No. 95-63

WILLIAM B. JONES	$	IN THE DISTRICT COURT
Plaintiff	$	
vs.	$	294th JUDICIAL DISTRICT
	$	
UDO BIRNBAUM	$	VAN ZAND COUNTY,
Defendant	$	TEXAS
	$	

Motion to Set Aside Judgment of "perpetual mandatory injunction compelling the [77 year old] Defendant to remove any [BEAVER] dam on Steve's Creek"

Motion for Voluntary Recusal

COMES NOW Udo Birnbaum ("Birnbaum") to show onto the Court –

- "The Judgment" at issue

"Short Summary"

(for those trained in understanding by words)

BEAVERS in an East Texas creek. Two elderly adjacent landowners. One – retired military – declares war against the "overgrown rats" - with DYNAMITE - flushing ACRES of water – across his downstream neighbor – and the BEAVERS to kingdom come.

Afraid BEAVERS would come back. Wants permission to also "treat" the creek of his downstream neighbor. Permission denied – because no beavers, no water problems. Problem is in his head.
(see Court files, transcript of the FOUR day trial. Search for BEAVERS - 166 times, "blew" 17 times, "blow" 20 times, "dig" 3 times, "dug" 5 times - - everybody trying to get rid of their water – by digging their water puddles – **DEEPER**. Real idiots. Too much money – for excavation – and lawyers - and no brains left.)

Gets madder and madder - gets himself a lawyer. (pays him $7000 or so – per testimony at the trial – and that was BEFORE the FOUR day trial)

Lawyer sees two suckers – and lots of "legal fees" - but BEAVERS do not make a "cause of action". Files suit under the **Texas Water Code** – claiming unlawful violation of **Section 11.06** – by Birnbaum:

> "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, to the height of approximately four (4) feet, and extending along the spring creek in the channel thereof for a distance of twenty (20) feet". (Original Petition, Section VI.)

A perfect description of a - **BEAVER DAM**!

"By building and maintaining the above described Dam, Birnbaum altered … … a large portion of Jones' land to be overflowed and so soaked as to make it untillable, and sand, driftwood, and debris to wash onto Jones' land, and to settle there and remain thereon." (Original Petition, Section VII)

Problem – he is entirely **UPSTREAM**. (things don't wash upstream)

FRAUD right out of the chute in 1994 – and ever AFTER. And now – TWENTY years later … ….

But now, back to - "inconsistent with due process":

1.

The Jury gave a unanimous verdict of ZERO damages

Plaintiff was NOT only NOT a "winning party" – but because of **ZERO** damages -- as a matter of law was found to have NEVER had a valid cause to start with. Therefore Judgment of ANY kind to Plaintiff is **"inconsistent with due process".**

2.

There was NO finding of "imminent and irreparable harm.

Issue of injunction was NEVER even submitted to the jury. All jury heard was about **BEAVERS** (166 times). Therefore ANY judgment – particularly in light of **ZERO** damages -- and particularly any injunction **perpetually** COMPELLING Defendant – is **"inconsistent with due process"**.

3.

Judge Chapman was NOT authorized to sign the Judgment.

Judge Ron Chapman was NOT the trial judge – and NEVER heard ANY part of the trial. However, in the Judgment he states:

> *"**After hearing** the evidence, arguments of counsel, and parties, and instructions of the Court … etc".* **Fraud upon the Court – by the Court**.

Judge Ron Chapman **heard** NONE of this! Furthermore, only the TRIAL JUDGE is authorized to sign a judgment – with the possible exception of the duly elected District Judge – and that only under the special exception if the trial judge, Judge James B. Zimmerman, had actually **pronounced** the judgment – which he DID NOT.

> It is **not always necessary** for the **judge who presides** over the trial to actually sign the judgment. The **duly elected judge** of the trial court **may sign** any written judgment in a trial which was presided over by a properly assigned visiting judge **who orally pronounced** judgment. ***Sparkman v. State***, 997 S.W.2d 660, 664 (Tex. App.-Texarkana 1999, no pet.). Judge Kent is the duly elected judge of the 114th District Court in Smith County. Judge Clapp was properly assigned as a visiting judge in the 114th District Court. Therefore, it was not improper for Judge Kent to sign the judgment **after** Judge Clapp presided over the trial **and**

pronounced the sentence. ***Id***. 12th Court of Appeals, July 9, 2003, *Panel consisted of Worthen, C.J., and Griffith, J.*

As a matter of note, **after the Verdict**, Judge Zimmermann had hearing after hearing after hearing about just *"what the jury meant"* when they answered Judge Zimmermann's questions – till Judge Zimmermann finally recused himself from the case – **without ever pronouncing** any judgment - and finally **Judge Andrew Kupper** – and then **Judge Ron Chapman** - came on board – about FOUR YEARS or so later!

"If there is insanity around – well, some of us got to have it"

In summary

– Judge Ron Chapman signing the Judgment of Injunction – without EVER hearing an iota of the case – and with a ZERO for damages, without the issue of injunction going before the jury – is just simply – **"inconsistent with due process" – fraud upon the Court – by the Court**.

Prayer

Birnbaum prays for judicial notice upon these matters – and removal of this millstone around his neck.

And for voluntary recusal,

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