

CAUSE NO. 07-00168

UDO BIRNBAUM	§	
Plaintiff		
v.	§	IN THE DISTRICT COURT
RICHARD L RAY	§	
Defendant/Counterclaimant		
JOEL C ELLIOTT	§	294th JUDICIAL DISTRICT
Defendant		
VICTORIA RAY THATCHER	§	
Defendant		
v.	§	VAN ZANDT COUNTY, TEXAS
UDO BIRNBAUM	§	
Counterdefendant		

THIRD AMENDED ORIGINAL PETITION

Comes now UDO BIRNBAUM ("Birnbaum"), Plaintiff, *Pro Se*, complaining of attorneys RICHARD L. RAY ("Ray"), JOEL C. ELLIOTT ("Elliott"), and VICTORIA RAY THATCHER ("Thatcher"), and for cause of action would respectfully show the Court the following:

Udo Birnbaum is an individual residing in Van Zandt County, Texas. He may be served with process at 540 VZ CR 2916, Eustace, Texas 75124.

Richard L. Ray is an individual residing in Van Zandt County, Texas. He may be served with process at Ray & Elliott, Attorneys at Law, P.C., 300 S. Trade Days Blvd. (300 S. Hwy 19), Canton, Texas 75103.

Joel C. Elliott is an individual residing in Van Zandt County, Texas. He may be served with process at Ray & Elliott, Attorneys at Law, P.C., 300 S. Trade Days Blvd. (300 S. Hwy 19), Canton, Texas 75103.

Victoria Ray Thatcher is an individual residing in Van Zandt County, Texas. She may be served with process at Ray & Elliott, Attorneys at Law, P.C., 300 S. Trade Days Blvd. (300 S. Hwy 19), Canton, Texas 75103.

NATURE OF THE CASE

1. Pursuant to RCP Rule 190.1, Plaintiff intends discovery under Level 3 (**By Order**).
2. Plaintiff complains under 18 U.S.C. § 1964(c) ("civil RICO") of injury to his property "by reason of" Defendant attorney **Ray's** violation of 18 U.S.C. §1961 *et seq.* ("RICO") by a "pattern of racketeering activity", and Defendant attorneys **Elliott** and **Thatcher** for aiding and abetting Defendant Ray by pushing in the court alternate versions of Defendant Ray's conduct which they have been shown, and know, are not the truth.
3. State courts have concurrent jurisdiction to consider civil claims arising under RICO. *Tafflin v. Levitt, 493 U.S. 455 (1990).*

STATEMENT OF THE CASE

4. This action arises out of a scheme round and about the 294th District Court in Canton, Texas under judge Tommy Wallace, where lawyers enriched themselves by using their relationships in the Court to extort "legal fees" by the use of fraudulent documents, arguments, and corrupt court process, and protected their turf by running over and making an example of anyone who complained of the corruption, instead of quietly submitting to the injustice by paying one another's buddy to be their attorney.
5. In the pattern of this scheme, Defendant attorney Richard Ray fabricated, and to this day is maintaining, a totally fraudulent "beaver dam scheme" case upon Birnbaum:
6. Ray sued Birnbaum over **natural BEAVERS** who had once built a **natural dam** on a **natural creek** on Birnbaum's farm.

7. Defendant Ray's scheme was to get both Birnbaum and Ray's "client", a certain then already up-in-age retired military officer by the name of William B. Jones (deceased) entangled in court process to cause lots of "legal fees". (Cause 95-63, filed January **1995**, still in there March **2008**, more than **thirteen (3) years later**, and despite a jury verdict of exactly ZERO damages way-back in March **1998**, still pushing for \$10,000 in legal fees and a fraudulent injunction - **to baby-sit natural BEAVERS in a natural creek** - against Birnbaum, while concealing from the court that his client - and the BEAVERS - had DIED years ago.

8. Ray's "beaver dam" scheme is a "scheme to deprive of the intangible right of honest services". (i.e. the right to receive honest services from lawyers as "officers of the court")

9. Ray's use of the U.S. Mail and interstate capable communications equipment to execute such scheme provides the "predicate acts" of "racketeering activity" constituting the outlawed "pattern of racketeering activity" as defined under RICO.

"For the purposes of this chapter, the term "scheme or artifice to defraud" includes a scheme or artifice to **deprive** another of the **intangible right of honest services**". 18 U.S.C. § 1346

10. ALL of Plaintiff's injury was produced "*by reason of*" Defendant's "pattern of racketeering activity".

11. Before Ray's fraudulent beaver dam suit, Birnbaum had been quietly living on his farm tending to his cows and his invalid 90 year old mother, and had only known the courthouse from getting license plates.

THE PATTERN OF RACKETEERING ACTIVITY (Defendant Ray)

12. The acts of "racketeering activity" shown below constitute a "pattern of racketeering activity" within the meaning of 18 U.S.C. § 1961(5). The acts complained of are not isolated

events, but relate to each other by virtue of a common participant, a common method of commission, and the common purpose and common result of defrauding of honest service by a pattern of deception and lying by an officer of the Court.

- Predicate 1: Hauling Birnbaum into court in 1995 with his fabricated "The Dam" (*William B. Jones vs. Udo Birnbaum*, Texas 294th Cause No. 95-63) accusing Birnbaum of violating the Texas Water Code by having built a DAM in 1994, ("The Dam") when his client Jones (deceased) was complaining only of natural BEAVERS in a natural creek.
- Predicate 2: Sneaking in for default judgment on his fraudulent suit
- Predicate 3: Interrogatories co-mingling beaver dams with fraudulent "The Dam".
- Predicate 4: Abusive deposition of Birnbaum about everything but "The Dam".
- Predicate 5: Trying to "enforce mediation or enter judgment" on fraudulent suit.
- Predicate 6: Lying to the (then) TNRCC and threatening them with suit. (Texas Natural Resource Conservation Commission - now has different name - which was investigating creek channel modification done by Jones)
- Predicate 7: First Amended Original Petition (again has fraudulent "The Dam").
- Predicate 8: Second Amended Original Petition (again has fraudulent "The Dam").
- Predicate 9: Fraudulent questions to jury (NOTHING about "The Dam")
- Predicate 10: Dishonest closing argument to jury (NOTHING about "The Dam")
- Predicate 11: Motion upon motion to enter judgment (ZERO damages verdict!)
- Predicate 12: Still seeking "legal fees", when he was NOT a winning party
- Predicate 13: Hiding that his client DIED long ago, and that he is FREELANCING
- Predicate 14: Still seeking injunction to remove "The Dam" which NEVER existed
- Predicate 15: Currently concealing the above predicate acts by pushing to the court, with the aid of his law office partner attorneys, alternate versions of the truth and a frivolous libel and slander counterclaim.

THE VIOLATIONS OF RICO **(attorney Defendan Ray)**

18 U.S.C. § 1962(c)

"to conduct or participate, directly or indirectly, in the conduct of an enterprise's affairs through a pattern of racketeering activity"

13. The 294th District Court of Van Zandt County, Texas qualifies as an "enterprise" under the definition of that term 18 U.S.C. § 1961. (“any entity”)
14. This "enterprise" has some effect upon interstate commerce. (not a lemonade stand)
15. Defendant was associated with the enterprise. (officer of the court)
16. Defendant played some part in directing the affairs of the enterprise. (officer of the court)
17. Defendant engaged in the pattern of racketeering activity as outlined. (above)
18. Defendant's association with the enterprise facilitated his commission of the acts. (officer of the court)
19. The commission of these predicate acts did indeed have some effect on the "enterprise". (process, judgments, sanctions)

**AIDING AND ABETTING
BY CONCEALING DEFENDANT RAY’S PREDICATE ACTS
(attorney Defendants Elliott and Thatcher)**

18 U.S.C. § 1962(c)

"to conduct or participate, directly or indirectly, in the conduct of an enterprise's affairs through a pattern of racketeering activity"

20. Attorney Defendants Elliott and Thatcher, through their powers in the court by reason of their law licenses, and in violation of their oaths and duty to honestly demean themselves in their practice of law, have been engaged in concealing Ray’s predicate acts.
21. Their association with each other – Attorney **Joel C. Elliott** as partner in Ray & Elliott, Attorneys at Law, P.C., and Attorney **Victoria Ray Thatcher** as Attorney Ray’s daughter working out of Elliott & Ray, P.C. – can provide a motive, but their means is through their access to the court process by reason of their law licenses. (*“to conduct or participate, directly or indirectly, in the conduct of an enterprise’s affairs”*)
22. Attorney Defendants Elliott and Thatcher are aiding and abetting Defendant Attorney Richard L. Ray in his latest predicate act of concealing his ongoing conduct of THIRTEEN (13)

YEARS of pressing in the court a malicious and frivolous BEAVER dam case against Plaintiff Birnbaum as detailed above.

23. Attorney Defendants Elliot and Thatcher have been shown Attorney Defendant Ray's initial letter of Dec. 14, 1994, produced by Defendant Ray for plaintiff Jones in *Jones vs. Birnbaum* as a plaintiff's exhibit at the trial, and the THREE versions of Rays petition in the court, showing exactly how this whole mess started over **natural beavers**, yet was and is being pressed by Attorney Defendant Ray as a case under the **Texas Water Code**.

24. Attorney Defendants Elliot and Thatcher have been shown the following documents, and many more like them, in *Plaintiff [Birnbaum] Motion for Summary Judgment, Affidavit of Udo Birnbaum*, Exhibits 1 through 15 thereto, including a CD disk of the **entire trial transcript**.

Among such documents as follows:

Ray's appearance upon Birnbaum by letter Dec. 7, 1994. (Exhibit "A")

*"**beavers** have dammed up a stream".*

*"unless you remove the **beaver dam**"*

Plaintiff's [Jones] Exhibit 2 in May 26-29, 1998 trial *Jones v. Birnbaum*, No. 95-0063 by attorney Ray. Case still active this day out of their very law office.

Presented to Attorney Defendants Elliott and Thatcher in *Plaintiff [Birnbaum] Motion for Summary Judgment, Affidavit of Udo Birnbaum*, Exhibit 1 thereto.

Ray's false petitions in *Jones vs. Birnbaum*, No. 95-0063. (Exhibit "B")

*"Jones brings this action as provided by Section 11.086 of the **Texas Water Code**"*

*"During 1994, **Birnbaum wrongfully built** and has at all times since then wrongfully maintained a dam on his land in the natural channel of the spring creek."*

*"**Birnbaum's diversion of the water** of the spring creek is contrary to the prohibition contained in Section 11.086(a) of the Texas Water Code."*

Original Petition Feb. 3, 1995 *Jones v. Birnbaum*, No. 95-0063 by attorney Ray. First Amended Original Petition Feb. 17, 1998. Second Amended Original Petition May 19, 1998.

Presented to Attorney Defendants Elliott and Thatcher in *Plaintiff [Birnbaum] Motion for Summary Judgment, Affidavit of Udo Birnbaum*, Exhibit 9 thereto.

Ray examining his client William B. Jones at trial in *Jones vs. Birnbaum*. (Exhibit “C”)

Q: “After you [Jones] found the location of the dam, what action did you take then, sir?”

A: “Well, the next day, on the 8th of October, I called Mr. Birnbaum and explained to him that the **beavers** had dammed up – and the water was backing up. I asked him if I had – could get his permission to go in there and **hire a professional** to go in there and **blow the dam** and trap the **beavers** out.”

Defendant attorney Ray questioning William B. Jones, his client. Trial transcript page 298.

Presented to Defendant attorneys Elliott and Thatcher in *Plaintiff [Birnbaum] Motion for Summary Judgment, Affidavit of Udo Birnbaum*, Exhibit 10 thereto..

Ray hiding from the jury that his cause was under the Texas Water Code. (Exhibit “D”).

“Question No. 1: Did Birnbaum allow [beaver] **dams [plural]** to flood Jones’ upstream property in October, 1994?” Court’s Charge May 29, 1995.

Ray’s jury questions should have been on the elements of his cause, i.e. whether Birnbaum even built a dam, and even if so, whether Birnbaum violated the Texas Water Code.

Presented to attorney Defendants Elliott and Thatcher in *Plaintiff [Birnbaum] Motion for Summary Judgment, Affidavit of Udo Birnbaum*, Exhibit 11 thereto.

That Jones’ complaint was over beavers, not Birnbaum building a dam. (Exhibit “E”)

“Now, if Mr. Birnbaum wants to have **beaver dams** all over the rest of his property, so long as it doesn’t interfere with someone else’s use of their property, that’s well and good. That’s fine.

This lawsuit would never have been brought, had that been the case.” Trial transcript page 645.

Presented to attorney Defendants Elliott and Thatcher in *Plaintiff [Birnbaum] Motion for Summary Judgment, Affidavit of Udo Birnbaum*, Exhibit 10 thereto.

25. And despite attorney Defendants Elliott and Thatcher having been made aware of all these matters regarding attorney Defendant Ray, attorney Defendants Elliott and Thatcher tell this court the following falsehoods:

“... .. Plaintiff [Birnbaum] has filed a Racketeer Influenced Corrupt Organizations (RICO) action against Defendant [Ray] based upon Ray’s representation of William B Jones, cause number 95-0063 in which Ray sought an injunction for Jones against Birnbaum for damming up a creek which flooded Jones’ property.” Page 1, Defendant’s Response to Plaintiff’s Motion for Traditional Summary Judgment.

NO. Jones complained of **natural beavers**, and Ray filed suit under the **Texas Water Code**.

“That each and every action which Defendant [Ray] took on behalf of his client, William B. Jones, in Cause No. 95-0063 was ethical and professional as an attorney. No act of Racketeer (sic) or scheming occurred.” Page 2, no. 1, of same

NO. Defendant attorney Ray has a duty to the State of Texas to demean himself honestly instead of twisting a complaint over **natural beavers** into a 13 YEAR and ongoing ordeal under the **Texas Water Code**.

“Plaintiff’s [Birnbaum] affidavit contains no factual allegations to which perjury can be assigned, but instead, is completely argument and arguendo.” Page 7, second paragraph, of same.

NO. Clearly not true. Contains exhibits, NONE of which Elliott and Thatcher address, certainly not how Ray twisted a dispute over Jones wanting to **blow up beaver dams** on Plaintiff’s [Birnbaum] property into a cause against Birnbaum under the **Texas Water Code**.

“Plaintiff [Birnbaum] indicates no allegations of fact gained through personal knowledge in his affidavit.” Page 7, second paragraph, of same.

NO. Clearly not true upon the documents presented to them.

“That each and every action which I [Ray] took in behalf of my client (sic) William B. Jones in Cause No. 95-0063, was ethical and professional as an attorney and that no act of racketeering or scheming occurred.” Page 1 No. 3, Defendant, Richard L. Ray’s Affidavit in Support, etc

NO. Defendant attorney Ray has a duty to the state of Texas to demean himself honestly instead of twisting a complaint over **natural beavers** into a 13 YEAR and ongoing ordeal under the **Texas Water Code**.

26. And then there is attorney Defendants Elliott and Thatcher bringing a **libel and slander counter-claim** on Jan. 21, 2008 against Birnbaum, citing the following statements from Birnbaum on his web site OpenJustice.US:

“The beaver dam suit against me – a wake-up call – what started it all:

“**Beaver Dam Bunk** – I get sued because BEAVERS had built a dam on my farm! Senile neighbor (ex-military) goes to war – against beavers – with DYNAMITE! Calling them “overgrown rats”, he gets mad at me too.

“His shyster lawyer, knowing he can’t sue me over BEAVERS (they are state animals), simply **changes the facts**.

“Claims I had violated the TEXAS WATER CODE, by ME having built a dam that caused “sand, driftwood, and debris” to wash onto my neighbor – when he is entirely UPSTREAM!

“Etc., etc. etc.

27. Attorney Defendants Elliott and Thatcher tell this court:

“Counterdefendant made his statements regarding Counterclaimant [Ray] with actual malice, in that Counterdefendant knew that the statements **were false at the time they were made**.” Page 4 paragraph X, Original counter-claim Jan. 21, 2008.

“The words and charges made, printed, and published by Counterdefendant, and understood and intended to be understood by the readers of his newsletter, were **false in every particular**, defamatory, libelous, unprivileged, and without legal excuse, in that Mr. Birnbaum’s accusations were unfounded, and were fueled by vengeance and anger towards the legal system, of which he believed (and continues to believe) himself to be a victim.” Page 6 paragraph XVI, **Original counter-claim** Jan. 21, 2008.

28. Attorney Defendants Elliott and Thatcher had of course been shown just exactly how Mr. Birnbaum's statements were TRUE, as shown above, yet they (Elliott and Thatcher) are smearing Birnbaum in this court anyway, and holding their office mate, attorney Defendant Ray, up as some helpless victim of a Mr. Birnbaum who "*believed (and continues to believe) himself to be a victim*" of the "*legal system*".

29. Attorney Defendants Elliott and Thatcher are actively concealing how Attorney Defendant Richard L. Ray twisted and transformed a dispute over **natural beavers** once having built a **natural dam** in a **natural creek** (Steve's Creek) into a THIRTEEN (13) YEAR ONGOING ordeal against Plaintiff Birnbaum under the **Texas Water Code**, and how Ray is still pursuing a **permanent injunction** against Birnbaum to be perpetually babysitting **natural beavers** in a **natural creek**.

30. Attorney Defendants Elliott and Thatcher are doing this by knowingly and intentionally spreading falsehoods against Birnbaum as shown above, all in violation of their oaths as attorneys to honestly demean themselves in their practice of law.

31. Attorney Defendants Elliott and Thatcher, by their oaths as officers of the court, had a solemn duty to demean themselves honestly in their practice of law, but have instead chosen to deceive the court. Defendant attorneys Elliott and Thatcher were clearly informed, by Birnbaum's petition, and again in excruciating detail in Birnbaum's motion for summary judgment, with attached exhibit of documents in the court, created out of their own law office, just exactly how Defendant attorney Ray twisted a dispute over **natural beavers** in a **natural creek**, into a suit under the **Texas Water Code** claiming Birnbaum had **personally** built a dam ("The Dam").

32. Defendant attorneys Elliott and Thatcher were clearly informed just exactly how Defendant attorney Ray maintained and still is still maintaining his “The Dam” suit for over THIRTEEN YEARS, and despite getting a unanimous verdict of exactly **ZERO** damages, and not having presented the issue of an injunction to the jury, is still seeking a PERPETUAL INJUNCTION for 71 year old Mr. Birnbaum to forever be keeping Steve’s Creek free of **natural beavers!**

INJURY

"by reason of the RICO violation"

33. All this thrashing upon Birnbaum in the 294th District Court, all produced by Mr. Ray's pattern of racketeering activity in violation of RICO as shown above, attracted other sharks hungry for "legal fees".

34. One of these was a certain Dallas lawyer by the name of G. David Westfall (now deceased) who solicited Birnbaum unbeknownst to Birnbaum. Westfall promised to "save" Birnbaum from the corruption in the 294th, if Birnbaum were to pay Westfall \$20,000 up front, and Birnbaum did. Birnbaum did not recognize injury until much later when Birnbaum discovered that he had been conned by Westfall, and Birnbaum fired Westfall.

35. As if this injury were not enough, Westfall went on to fabricate a \$18,121.10 "bill", filed suit against Birnbaum in the 294th District Court, a court where things can be made to move behind the courtroom as indicated by the pattern of racketeering as shown above.

36. Anyhow, by a pattern of lying, Westfall was able to obtain judgment against Birnbaum totaling \$85,207.46 plus FINE of \$62,885. "Legal fees", more "legal fees", and "legal fees" for collecting on fraudulent "legal fees".

37. And just this **Oct. 24, 2006** another FINE was assessed against Birnbaum, in the amount of **\$125,770**.

38. But for Richard L. Ray's RICO violation Birnbaum would never have been entangled in the 294th District Court, not with Ray, not with Westfall, not with elderly retired "visiting" judges getting mad at him. All of Birnbaum's injuries flowed from Defendant Ray's unlawful acts of racketeering activity, pattern of racketeering activity, and conduct of the affairs of the 294th District Court through a pattern of racketeering activity.

39. But for Richard Ray's conduct, judges would not be punishing Birnbaum to the tune of **HUNDREDS OF THOUSANDS of dollars,**

"to stop this litigant and others similarly situated",

"to stop Birnbaum and others like him",

"a deterrent to prevent Birnbaum from committing further similar acts in the future"

"delusional belief held only inside the mind of Birnbaum",

ALL from Birnbaum being wrongfully forced into court by Ray's fraudulent BEAVER DAM suit and entangled there by his ongoing pattern of racketeering activity.

SUMMARY OF THIS CAUSE

40. The RICO violation and scheme can be clearly seen from the "predicate acts" of "racketeering activity" constituting the "pattern of racketeering activity" as shown above.

Attorney Defendant Ray's scheme was to use his attorney license to "participate in the conduct of the affairs" of the 294th District Court of Van Zandt County, Texas by fabricating a "beaver dam" scheme, and to execute the scheme by depriving the Court, his client Jones, and the State of Texas of the "honest service" he owed as an "officer of the court".

41. "Legal fees", more "legal fees", and "legal fees" for collecting on "legal fees". As one justice once said, suits on legal fees must certainly be the *"least socially productive activity"* that he could think of.

42. Before Richard L. Ray's fraudulent "beaver dam" scheme, Birnbaum had been quietly living on his farm tending to his cows and his invalid 90 year old mother, and had only been in the Courthouse to pay for license plates.

43. And as for the newly added attorney Defendants Joel C. Elliott and Victoria Ray Thatcher, their aiding and abetting in concealing attorney Defendant Richard L. Ray's predicate acts of racketeering activity can be clearly seen in the documents they filed in this court, as shown above.

44. But for their access through the 294th District Court, by reason of their law license, Defendants Joel C. Elliott and Victoria Ray Thatcher would not be able to aid and abet as they are.

PRAYER FOR RELIEF

Wherefore, Plaintiff Birnbaum seeks judgment against Defendants Richard L. Ray, Joel C. Elliott, and Victoria Ray Thatcher, as agents of each other.

Defendants' 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. Birnbaum seeks judgment as follows:

- (a) \$1,032,000 as treble damages as proscribed by RICO
- (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) 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, *Pro Se*
540 VZ CR 2916
Eustace, Texas 75124
(903) 479-3929

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this **Third Amended Original Petition**, including Exhibits “A” thru “E” thereto, was mailed today by CERTIFIED mail addressed to Richard L. Ray, c/o Joel C. Elliott and Victoria Ray Thatcher, Ray and Elliott, P.C., 300 S. Trade Days Blvd, Canton TX 75103. This the _____ day of March, 2008.

UDO BIRNBAUM