

suit was for violating the TEXAS WATER CODE. No question on that.
ALL FRAUD

Cause No. 95-63

WILLIAM B. JONES

vs.

UDO BIRNBAUM

RECORDED FOR RECORD
MAY 29 AM 10:16
§ 16
IN THE DISTRICT COURT
VAN ZANDT COUNTY, TEXAS
BY *R. Young* §
CLERK VAN ZANDT CO. TX.
§
294TH JUDICIAL DISTRICT
DEP.

also did not submit matter of an
INJUNCTION to the jury!
ALL FRAUD

COURT'S CHARGE

look at fraudulent Question 1,
and Question 3 !

LADIES AND GENTLEMEN OF THE JURY:

This case is submitted to you by asking questions about the facts, which you must decide from the evidence you have heard in this trial. You are the sole judges of the credibility of the witnesses and the weight to be given their testimony, but in matters of law, you must be governed by the instructions in this charge. In discharging your responsibility on this jury, you will observe all the instructions, which have previously been given you. I shall now give you additional instructions, which you should carefully and strictly follow during your deliberations.

1. Do not let bias, prejudice or sympathy play a part in your deliberations.
2. In arriving at your answers, consider only the evidence introduced here under oath and such exhibits, if any, as have been introduced for your consideration under the rulings of the Court, that is, what you have seen and heard in this courtroom, together with the law as given you by the Court. In your deliberations, you will not consider or discuss anything that is not represented by the evidence in this case.
3. Since every answer that is required by the charge is important, no juror should state or consider that any required answer is not important.
4. You must not decide who you think should win, and then try to answer the questions accordingly. Simply answer the questions, and do not discuss nor concern yourselves with the effect of your answers.
5. You will not decide an issue by lot or by drawing straws, or by any other method of chance. Do not return a quotient verdict. A quotient verdict means that the jurors agree to abide by the result to be reached by adding together

each juror's figures and dividing by the number of jurors to get an average. Do not do any trading on your answers; that is, one juror should not agree to answer a certain question one way if others will agree to answer another question another way.

6. You may render your verdict upon the vote of ten or more members of the jury. The same ten or more of you must agree upon all of the answers made to the entire verdict. You will not, therefore, enter into an agreement to be bound by a majority or any other vote of less than ten jurors. If the verdict and all of the answers therein are reached by unanimous agreement, the presiding juror shall sign the verdict for the entire jury. If any juror disagrees as to any answer made by the verdict, those jurors who agree to all findings shall each sign the verdict.

These instructions are given you because your conduct is subject to review the same as that of the witnesses, parties, attorneys and the judge. If it should be found that you have disregarded any of these instructions, it will be jury misconduct and it may require another trial by another jury; then all of our time will have been wasted.

The presiding juror or any other juror who observes a violation of the Court's instructions shall immediately warn the one who is violating the same and caution the juror not to do so again.

When words are used in this charge in a sense which varies from the meaning commonly understood, you are given a proper legal definition, which you are bound to accept in place of any other definition or meaning.

Answer "Yes" or "No" to all questions unless otherwise instructed. A "Yes" answer must be based on a preponderance of the evidence. If you do not find that a preponderance of the evidence supports a "Yes" answer, then answer "No". The term "Preponderance of the Evidence" means the greater weight and degree of credible testimony or evidence introduced before you and admitted in this case. Whenever a question requires other than a "Yes" or "No" answer, your answer must be based on a preponderance of the evidence unless instructed otherwise.

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QUESTION NO. 1

Did Birnbaum allow dams upon his land to flood Jones' upstream property in October, 1994?

Answer "yes" or "no".

We Answer: YES

Should have been:
DID HE VIOLATE THE TEXAS WATER
CODE!

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INSTRUCTION

If you have answered "Yes" to Question No. 1, then answer Question No. 2.
Otherwise, do not answer Question No. 2.

QUESTION NO. 2

What sum of money, if paid now in cash, would fairly and reasonable compensate William B. Jones for his loss, if any, resulting from the occurrence in question?

Answer in dollars and cents, if any.

We Answer: \$ 0

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INSTRUCTION

If you have answered "Yes" to Question No. 1, then answer Question No. 3.

Otherwise, do not answer Question No. 3.

Should have been on No. 2,
"DAMAGES", NOT No. 1, "water"

QUESTION NO. 3

What sum of money, if any, do you find from a preponderance of the evidence would be reasonable and necessary attorney's fees for the services, if any, performed by Plaintiff's attorney:

- a. For legal services rendered in the preparation and trial of this cause in this Court?

Answer in dollars and cents, if any.

We Answer: \$ 10,000⁰⁰

- b. For legal services if this cause is appealed to the Court of Appeals?

Answer in dollars and cents, if any.

We Answer: \$ 5,000⁰⁰

- c. For legal services if application is made for a writ of error to the Supreme Court of Texas?

Answer in dollars and cents, if any.

We Answer: \$ 0

[REDACTED]

(S)

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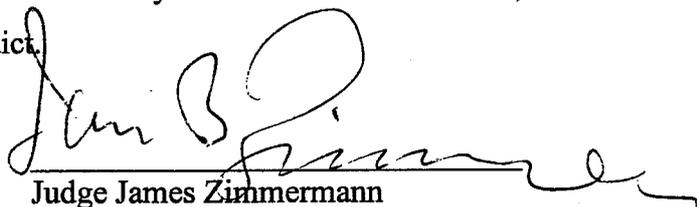
After you retire to the jury room, you will select your own presiding juror. The first thing the presiding juror will do is to have this complete charge read aloud and then you will deliberate upon your answers to the questions asked.

It is the duty of the presiding juror:

1. To preside during your deliberations;
2. To see that your deliberations are conducted in an orderly manner and in accordance with the instructions in this charge;
3. To write out and hand to the bailiff any communications concerning the case which you desire to have delivered to the Judge;
4. To vote on the questions;
5. To write your answers to the questions; in the spaces provided; and
6. To certify to your verdict in the space provided for the presiding juror's signature or to obtain the signatures of all the jurors who agree with the verdict if your verdict is less than unanimous.

You should not discuss the case with anyone, not even with other members of the jury, unless all of you are present and assembled in the jury room. Should anyone attempt to talk to you about the case before the verdict is returned, whether at the courthouse, at your home, or elsewhere, please inform the Judge this fact.

When you have answered all of the questions which you are required to answer under the instructions of the Judge, and your presiding juror has placed your answers in the spaces provided and signed the verdict as presiding juror or obtained the signatures, you will inform the bailiff at the door of the jury room that you have reached a verdict, and then you will return into Court with your verdict.


Judge James Zimmermann

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CERTIFICATE

We, the jury, have answered the above and foregoing special issues as herein indicated and herewith return same into court as our verdict.

(To be signed by the foreperson if unanimous.)

Yvonne McCauley
Foreperson

(To be signed by those rendering verdict if not unanimous.)

Jim De
Paul Robinson

Amy Mislivets

Henry K...

John Gates

Denny Williamson

Bill Spencer
Roie Richardson

Ethel Cunningham

Robbey Bidwell

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