.R.D. 278.

Black's Law Dictionary, Sixth Edition, p. 1574:

Void judgment. One which has **no legal force or effect**, invalidity of which may be asserted **by any person** whose rights are affected at **any time** and at **any place directly or collaterally**. Reynolds v. Volunteer State Life Ins. Co., Tex.Civ.App., 80 S.W.2d 1087, 1092. One which from its inception is and forever continues to be absolutely null, without legal efficacy, ineffectual to bind parties or support a right, of no legal force and effect whatever, and incapable of confirmation, ratification, or enforcement in any manner or to any degree. **Judgment is a "void judgment"** if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner **inconsistent with due process**. Klugh v. U.S., D.C.S.C., 610 F.Supp. 892, 901. See also Voidable judgment.

[Black's Law Dictionary, Sixth Edition, p. 1574]

So, the issue, the ONLY issue:

Res judicata does NOT apply to something having only “**mere semblance**” - - and the ONLY issue is whether these specific documents are in **FACT** “inconsistent with due process” and outright **UNLAWFUL**.

Short note

This, First Amended Original Petition to Declare etc., is to rid me not only of the menace of “The Westfall Bunch” – but to officially and simply declare these pieces of paper - as - **just pieces of paper**.

FIRST JUDGMENT (\$85,000)

titled “**Final Judgment**” – Retaliation using the Jury as a Weapon
Always remember - - suit was for supposed “**sworn open account**”

Plaintiff's submitted first question was : **“Did Defendant, Udo Birnbaum fail to comply with the terms of the attorney client agreement?”**

Thereupon I submitted my issue, **“Was Udo Birnbaum's failure to comply excused – by Plaintiff's failure to comply with a material obligation of the same agreement?”**

Whereupon Judge Paul Banner, over my strong **Objection** (handwritten, filed, attached), **completely bypassed the jury**, by presenting **only** the following question, de facto **instructing the jury** that there **was** *“failure to comply”* and that I **was** *“still obligated financially”*.

QUESTION NO.1

“What sum of money, if paid now in cash, would fairly and reasonably compensate the Law Offices of G. David Westfall, P.C., for its damages, if any, that resulted from Defendant Udo Birnbaum's, **failure to comply** with the agreement between the Plaintiff and the Defendant?”

INSTRUCTION:

You are **instructed** that after the attorney-client relationship is terminated, a client or an attorney can have post termination obligations to each other, such as, **the client is still obligated financially** for the lawyer's time in wrapping up the relationship and the lawyer is still obligated to perform tasks for the client to prevent harm to the client during the termination process.”

Never mind the fact that the cause was brought as a sworn suit on an **open account**, which of course has the elements of **sale and delivery of goods and services**.

There was of course no open account at all – or account of any kind - Only a letter memorandum of understanding regarding expectations regarding **accounting** – for the \$20,000 pre-paid **non-refundable RETAINER** – of an **attorney** - to make time available - - the letter itself so states! It even named the only right of Plaintiff – the **right to terminate** for future non-payment (above the \$20,000 **credited**).

Retaining a lawyer does not constitute “sale and delivery” of “goods and services” a la “open account”! Not only was the jury not asked – but they were **actively defrauded** by Judge Paul Banner himself.

Fraud upon the Court, by the Court, by Judge Paul Banner, and thru the prism of the other “judgments” – nothing less than **RETALIATION** using the **JURY AS A WEAPON**.

And the blatant jury “instructions” as to the “**obligations to each other**” – in “**wrapping up**” is completely out of line with sworn **open account**.

SECOND JUDGMENT (\$62,885)

titled “Order on Motion for Sanctions” -- Award of “**punitive damages**” “**which the Court seeks**” – plum **unlawful** in **CIVIL** process! Also was **jury** case???

The following from the **Findings of Fact and Conclusions of Law** by the **JUDGE** re this SECOND “judgment”. Was of course a **JURY** cause. Findings had to be by **JURY**, but

11. ... **punitive** damages awarded **by the Court** prevent similar **future** action p3
14. ... the relief **which the Court seeks** **and others** similarly situated from **filing** lawsuits. p3
15. ... **punitive** damage conduct to be **punished** p3
4. ... on the evidence **presented to the Court** p5
9. ... **punitive** damages for the **filing** **lawsuit** p5
10. ... [for] **filing** this claim **calls out** for ... **punitive** damages p6
15. ... The award of **punitive** damages harm done p6
16. ... The award of **punitive** damages is not excessive. p5
- 17.... **Punitive** damages gain the **relief sought** which is to stop **and others like him**, from **filing** **lawsuits**. p6
18. ... **punitive** damage award to the harm done. p7
19. ... Authority for the **punitive** damage award etc. common law of Texas. p7

Totally “inconsistent with due process”. Filing a lawsuit (I did NOT – only made a counter-claim!) is a First Amendment Right. **ANY** adverse

action – by a public official – for exercising a Right (and he says that is why he did it!) **IS** official oppression! He also cannot impose **punitive** sanction by **civil** process – only “coercive” – where one has the “keys to one’s own release” – i.e. by complying with some Order – of which there was none – to purge a contempt!

And all these poison words? At his **very sanction hearing**, he found me “**well-intentioned**”, only that HE did not see my **evidence** as showing my **counter-claim**. Weighing the evidence is of course for the jury. And he even states – that he is **punishing** (“*sanctions*”) me – for **having** made a counter-claim – a **First Amendment Right!** Civil contempt cannot punish for past conduct. Period. Plum mad. This guy needs to be gotten off the bench!

*“In assessing the **sanctions**, the Court has taken into consideration that although Mr. Birnbaum may be **well-intentioned** and may believe that he **had** some kind of real claim as far as RICO there **was** nothing presented to the court in any of the proceedings since I’ve been involved **that suggest** he **had** any basis in law or **in fact** to support his **suits** against the individuals, **and I think** – can find that such **sanctions** as I’ve determined are appropriate”. (Transcript, Sanction hearing July 30, 2002)*

Indicated real reason: - to stop this defendant “**and others like him**” (Judge Paul Banner **Findings** re SECOND judgment) - from going Pro Se with civil RACKETEERING counter-claims – against **fraudulent suits** – by lawyers - for that holiest-of-holies - LEGAL FEES!

The THIRD “judgment” – plum INSANE
titled “**Order on Motion for Sanctions**” (\$125,770, exactly DOUBLE \$62,885)

Judge Ron Chapman was assigned solely to hear a Motion for Recusal – TWO (2) YEARS **after** Final Judgment – a purely **administrative**

assignment at that - **no personal jurisdiction whatsoever**. The case was OVER! Judge Chapman did not hear an IOTA in the case! But

- B. \$124,770.00 **punitive** damages ... deterrent from **committing** in the **future** p2
- 7. **delusional belief** held only inside the mind of Birnbaum p3
- 19. relief which **the Court** seeks ... stop this litigant ... **others** similarly situated ... **filing** ... **lawsuits** ... **counter-claims** ... **new lawsuits**. p3
- 20. **punitive** damage ... narrowly tailored ... conduct to be **punished** p5
- 21. intimidation, and **threats** p5
- 8. **punitive** sanction **filing** \$124,770.00 p6
- 9. **punitive** damages is directly related to the harm done. p6
- 10. **punitive** damages is not excessive p6
- 11. **punitive** damages relief sought **by the Court** and others ... from **filing** **lawsuits**. p7
- 12. [\$124,770] **punitive** damage ... narrowly tailored to the harm done p7
- 13. **punitive** damages narrowly **tailored** to exactly **coincide** p7

Same “inconsistent with due process”. Plum insane. Was not the trial judge – cannot sign **ANY** judgment under **ANY** circumstances! This guy also needs to be gotten off the bench!

Summary and Conclusion

The issue in **this cause** – is NOT whether there was fraud involved in **another cause**. (there was)

The issue in **this cause** – is NOT whether these documents in **another cause** – were indeed issued by a court.

The issue in **this cause** – is NOT whether the matter regarding another cause - is outside or inside or sideways of some statute of limitations.

The issue **in this cause** – is NOT whether this suit is a collateral attack on a judgment or judgments or has been settled by res judicata, estoppel, latches, Rooker-Feldman Doctrine, or whatsoever, ad nauseam.

There is no “judgment” or “judgments” to have this stuff on. The three “judgments” above have a “mere semblance”, but are void – and no

such stuff attaches to these pieces of paper – i.e. “inconsistent with due process”.

PRAYER

Texas courts were not established for the purpose of cranking crap into \$500,000 pieces of paper parading as “judgments”.

REGARDLESS of exact details - it is still PERVERSION OF COURT PROCESS - - no cause to start with – perpetrated by officers of the court – i.e. EXTRINSIC FRAUD.

Plaintiff prays that these “judgments” be “judged” for exactly what they are – “inconsistent with due process” – and VOID.

And again, Plaintiff demands determination by JURY.

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attached – physical: (also at www.OpenJustice.US)

Attorney Retainer – for \$20,000 **non-refundable pre-payment**
Original Petition – suit thereon - claiming commercial **open account**
Objections to Today’s Jury Questions - verbal, handwritten, file-stamped
Review of File and Order of Voluntary Recusal – by Judge Teresa Drum

attached – by reference: (available at www.OpenJustice.US)

FIRST Judgment – “Final Judgment” - annotated
SECOND Judgment – “Order on Motion for Sanctions” - annotated

SECOND Judgment – “Findings of Fact and Conclusions of Law” – ann.
THIRD Judgment – “Order on Motion for Sanctions” - annotated
“Securing Execution of Documents by Deception”
“Complaint of Official Oppression”
“Cease and Desist”
“Motion for Recusal of Judge Banner” – latest, same subject matter
ALSO – all that fraudulent BEAVER DAM SCHEME stuff
ALSO - EVERYTHING ELSE openly available at www.OpenJustice.US