TO THE HONORABLE JUDGES OF THIS COURT;

The Honorable Judges of this Court entered Judgment on this case on January 30, 2003 with finding on the question of Heimlich's Actual Innocence. Judgment in cause 03-02-00151-CV mandates:

> ***"claiming that he has "been granted relief on the basis of actual innocence of the crime."…. Heimlich's pleadings are sufficient to state a claim."***

This finding constitutes the Law of the Case. Plenary power to review this finding expired 60 days following entry of our Judgment. Judicial Estopple applies.

The district court did not abuse discretion or commit error in its definition of the phrase "direct result" or the word "incurred". The recovery ordered for the plaintiff is not excessive and is not based on speculative evidence. To the contrary, the district court erred in the application of "Havner" and in the application of "Capital Metro". The Final Judgment must be reformed to provide recovery for fact evidence, uncontroverted by the defendant, entitling Heimlich to recover, as a matter of law, $1,368,347, plus post-judgment interest. It is in the public interest this judgment be paid to Heimlich, without delay, by the agent of the defendant, the Comptroller of the State of Texas.

§103.105(c) of the Texas Civil Practice and Remedies Code is a statutory defense to liability. If not properly pled it is waived. Defendant waived this defense, and defendant forfeited this defense by repeated refusal to accept offers of the plaintiff for settlement. Furthermore, as we noted in "Oakley", and consistent with other districts of the Appellate Court for this State, this statutory defense plainly states "under this subchapter". This limitation does not apply to compensation to which Heimlich is entitled pursuant to §17 of Article I, nor for pre and post judgment interest secured by other law.

JURISDICTION STATEMENT

Alexander, Attorney for Appellant, makes frequent use of the word "jurisdiction" in her brief. The word "jurisdiction" was presented by Alexander Hamilton, in the Federalist Paper 81, footnote 3, as of the following definition:

This word is composed of JUS and DICTIO, juris dictio or a speaking and pronouncing of the law."

The people of the State of Texas have authority to "pronounce the law" in their Constitution for their State, the Texas Constitution, and in private contracts. The power to decide what the Law will be rests with the people of the State of Texas, and is pronounced by them in the Texas Constitution. This is 'Constitutional Law'. The power delegated to the Legislative Division to pronounce the law, 'Statutory Law', is limited by the Constitution. It is overruled by 'Constitutional Law'. The Judicial Division has the power, and the duty, (jurisdiction) to check abuse of power by the Legislative Division. That is, refuse to enforce unconstitutional statutory law or to pronounce statutory law as unconstitutional if it is outside the jurisdiction delegated to that division.

Authority is found in §13 of Art. I, of our Texas Constitution (excepted from the jurisdiction of our Legislators by §29 of Art. I), among others. Incorporated herein, as if fully restated, is "The Constitutional Right to Remedy" by former Chief Justice Tom Phillips, See **Appendix A** (electronic media to conserve paper), and to the words of our Law Givers, Founders for our Land of Texas, in the Turtle Bayou Resolution:

> ***Fourth:*** By the imposition of military force, preventing the Alcalde [Judge] of the jurisdiction of Liberty to exercise of his **constitutional** functions. (emphasis added. Judge's power limited by constitution)

Our Executive and Legislative Divisions do not have power to prevent the Judicial Division of our government from it's duty to grant to Individuals their Liberty, which includes the Right to Remedy when one of the people, a citizen, petitions to those vested with the power, our Judges, to redress a grievance, against the government of our State.

Jurisdiction, for Judicial Officials of our Court is to pronounce statutory law unconstitutional and to administer the Law impartially under a hierarchy. The Judicial Division does not have jurisdiction to pronounce our Constitution as unconstitutional, neglect to rule Statutory provisions unconstitutional, nor to neglect or refuse their duty to administer the Constitution on the Facts, or to conceal Facts. Neglect, refusal, concealment is known as conscious and deliberate disregard for the Truth. No Judge has been delegated this power. It is a power exercised in absence of jurisdiction. The duty, obligation, and responsibility of this Honorable Court is to declare the foregoing as abuse of discretion or as error, refuse to enforce unconstitutional provisions of statutory law, and reform the Final Judgment to the Facts offered, so Constitutional Law and constitutional ancillary law, may be properly administered, or remand for a New Trial.

STANDARD OF REVIEW

Review of subject matter jurisdiction over Plaintiff / Petitioner, now Appellee, his claims, was previously adjudicated by this Court on review of this Case. This is of record as 03-02-00151-CV, and published Heimlich v. State of Texas, 107 S.W.3d 643.

Appellant has presented in this Second Review a challenge to the factual sufficiency of the evidence and legal sufficiency of the evidence to support the recovery ordered by the district court. In doing so, the Appellant has opened the door for the

Appellee to challenge the same with response. The recovery ordered is insufficient as a matter of law and uncontroverted facts.

For a standard of review Appellee relies upon the standard of this Court in Kirby v. Tjarks, No. 03-05-00063-CV (03/23/2006, and in Moyer v. Moyer, of record as No. 03-03-00751-CV (Tex.App.Dist.3 08/26/2005). Moyer v. Moyer is also relevant to this review as it, too, concerned "lost earning capacity" ("wages, salary, other income lost") and admission of Expert Testimony. Quoting this Court in Moyer v. Moyer:

"When reviewing a challenge to the factual sufficiency of evidence, we must consider, weigh, and examine all of the evidence in the record. Plas-Tex, Inc. v. U.S. Steel Corp., 772 S.W.2d 442, 445 (Tex. 1989). A party attacking the factual sufficiency of an adverse finding on which the other party had the burden of proof must demonstrate that there is insufficient evidence to support the adverse finding." Westech Eng'g, Inc. v. Clearwater Constructors, Inc., 835 S.W.2d 190, 196 (Tex. App.--Austin 1995, no writ). "We will set aside the verdict only if the evidence that supports the finding is so weak as to be clearly wrong and manifestly unjust. See Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986)." [¶ 70 as numbered by versuslaw.com]. Likewise, reform or remand a finding that is clearly wrong and manifestly unjust to the prevailing party, in view of the facts.

"Direct evidence may be in the form of the party's own testimony, that of third parties, or that of experts Parkway Co. v. Woodruff, 901 S.W.2d 444 (Tex. 1995)" [[¶ 74 of Moyer v. Moyer as numbered by versuslaw.com]

"In the present review, the Appellant unsuccessfully challenged the admissibility of the experts' testimony, and does not challenge on appeal their qualifications:

"Although Gary unsuccessfully challenged the admissibility of the experts' testimony on procedural grounds, he does not challenge on appeal their qualifications or the reliability of any opinions they offered. See Ramirez, 159 S.W.3d at 904; E.I. du Pont de Nemours & Co. v. Robinson, 923 S.W.2d 549, 556 (Tex. 1995)." [[¶ 75, id. per versuslaw]

See also Kirby v. Tjarks, No. 03-05-00063-CV (03/23/2006) [¶39 versuslaw]; "We credit favorable evidence if a reasonable fact-finder could and disregard contrary evidence unless a reasonable fact-finder could not. City of Keller v. Wilson, 168 S.W.3d 827 (Tex. 2005). The evidence is legally sufficient if it would enable fair-minded people to reach the verdict under review. Id. In reviewing the factual sufficiency of the evidence, we consider and weigh all the evidence and should set aside the judgment only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986)."

INTRODUCTION

I am Edmund Bryan Heimlich. I am the Appellee, the Plaintiff in the cause now submitted to you for review. As unrepresented I may refer to myself hereinafter as "I", "me", "my", as well as "Plaintiff", "Petitioner", "Claimant" or "Appellee".

I am a Human Person, one of the people of this State; And, a citizen of this State of Texas, and of the United States. My people, the people of the State of Texas, have exercised their jurisdiction to render judgment in a mandate known as the Texas Constitution. They have rendered their Decree, and bound all elected or appointed to serve to this Legal Document, the Texas Constitution that governs their government.

Cause No. GN1-00142, now subject of a second review by this Court of Review known as the Court of Appeals, serving our Third Supreme Judicial District (hereinafter

"this Court"), is an Action in Law for Enforcement of that Decree, the Texas Constitution. I, the Plaintiff in Cause GN100142, did not initiate this case. GN100142 is a continuation of the case, the process or course of law, initiated by government of the State, of record as Cause No. 674066. The government, as Plaintiff in that cause, is now the Defendant in Cause No. GN100142.

Pursuant to the Art. 3.02 of our Code of Criminal Procedure, government initiated the case in the name of THE STATE OF TEXAS. Therefore, the person amenable to lawsuit for the recovery of damages caused by the injuries inflicted on me, a Human Person, is the Artificial Person known as THE STATE OF TEXAS. Pursuant to our Texas Constitution the government of the State is represented by the Attorney General, when the government of our State is the defendant in a lawsuit. The cause / lawsuit GN100142, submitted for your second review, is a counter-claim to 674066.

My people have mandated that I, one of the people, and a citizen of this State, have Remedy from the entity represented by Greg Abbott as Attorney General. This person may herein be referred to as "government"; or, when Greg Abbott, speaking through his Attorney of Record, is clearly voicing a personal opinion, an opinion without jurisdiction of an Office of our government, an opinion contrary to Public Policy for our State, "Alexander", the name of the Attorney that is now standing in this Court as Greg Abbott, our Attorney General, representing Executive & Legislative Divisions before an Independent Judicial Division of our government (See Art. 2, Texas Constitution).

SUMMARY OF THE CASE

This case, referred to by the Appellant as an 'Odyssey' has been a 13 year 'Ordeal' for me. This is an Action for Enforcement of our Texas Constitution as

paramount Law of the Land known as Texas. Texas is geographical division of the Land known as the United States of America, and therefore subject to the "supreme Law of the Land". This has been a 'Trial by Ordeal' for 'the Rule of Law' / Liberty on this Land.

The Ordeal began in 1993 when I was operating as a Real Estate Broker. My income was generated by Professional Fees I charged for my services, much the same way that a licensed Lawyer (Attorney) generates income. My income (wage) in Professional Fees was NOT 'profit' from the Business Entity I owned at the time.

As a Broker I had 'subject matter jurisdiction' over the income I earned in professional fees. I also had 'subject matter jurisdiction' over any professional fee generated by any licensed Real Estate Agent operating under my sponsorship. In this sense I was a Regulatory Agent of the State of Texas on behalf of the Texas Real Estate Commission. By Public and Private (contract[1]) Law, I was, and remain, the owner of the property "taken, damaged, or destroyed" (quoting §17, Art. 1), beginning with the $5,050 and all my property, personal and real, that has been "taken, damaged, or destroyed" thereafter by the entity responsible. My personal and official jurisdiction was violated by the government of the State of Texas by and through it's Actors and Agents. By those acting by law that made them Officers or Employees, Actors of this Entity, my property, real and personal, has been "taken, damaged, or destroyed". §17, Art. I mandates remedy.

Alexander asserts, under color of her position as an 'attorney' that my property, $5,050 was 'owed' to another. As any competent to be licensed to practice law knows, the doctrine known as the Statute of Frauds[2] applies to written contracts. "Owed" is defined as "a debt payable immediately or on demand"[3]. No payment is 'owed' prior to a

[1] Contract is of Record in this Court, CR1, 99 - 102
[2] A 'core course' required for licensure as a Real Estate Agent / Broker or as an Attorney
[3] See www.onelook.com providing a 'quick definition' and links to all dictionaries providing definitions of words of 'common usage and ordinary meaning' as well as technical definition for the language common to

contracted date. Pursuant to the terms of the contract, no payment from the $5,050 taken from me is 'owed' to anyone. Alexander attempts to perpetrate the same fraud upon the Court an Attorney for the State perpetrated as an excuse to take my $5,050 and take my property in the form of my body and my reputation and other property in the process. With no 'Actus Reus' (illegal act), intent ('Mens Rea') is not subject to speculation.

The people of the State of Texas have mandated the justice I am entitled to come from the Defendant in this Action for Enforcement of our Constitution, as monetary compensation to me, the Plaintiff. Our Texas Constitution entitles me to recompense.

IDENTITY OF THE PARTIES and SUBJECT MATTER

A proper definition / understanding of the parties, and the subject matter in dispute, in GN100142, now on review, is essential to a proper review of the Law and Facts at issue:

A. The subject matter in dispute is **Property**, both real and personal. At issue is determination of a value for this property for a sum of money as compensation.

B. The Plaintiff is **a person**, known as an 'Individual', Human in character, referred to as "Heimlich". Or, as I am unrepresented, I may refer to myself as "I" or "my".

C. The Defendant is **a person**, a 'fiction of law', 'legal entity', Artificial in character, referred to herein as "government" of our State, represented by an Agency of the Executive Division, our Office of the Attorney General represented by Greg Abbott.

The definition of the foregoing words I emphasized are pursuant to;

Gov. Code: § 311.005. GENERAL DEFINITIONS.

> (2) **"Person" includes** corporation, organization, **government** or governmental subdivision or agency, business trust, estate, trust, partnership, association, **and any other legal entity**.
>
> (4) **"Property" means real and personal property.**

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the people of this land.

Gov. Code: § 312.011. DEFINITIONS.

(13) "Property" includes real property, personal property, life insurance policies, and the effects of life insurance policies.

(19) **"Includes"** and "including" are **terms of enlargement and not of limitation or exclusive enumeration**, and use of the terms does not create a presumption that components not expressed are excluded.

Penal Code §1.07:

(26) "**Individual" means a human being**.

(38) **"Person" means an individual**, corporation, **or** association.

Alexander, for the Appellant, asserts that all Individuals are the property and prisoners of the government of their State. Their Individual Right to own private property was abrogated by declaration of the Legislative Division of government by statute codified in § 311.034 of the government code regardless of any decree of Free Persons assembled in the Texas Constitution to the contrary. In her opinion, the people of the State of Texas are prisoners of their government that has, at all time, their body; "habeas corpus" in a form of custody, imprisonment, even if not in custody of a penal institution.

PERSONS PARTY TO THIS CASE

It is well-established in the jurisprudence of this State, of the United States, and as well in International Law, that where the Rule of Law prevails, government entities are 'persons' amenable[4] to an Action in Law brought by a Human Person of that Jurisdiction to an Independent Judicial Division / Branch of that government ("open courts"). This is an Action in Law for Remedy secured by our Constitution, the Constitution of the State of Texas, a Legal Document subject only to provisions of the 'supreme Law of the Land'[5]

[4] "Amenble" – subject to a higher authority. The higher authority for our State of Texas, and persons artificial & real, is our Texas Constitution, administered impartial by our Judicial Division.
[5] "supreme Law of the Land" – The Constitution of the United States of America, Laws of Congress "made in pursuance thereof", including International Treaties ratified by Congress known as International Law.

(pursuant to Article VI of our Constitution of the United States of America) for enforcement of our Texas Constitution, and ancillary statutory law of our jurisdiction.

I, as one of the People of the State of Texas, have no duty to supervise and manage the individuals elected or appointed (employed) in the entity THE STATE OF TEXAS ("government") our people, of which I am one, created to benefit 'the people of the State of Texas'. Therefore, I have no duty, obligation, or responsibility to seek remedy from the individuals employed in this entity. My source of Remedy is from the employing entity, government of our State. That entity might, if it chooses, pursue recovery from the Individuals of its employ, to recovery the costs to our State Treasury. That decision is within the jurisdiction of the Attorney General of our State of Texas.

See also Art. 1.04, Texas Code of Criminal Procedure, defining "due course of law" for our State. The statute codified therein is equally applicable to a Civil Cause where government is the person who initiated the action, in the criminal venue, requiring an action in response in the civil venue of our Court.

EQUAL JUSTICE UNDER THE LAW

I am endowed with "Equal Rights". See §3 of Article 1, and §3a mandating "Equality under the Law". In the words of our Constitution of the United States of America, applicable to the States, this security of "Equal Rights" and "Equality under the Law" is imposed upon the State of Texas by §10 of Article I; "No state shall…grant any Title of Nobility". For understanding of this clause look to No. 84 of the Federalist Papers, also found in our Texas Constitution in §17 of Article 1 with these words: "no irrevocable or uncontrollable grant of special privileges or immunities shall be made".

This security of Liberty (protection of the Law) is also secured by §2 of Art. IV of the Constitution of the United States of America; "The Citizens of each State shall be entitled to all Privileges and Immunities of the Citizens in the several States". To make this clear to those who rebelled against our 'supreme Law of the Land', during the 1860 and 1865 insurgency, the Fourteenth Amendment was added providing that; "nor shall any State deprive any [Human] person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law". I have standing to demand Equal Protection of the Law, and the Remedy that requires.

This assertion that I, a Human Person, have "standing" and am equal to the Artificial Person known as government, and entitled to Remedy from this person, has also been recognized by our Texas Supreme Court. See Dept. of Transp. v. City of Sunset Valley, 146 S.W.3d (Tex. 2004) 2004.TX.0007236 @ http://www.versuslaw.com generally. See also Davis v. City of San Antonio, 752 S.W.2d 518 (Tex.1988) citing Texas Department of Corrections v. Herring, 513 S.W.2d 6, 7-8 (Tex. 1974), citing Texas Co. v. State, 154 Tex. 494, 505, 281 S.W.2d 83, 90 (1955) and Texas Department of Transp. v. Jones 8 S.W.3d 636, 43 Tex. Sup. Ct. J. 143 Tex.,1999**,** supporting and making clear the finding in Davis.

INTERPRETING §17 OF ARTICLE 1

The Appellant attempts to make this case unduly complex. The crux of this case is the Substantive Right of the Individual to Private Property Ownership including, but not limited to, their proprietary right in their body and the constitutional requirement they be compensated when that property is "taken, damaged, or destroyed" (quoting §17 of Art. 1) by the person known as government of our State of Texas, the STATE OF TEXAS.

Ancillary law created by our Texas Legislature must be interpreted, taken in context or in conjunction with, the spirit and intent as well as plain language of our Constitution.

My Right is secured by our Texas Constitution providing for compensation to vindicate the Right when violated by the Artificial Person, a Fiction of Law / "creature of our law", an entity known as government "as a convenient agency for the exercise of such powers as are conferred upon [it] by the [sovereign people of the State of Texas]"; paraphrasing Texas Dept. of Transp. v. City of Sunset Valley, 146 S.W.3d (Tex. 2004) 2004.TX.0007236 @ http://www.versuslaw.com (hereinafter "Sunset Valley"). This is the essence of §17 of Article I of our Texas Constitution. The Substantive Right of a Citizen to compensation for property "taken, damaged, or destroyed" by government has been documented as far back as 122 BC in the Law of the Roman Republic known as Acilian Law on the Right to Recovery of Property Officially Extorted[6].

I, the Appellee, have a "proprietary title or vested property right" in my body, and in my reputation on which my ability to earn "wages, salary, or other income" depend, as well as in the Business entity that is "superior to that of political divisions" (Id. Sunset Valley) which was "taken, damaged, or destroyed" by State government. My title to this property is not "held for the benefit of the State [government] or the general public" (id. Sunset Valley). I have standing to maintain this suit and have "demonstrated an interest distinct from that of the general public" (Id. Sunset Valley) for my property. In fact, this "interest" is "self-evident". See Law of the Land (U.S.) dated July 4, 1776.

[6] http://www.yale.edu/lawweb/avalon/medieval/acilian_law.htm - Yale Law School Avalon Project. Protecting the citizen of the Republic of Rome. Non citizens were not protected by Roman Law.

Relevant to this case is the intent of the sovereign, the people of the State of Texas, expressed in the Constitution by which they created, and govern, their government, to secure Substantive Rights. Of relevance to this case is §17 of Article 1:

TEXAS CONSTITUTION; Article 1 - BILL OF RIGHTS (inviolate by §29)

Section 17 - TAKING, DAMAGING, OR DESTROYING PROPERTY FOR PUBLIC USE; SPECIAL PRIVILEGES AND IMMUNITIES; CONTROL OF PRIVILEGES AND FRANCHISES

No person's property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person; and, when taken, except for the use of the State, such compensation shall be first made, or secured by a deposit of money; and no irrevocable or uncontrollable grant of special privileges or immunities, shall be made; but all privileges and franchises granted by the Legislature, or created under its authority shall be subject to the control thereof.

Texas Dept. of Transp. v. City of Sunset Valley, 146 S.W.3d (Tex. 2004) provides guidance in interpreting the foregoing constitutional provisions. See ¶20 as published by versuslaw. The objective in interpreting our State Constitution is the same as applied to interpreting a statute. That is; "to ascertain and give effect to the [intent of the people as sovereign]. ""In discerning that intent, we begin with the "plain and common meaning of the [constitution's] words"". "If the [constitution's] language is unambiguous, we must interpret it according to its terms, giving meaning to the language consistent with other provisions in the [Article of the Constitution]".

Of primary relevance in §17 is the provisions or clause "and **no irrevocable or uncontrollable grant of special privileges or immunities, shall be made**; which must be considered distinct and separate from "but all privileges and franchises granted by the Legislature, or created under its authority shall be subject to the control thereof." Our

Legislature did **not** create our government of our State. This entity was created by the people of the State by the Articles of our Texas Constitution that followed Article I. It is a creature of Constitutional Law. Therefore, our State Government is **not** entitled to any "irrevocable or uncontrollable grants of special privileges or immunities" by Legislative Decree, nor by Executive or Judicial Decree of our political subdivisions created for the objective of securing to the Individual members of the people their Substantive Rights.

Our State government is **not** a 'corporation' or any other type of legal entity that may be created by our Legislature, known as a 'franchise' granted by the Legislature. Our State Legislative Division may, through ancillary law, manage and regulate our State Government Entity and Agencies, and Professionals but is barred by §29 of Article I from regulating or limiting our Individual Rights secured by Art. 1 of our Constitution as "excepted from the powers of government; forever to remain inviolate". Government immunity was waived by the people of the State of Texas in the Texas Constitution.

SUMMARY OF THE ATTORNEY FOR APPELLANT'S BREIF

Alexander's opinion, expressed in her brief, can be summed up as a belief the citizens of the State of Texas, of which I am one, have been outlawed. That is, citizens of the State of Texas are out outside the law, not entitled to the Protection of the Law. This opinion is contrary to the prohibition mandated and decreed by the people of the State of Texas in §20 of Article I, which states plainly; "No citizen shall be outlawed."

'The people of the State of Texas' cannot, as a collective represented by representatives or an entity, be a citizen. Nor can government. Only an individual, a Human Person, can be a citizen. §20 of Article I prohibits the collective, known as 'the

people' or public, acting through a jury or legislators, as well as the government via any agency thereof, from depriving me, a citizen, of the protection of the Law = LIBERTY.

Her opinion is also contrary to the federally protected right of persons, including a human person who happen to be citizens of the State of Texas, the protection of the 14th Amend. US Const. "no State shall deny to any person within its jurisdiction the equal protection of the law". 'Protection of the Law' mandates Remedy / Compensation; or, there is no protection, only a pretense of protection to the Individuals that constitute the people of our State of Texas. This immunity of the Individual from the arbitrary exercise of authority is LIBERTY. In this jurisdiction, I am equal to the Artificial Person, the Fiction of Law known as THE STATE OF TEXAS, as government of our State of Texas.

STATUTORY LAW AT ISSUE

Submitted for Review by the Honorable Judges of this Court is the administration of the following Law on the facts presented (includes offered as well as admitted) in our district court on the trial of GN100142 for "**determining the sum of money owed to the petitioner",** quoting exact language of §103.105(b), incorporated in this section**. I,** Appellee, am "the petitioner", also know as "plaintiff" in the Trial Court. This "sum of money" is compensation for the damages I am entitled to recover from the Appellant, government as defendant, pursuant to prior judgment of our Court of Appeals, in the Fourteenth as well this District, the Third, and by Trial Court Final Judgment of August 14, 2003, the first trial following remand, pursuant to §103.105(a) and §17 of Art. I.

Subchapter C of Chapter 103, of our Texas Civil Practice and Remedies Code, provides damage recovery ("sum of money" / aka compensation) for claims for recovery

brought by lawsuit. The damage provisions, §103.105 of Subchapter C, do not apply to a claim brought by administrative process. That is Subchapter B of Chapter 103.

Chapter 103 is codification of a Statutory Law enacted by the Legislative Division of this State to more fully secure to the people and/or citizens of the State of Texas (Appellee is both; one of the people, and a citizen) their Substantive Right, as Individuals, secured by §17 of Article I of our Texas Constitution, our Bill of [Individual] Rights, among other Substantive Rights secured by our Texas Constitution.

Texas Civil Practice & Remedies Code: § 103.105. Damages (emphasis added)
(a) If the trier of fact finds that the petitioner is entitled to compensation, the petitioner is entitled to:

> **(1) expenses incurred by the petitioner in connection with all associated criminal proceedings and appeals and in connection with obtaining the petitioner's discharge from imprisonment, including any fine or court costs paid and reasonable attorney's fees, including reasonable attorney's fees for prosecuting the lawsuit under this subchapter;**
> **(2) wages, salary, or other earned income that was lost as a direct result of the arrest, prosecution, conviction, or wrongful imprisonment; and**
> **(3) medical and counseling expenses incurred by the petitioner as a direct result of the arrest, prosecution, conviction, or wrongful imprisonment.**

(b) In determining the sum of money owed to the petitioner, the trier of fact may not deduct any expenses incurred by the state or any of its political subdivisions in connection with the arrest, prosecution, conviction, and wrongful imprisonment of the petitioner, including expenses for food, clothing, shelter, and medical services.

The foregoing is 'black letter law' written in words of 'common usage' and 'ordinary meaning' as Law for this Land, this jurisdiction known as Texas, to the extent it is interpreted pursuant to our Texas Constitution[7]. Of particular relevance to this proceeding is §17 of Article I, an Individual Right **"inviolate; forever excepted from the powers of government**" pursuant to §29 of Article I, Texas Constitution.

[7] Subject to other law binding on this jurisdiction – supreme Law of the Land, Art. VI US Const.

§27 of Art. I of our Texas Constitution secures to citizens, of which I am one, the Right to Petition to those invested with the powers of government, that is you our Judges, for Redress of my Grievances with the entity that governs our State; And, to have pursuant to §13, 17, 19 20 & 27 of Art. I, Remedy for the injuries that caused these grievances from the entity responsible. The provisions of Article I of our Texas Constitution are self-executing, self-operative. That is, do not require ratification by the Legislative Division of our State to be ordered by our Judicial Division to be enforced.

Appellant asks the Honorable Judges of this Court to rewrite the statute to confine Appellee to Administrative Process, Subchapter B of Chapter 103. The Statute is clear and unambiguous, if the petitioner (appellee herein) elects Judicial Process §103.105 of Subchapter C applies entitling recovery for injuries beginning from time of the arrest. Jurisdiction of our Judicial Officials is limited to repose[8] unconstitutional provisions.

RESPONSE TO ISSUES RAISED BY APPELLANT

ISSUE NO. 1:
Did the Legislature intend to waive the State's immunity from a suit brought under Chapter 103 for a person acquitted on the basis of legal insufficiency of the evidence?

The 'waiver' of immunity from suit and liability for the type of wrong addressed by Chapter 103 is a Substantive Right of an Individual our Legislative Division of government cannot abrogate Right in any way, by stipulations or limitation. The 'waiver' is by constitutional provisions. Legislative enactment, codified in Chapter 103, is ancillary to our constitution. That is, statutory law provides additional security for the people of the State of Texas who might be victims of this, the most egregious of wrongs THE STATE OF TEXAS, government, can inflict upon the people of the State of Texas

[8]"Repose"; Word utilized by Hon. Steve Phillips in 'The Constitutional Right to Remedy' meaning to declare unconstitutional a provision of statutory law.

(of which I am one, and a citizen of this State). Statutory Law clarifies, and secures, the entitlement of the Individual to remedy from government as the entity responsible.

Alexander, now representing the Appellant, devotes most of her brief, pages 10 through 25, to this issue. She provides various paragraph headings that apparently attempting to re-litigation what was settled by the Attorney previously representing the Appellant. Also settled by prior Judgment of this Court, of record herein as 03-02-00151-CV, January 30, 2003, and by Final Judgment of August 14, 2003 in the Trial Court, a judgment rendered three years ago for which the time for appellate review has long since passed, depriving this Court of jurisdiction to grant Appellant the Review Requested.

"Where immunity from liability has been waived immunity from suit is no longer at issue". Huddleston v. Murray, 841 S.W.2d 24, 30 (Tex. App. — Dallas 1992, writ dism. w.o.j.). Defendant-Appellant stipulated to liability (my Actual Innocence) and 'waived' "State's Immunity" from suit, when the issues of Actual Innocence was raised by me during the trial on damages. See TR1, 48, [Mr Dennis for Defendant-Appellant]:

Q. And was there testimony from the alleged victim in that case?

A. Yes, there was.

Q. Did the victim give testimony as to who owned the check?

A. Yes.

Q. What did that victim testify?

MR. DENNIS: Again, Your Honor, relevance to all of this. **Liability has been established.**

15 We're here about damages. I don't see how that

16 relates at all to damages.

See also CR2, 306 where Attorney for Appellant stipulates to suit and liability. Seth Byron Dennis was granted authority to speak for the defendant, the government of our State. If the Appellant now has a complaint against their prior Attorney of Record, for ineffective assistance of counsel, the Appellant's recourse is to bring a suit against Mr Seth Dennis, Assistant Attorney General, for Legal Malpractice. It is not within the jurisdiction of this Court to correct the errors of the Appellant's Attorney, as Alexander appears to request. Nor can Appellate government, nor it's Attorney Greg Abbott escape his responsibility by appointed new Counsel, Cynthia Alexander, to represent him as Attorney General. Ms Alexander, in disregard of the Public Record, a display of contempt, has again raised the issue of suit and liability without jurisdiction to do so.

Responding to Alexander

Alexander attempts to avoid the facts by converting a question of fact into a question of law. On a claim brought by lawsuit, Subchapter C, 'Actual Innocence' is not a 'question of law', determined by a 'term of art' definition, but a 'question of fact' to be determined by a 'preponderance of the evidence', pursuant to §103.102 of the statute: **"The petitioner must establish by a preponderance of the evidence that the petitioner is entitled to compensation…..".** The Legislature could not have been more clear. See also Brief of Appellee on 'Actual Innocence' CR1, 200-213.

She is correct that "attacking a criminal conviction in a civil proceeding" (quoting her brief) is not permitted prior to a reversal of the conviction. Following acquittal, dismissal of the indictment, <u>there is no conviction.</u> This is why a pardon is not possible.

There is nothing to pardon; No sin to forgive, or beg forgiveness for. This is also the reason I, the Appellee, was required to wait until after the Final Adjudication by our Texas Court of Criminal Appeals before I had standing to bring this Counter-Claim.

But; The opinion expressed in Ex Parte Tuley, by our Court of Criminal Appeals, is irrelevant and immaterial to this proceeding. I, and the people of our State, are not 'prisoners' of our government. Our Legislators, in clear and unambiguous language, preserved my Right to Judicial Process (lawsuit), in Subchapter C. In plain and unambiguous language they delegated jurisdiction our Judicial Division of our Government. This is going with, but not assenting to, the opinion of some that our Legislators have Constitutional authority to deprive the people of the State of Texas of Judicial Process. I, as one of the people, am not required to proceed with my claim upon the government by Administrative Process, Subchapter B. Furthermore; Our Court of Criminal Appeals had an opportunity to review this case and, in their judgment, the imprisonment was wrongful. This is of Public Record in that Court under file No. PD-0715-99, State of Texas v. Heimlich, review of 14-95-01369-CR, Heimlich v. State.

Quoting this Court in State v. Oakley, of record under file NO. 03-05-00007-CV, ¶ 20 as published by versus law, or 181 S.W.3d 860 as published by West. "In chapter 103, the legislature clearly expressed its intent to waive immunity when a person has been wrongfully convicted. Unlike the ill-defined waiver for "use of tangible personal property" discussed in York, "wrongful conviction" is clearly defined by chapter 103. See York, 871 S.W.2d at 177 ("Our construction of section 101.021(2) of the Tort Claims Act and the scope of waiver expressed therein has a long and arduous history.")." Thus, all opinions cited by Alexander the 'Tort Claims Act', are not directly applicable.

Ex Parte Tuly, cited by Appellant, reveals new definitions applied to phrases created by courts. What the Fourteenth Court of Appeals referred to in this case, of record as 14-95-01369-CR, as "legal insufficiency of the evidence" is what is clearly synonymous with "Actual Innocence" or, the phrase now utilized by the Court of Criminal Appeals, "Bare Innocence". The meaning of phrases overrules definitions changed by Judicial Fiat. My "Bare Innocence" is not due to "newly discovered evidence" but due to lack of any evidence of any wrongdoing as I was acting within my legal Rights. The complainant had no legally cognizable complaint and, therefore, the STATE OF TEXAS, now defendant, was acting without any jurisdiction over my person or my property including my personal property, my body, that was 'taken'. My Actual, or Bare, Innocence was not due to a 'lack of evidence', but is an inherent Right of Liberty.

As one in close contact with our Legislators during the deliberations on the statute at issue, the change in language Appellant refers to was simply for the purpose of conciseness because it was determined "legal insufficiency of the evidence" was synonymous with "actual innocence". The "omission" was directed to claimants whose acquittal was solely due prosecutorial misconduct but where facts might reveal 'Actual Guilt', guilt beyond a "preponderance of the evidence" but not sufficient to prove guilt "beyond a reasonable doubt", reflecting the difference in standards of review used in the criminal venue and the civil venue of our Court, our Judicial Division of Government.

Finally, Alexander attempts to employ the same trick of the Attorney for the STATE OF TEXAS operating in the district of Harris County in 1993. A County Constable violated the Law. To cover-up for his violation he arrested me. To cover-up for the wrongful arrest an Attorney for the State had my property, again, illegally seized and

my body, again, illegally seized. The second arrest was illegally presented to secure a wrongful conviction that would protect the Constable, and his employer, from liability. The first wrongful arrest and conviction was then used to secure the wrongful "arrest, prosecution, conviction and imprisonment" for which the STATE is now liable. The first arrest, a misdemeanor, is not of record before this court, and was not the "primary cause" or "proximate cause" of my injuries inflicted by an unlawful felony arrest.

In THE STATE OF TEXAS vs. one of the people of this State (Heimlich) the complainant did not then, nor now, have a legally cognizable claim on Heimlich's property. By Private Law known as a Legal Contract, of record in this Court as CR1 99 – 102. THE STATE OF TEXAS, now Defendant-Appellant, acted without jurisdiction.

As the new Attorney for the Appellant has brought it up, I will again address this further, emphatically, for the education of the Attorney representing Greg Abbott, Ms Alexander, and for her superiors, allegedly supervising her in our Office of the Attorney General, after responding to the other issues raised by the Appellant.

ISSUE NO. 2 and CROSS ISSUE:
Did the district court exceed its jurisdiction in awarding damages which are not "directly related to" the arrest, prosecution, conviction or imprisonment?

The Appellant misquotes the law. The phrase in the statute is "**as a direct result**". The phrase is composed of words of common usage and ordinary meaning. It is not a 'technical' phrase. Pursuant to §311.011 and §312.002 of our Texas Government Code, the phrase is not subject to a definition by Judicial Officials. It means what it means.

"why should the meaning of the term "directly caused" be beclouded by a long complicated attempt to define what needs no definition?" Commercial Standard v. Caster, 59 S.W.2d (1933)

Appellant's issue here is not a question of law, but an abuse of discretion requiring a factual sufficiency review. A review to determine if the recovery ordered for the damage inflicted by the arrest, prosecution, conviction or imprisonment were excessive, or insufficient based on the facts on which the law is to be administered.

The Appellant unsuccessfully challenged the admissibility of Expert Rimkus Consulting, in the written report entered as Exhibit 22. The Record, and the Recovery Ordered, reflect the Exhibit was, and must be presumed, admitted absent specific order of the Judge to the contrary. The Appellant did not, in the trial nor on appeal, challenge the qualifications of the experts, Rimkus Consulting AND Heimlich. There testimony was admitted. There is no record of testimony ordered struck. "Although Gary unsuccessfully challenged the admissibility of the experts' testimony on procedural grounds, he does not challenge on appeal their qualifications or the reliability of any opinions they offered." See Ramirez, 159 S.W.3d at 904; E.I. du Pont de Nemours & Co. v. Robinson, 923 S.W.2d 549, 556 (Tex. 1995)." Moyer v. Moyer, No. 03-03-00751-CV (Tex.App. Dist.3 08/26/2005) [[¶ 75, per versuslaw]. Appellant Attorney has not challenged the experts testimony on appeal. Rather, she relies on a naked, unsupportable, assertion they were disqualified by order of the Trial Court Judge. There is no record of any such order.

Appellee's cross-issue is a question of legal error, as well as abuse of discretion. The Judge, acting on behalf of the Defendant-Appellant, intervened to testify as a fact and expert witness; Also, as Attorney for Defendant presenting as a defense to Appellee's fact evidence, decisional law known as "Havner" and "Capitol Metro". This is a procedural error depriving the Appellee of 'due course of law' / 'due process of law'. The trial court then misapplied the "Havner Standard" and "Capital Metro" to exclude fact

evidence, a written business plan Exhibit 1, or discount the fact evidence depriving Appellee of the recovery he is entitled to as a matter of law, and as a matter of facts on which the law must be administered. I, Appellee, address “Havner” and “Capitol Metro” later in this brief. Keeping the focus the phrase “as a direct result”, this Court reviewed this phrase in Edwards v. Employees Retirement System of Texas, of record as No. 03-03-00737-CV (08/26/2004), (emphasis added):

“See Stroberg v. Insurance Co. of No. Am., 464 S.W.2d 827, 828 (Tex. 1971). The supreme court in Stroberg, however, focused on the language "independently of all other causes" in concluding that an insurance policy applied only when the accident was the sole proximate cause of the loss. Id. at 829. The implication of Stroberg is that without the addition of the phrase "independently of all other causes," the language **"resulting directly" means proximate cause.** See also Flores, 74 S.W.3d at 548 ("Had the legislature intended a sole cause standard, it could have given some indication, for example, by using 'solely results' or 'directly results independently of all other causes.'"). *fn3 74 S.W.3d at 537. After weighing various policy concerns we agreed with the Board that "directly results" meant "primary cause," not proximate cause. See id. at 551 **Regardless of whether the proper interpretation of the language at issue is proximate cause or primary cause, however, it simply would not make sense to interpret "direct result" to mean sole cause.”**

It is beyond reasonable dispute, the Appellant government, STATE OF TEXAS, was the ‘proximate cause’ or ‘primary cause’ for “the arrest, prosecution, conviction or imprisonment” causing the damages I, Appellee, am entitled to recover pursuant to §17 and ancillary law §103.105(a)(1),(2)&(3) from the Appellant. By a ‘Preponderance of the Evidence’ (a weight of 51% or greater) presented in the Trial on Damages, Appellant presented no evidence of other ‘cause’ legally admissible, or that could be reasonably considered ‘proximate’ or ‘primary’ to the ‘cause’ being “the arrest, prosecution, conviction or imprisonment” by none other than the Appellant. The “cause” was incompetence or arrogance of Actors of the Defendant-Appellant government due to a failure of the government to manage, supervise, hold accountable to the law (regulate), its

Actors. A 'cause' that can only begin to be addressed if the Honorable Judges of this Court holds the government Accountable in this case by ordering I, Appellee, recover all my economic damages without limitation or delay.

ISSUE NO. 3:
Did the district court exceed its jurisdiction in awarding damages which exceeded the statutory cap and were not included on the list of damages set forth in Chapter 103?

§103.005(c) is a statutory defense, not a Constitutional defense. By well-established law, it is waived if not properly pled**.** Davis v. City of San Antonio, 752 S.W.2d 518 (Tex.1988)**.** See also Texas Department of Transp. v. Jones 8 S.W.3d 636, 43 Tex. Sup. Ct. J. 143 Tex.,1999. Appellant waived their right to assert this statutory defense to liability. Therefore discussion of this issue is a moot point.

The Appellant did not invoke the jurisdiction of this Court for Review of this statutory defense. As a matter of well-established Law, Appellant is confined to the issues raised in their Motion for New Trial. See record, CR2, 494-501, and Order of the Court, CS1, 001. Copies attached as **Appendix B**.

Appellant's motion alleged only two errors; (1) an attempt to re-litigate the question of 'Actual Innocence', decided by the trial on Appellee's Motion for No Evidence Summary Judgment, with Final Judgment entered on August 14, 2003. Appellant is time barred from motion or petition for review of this Judgment, pursuant to Texas Rules of Appellate Procedure 49 & 53.7, and this Court, by Rule 19, does not have jurisdiction (plenary power) to grant a rehearing on its finding of January 30, 2003 of Record as 03-02-00151-CV. The only surviving error is the second; (2) complaint the recovery ordered for damages pursuant to §103.105(a)(2) and §103.105(a)(3) were

excessive, or based on speculative evidence. Alleged, preserved, Error (2) is addressed in this brief in response to other issues raised by Appellant.

The Appellant also waived their right to assert this statutory defense by declining Appellee's numerous offers of settlement. Therefore, Appellee's Constitutional challenge does not need to be addressed by this Court. This will be further addressed later in this brief, and in Appellee's post-submission issues later in this brief, including those prematurely filed, and in post-submission filings.

"under this subchapter"

Even if this Court were to allow Appellant to plead §103.105(c) the plain language of this section provides "under this subchapter". In the context of our Texas Government Code, §311.032, this is the opposite of severability, thus prohibits the remedy provided "under this subchapter" of being severed from Remedy secured by Legal Title in other provisions of our Statutory Law, and of course Constitutional provisions. Our Constitution prevails, as does the obvious intent of our Legislators.

Tex.Gov. Code; **§ 311.032. SEVERABILITY OF STATUTES.**
(a) If any statute contains a provision for severability, that provision prevails in interpreting that statute.

103.105(c) contains the opposite of a severability clause, "under this subchapter" preserving for Appellee his (my) Right to Remedy secured by Substantive Law in Constitutions; our Law codified or not, elsewhere in the Public Record.

Appellant's Attorney, if not the Appellant Greg Abbott, is of the view a party who cites the statutory law codified as Chapter 103 is, somehow, not equal, not entitled, to the same Rights, Privileges, and Immunities of other persons in this jurisdiction. Partiality, due to the inevitable but unjust 'taint' to a person's reputation by an unlawful conviction

is a constant burden the victim of this type of gross, egregious, injustice carries. To protect persons citing Chapter 103 from bias, prejudice, by the Judges of the Trial Court, and of our Appellate Court, as well as a jury if one is summoned to be Judge of the Facts, our legislators included §103.103 to protect this party (Petitioner; Plaintiff or Claimant):

Sec. **103.103. INSUFFICIENT STATE DEFENSES.**
The following are <u>not</u> defenses to an action brought under this chapter:
(1) the judgment of conviction in the trial that resulted in the claimant 's imprisonment; or (2) an indictment, information, complaint, or other formal accusation.

Appellant attempts to impose on a Chapter 103 petitioner a deprivation of other Legal Rights "not under this subchapter" by reference to §103.105(c) with an attempt to add remedies "<u>not</u> under this subchapter" to the calculation of recovery provided "under this subchapter" in §103.105(a)1,(a)2 & (a)(3), in disregard of the plain language of this clause. Only the damage recovery stipulated in these subsections of this Subchapter are "under this subchapter". A party citing their Legal Right to recovery provided by this subchapter does not waive their Legal Rights secured in the Texas Constitution and other Statutory Law anymore than does another person party to a lawsuit to enforce Legal Rights secured by other Law. The Legislature, by clear and unambiguous language, preserved the Legal Rights of a Subchapter C petitioner secured in other Law.

Pre-judgment and Post-Judgment interest are well-established entitlements. This is a Substantive Right secured by, and protected under, chapters of our Finance Code §304 Et. Seq. Not providing for pre-judgment and post-judgment removes the deterrent to abuse of process by unnecessary litigation and delay of payment of a judgment by a party found liable to another party. It encourages contempt of court. The Legal Right to Pre and Post Judgment interest is not "under this subchapter" and, therefore, not subject to

inclusion into a statutory defense of a cap on liability. To deprive me, Appellee, of my Legal Rights in our Finance Code, or other Law, would be an error in violation of §103.103, as well as the Fundamental, Constitutionally protect, Substantive Right to 'Equal Rights' [§3, Art. I], 'Equality under the Law' [§3(a), Art. I], and 'Equal Protection of the Law' [§10, Art. I, §2 & §4, Art. IV, and 14th Amend US Const.]

If the Judges of the Court should review §103.105(c), the Constitutionality of this statutory defense, limit on the Substantive Right of the people of the State of Texas to Remedy for this type of wrong, is highly questionable. This is more fully addressed in this brief in the sections titled interpreting §17 of Article I and sections addressing the public policy of the sovereign of this Land.

ISSUE NO. 4 and CROSS ISSUE:
Did Heimlich prove a cognizable takings claim pursuant to the Texas Constitution? [§17 of Article I]

Title to property is established by written law, contracts, that overrule verbal conjecture. This is well-established and well known in the doctrine 'Statute of Frauds[9]'. See Texas Bus. & Commerce Code and Property Code generally. Also well established are Constitutional prohibitions against impairing the obligations of contract. But this issue of ownership was settled by prior adjudication including this Court; of record as 03-02-00151-CV, and published Heimlich v. State of Texas, 107 S.W.3d 643.

Appellee's ownership of the first $5,050 of property taken from him, by Appellant, is a fact of contract, lawful private law. A right protected by Constitutional prohibition baring law 'impairing the obligation of contracts' and now well-established by prior adjudication. Appellee's ownership of his personal property, his body, is self-

[9] A 'core course' required for licensure as a Real Estate Agent / Broker or as an Attorney. See Texas Occupations Code, Chapter 7

evident. Appellant's implied assertion the Appellant owns, has title, to my body is void. Alexander's asserts that our Texas Constitution granted title to my body, and ownership of my life, to THE STATE OF TEXAS fails. Also self-evident; My, Appellee-Petitioner's reputation and Appellee's career, from which he may be gainfully employed (earn wage, salary, other income) in the market place, is property. All of the foregoing are property that was "taken" and "damaged" by the Appellant. He, Plaintiff-Appellee is entitled to compensation if his property, defined by law to mean [§311.005(2)] and include [§312.011(13)], both "real and personal" is "taken, damaged, or destroyed". This is as a matter of Constitutional Law, and ancillary, statutory, Law.

The trial court, in the trial on Appellee's claim for property taken, damaged and destroyed, committed constitutional error by reducing the value of his business property "taken, damaged or destroyed" by Appellant, from $400,000 to $0. This "real" property was condemned by the State. The trial court violated the mandate of this Court, of Record in this Court of date July 2, 2003. Appellee was deprived of "adequate compensation" and, effectively, the Substantive Right of the people and citizens of this State to Private Property was abrogated absent a correction by the Honorable Judges of this Court.

The trial court erred, or abused discretion, in reducing the value of my property in "wages, salary, other income lost" from $707,741, fully supported by uncontroverted fact evidence, to $400,000. Appellee is entitled to an additional $400,000 for his property, in the form of a business, destroyed by government, and another $307,741 for "wages, salary, other income lost, fully supported by uncontroverted fact evidence. The Final Judgment, as a matter of law, must be reformed to provide for recovery of $1,368,347 plus post-judgment interest to be adequate pursuant to what our Law defines as adequate.

This is addressed further in this brief in response to Issue 6 and in the section titled "Trial Court Error On "Determination Of Sum Of Money" [§103.105(b)] with an examination of decisional law applied by the Trial Court; "Havner" and "Capitol Metro"

Additional Issues raised by incorporation into Appellant's argument

In addition to the foregoing, Appellant attempts to disguise multiple issues by incorporating them in her argument without distinguishing them from the foregoing.

ISSUE NO. 5 and ISSUE 7:
Appellant asks for an opinion on the definition of the word 'incurred'. A word utilized by the Legislative Division to provide additional security of recovery of damages to property, real and personal, taken, damaged, or destroyed (Constitutional Right §17, Art. I) by government, via §103.105(a)(3). Appellate challenges the damage recovery ordered pursuant §103.105(a)(3), for "medical and counseling expenses incurred as a direct result of [the actions of the defendant]", as excessive, or as based on speculative evidence.

Appellant attempts to characterize receipts for medical and counseling expenses incurred as a tort remedy for mental anguish. It is beyond question the defendant is responsible for 'mental anguish' but plaintiff did not ask for any exemplary or punitive recovery for this injury. Plaintiff's Attorney refused to even ask for expenses incurred that could be substantiated by direct evidence, but not supported by receipts for payment that had been lost.[10] The veracity of these receipts admitted into evidence was not challenged by the defendant and, therefore, are not properly before this court for review. See Reporters Record generally.

Appellant's new Attorney asserts Appellee's economic damages are, by some stretch of logic, an 'award' for mental anguish and emotional distress. "We hold that mental anguish and emotional distress caused by tortious activities of the sovereign, are bodily injuries and compensable under the Tort Claims Act." [¶56] Edinburg Hospital

[10] One of the many reasons for dismissal of this Attorney. Appellee accepts he has no lost some of his entitlement for recovery of economic damages due to this waiver by his Attorney.

Authority v. Trevino, No. 13-93-278-CV (Tex.App. Dist.13 07/13/1995) 1995.TX.567 http://www.versuslaw.com citing many other cases. This opinion was upheld by our Texas Supreme Court published as Edinburg Hosp. Authority v. Trevino, 941 S.W.2d 76, 81 (Tex. 1997) Trevino was denied recovery from the State for mental anguish only because he was a 'bystander'. I, Appellee, was **NOT** a bystander. Decisional law applicable to this case is found in Fort Worth Osteopathic Hospital, Inc. v. Reese, No. 02-1061 (Tex. 08/27/2004) 2004.TX.0006644 http://www.versuslaw.com. Accordingly, immunity of our government from recovery for 'mental anguish' has been waived by the Legislative Division of our State by clear and unambiguous language providing for recovery of the economic costs, expenses incurred, by §103.105(a)(3), and decisional law of our Texas Supreme Court.

Regardless; Appellant failed to preserve the alleged 'Error of Fact' the recovery pursuant to §103.105(a)(3) was excessive, or based on speculative evidence, by Failure to timely request Findings of Fact, and then when Findings of Fact were submitted into the Record by the Appellee, Failure to request more specific findings of fact. See Appellee's Rule 42.3 Motion to Dismiss submitted to this Court and recorded by the Appellate Clerk on May 31, 2006, citing the decisional law referencing Rule 298 among others, incorporated herein by reference as if fully restated.

See also SR1, 3-4. Appellant failed to preserve the alleged "Error of Law", their 'Question of Law' by failure to timely request Conclusions of Law, and failure to request a more specific finding on Conclusions of Law when the Court, by and through the Appellee, submitted Findings of Fact and Conclusions of Law into the Record. Furthermore, Appellant is not entitled to review because Appellant lost the Exhibits.

In the event the Honorable Judges of this Court choose to provide an opinion on the definition of the word; The word "incurred", in the professional field of accounting and finance, might have a technical meaning. It is a debt established by statutory law. It is a liability for a future cost, a payment not yet due but certain to be realized. By law applicable to an entity, it is imposed on an entity and must be included in their accounting as a debt. This is the case in the statute enacted by our Legislature to secure to the people of this State (of which I am one) an entitlement to recovery the costs of medical and counseling expenses incurred as future expenses expected to follow release from a wrongful imprisonment. It an expense the plaintiff has not yet realized and is not yet payable but will be realized and will require payment in the future.

The statute imposed the responsibility for the payment of these costs on the defendant. Due to the time delay from the time Appellee's claim became cognizable, and the Final Judgment "determining the sum of money owed to the petitioner", many of these incurred expenses have already been paid, advanced by the Appellee on behalf of the Appellant. In addition to the receipts submitted to the Trial Court, additional receipts are now available for payment of medical and counseling expenses I have advanced on behalf of the party to whom this liability / debt has accrued – the Appellant – and will continue to accrue until paid. Appellee is entitled to recovery of his economic loss.

ISSUE NO. 6 and CROSS ISSUE:

Appellate challenges the damage recovery ordered pursuant to §103.105(a)(2), for "wages, salary, other income lost as a direct result of [the acts of the defendant]" as excessive, or as based on speculative evidence.

Not all petitioners, victims, asserting their Right to Remedy by citing Chapter 103 are alike. A petitioner that has invested their time and money into a college education and exhibited extra-ordinary ambition will suffer more economic damage than one whose

"wage, salary, other income lost" was not as great. Subchapter B provides remedy by Administrative Process where damages are calculated based on time imprisoned. That calculation does not apply to Subchapter C where the petitioner pursues Remedy through Judicial Process. The time imprisoned is irrelevant and immaterial under this subchapter.

Appellant has presented no evidence to support its assertion the trial court abused discretion, or erred, by ordering recovery that is excessive, or based on speculative evidence. To the contrary, the trial court abused discretion, and erred, by ordering recovery that is insufficient. By a preponderance of the evidence, Appellee is entitled, as a matter of law, and uncontroverted fact evidence, not less than $707,741 in compensation from Appellant in addition to the $400,000 recovery that was ordered pursuant to §103.105(a)(2). The Trial Court Judge did not have jurisdiction, abused discretion or erred, in reducing the compensation supported by uncontroverted fact evidence of "wages, salary, or other income lost".

The Trial Court Judge did not have discretion to enter "Havner" and "Capital Metro" as legal defenses to the fact evidence presented by Appellee. It was the duty of the Attorney for the Appellant to enter legal defenses, or waive these defenses by failure to plead the law. Furthermore; The Trial Court Judge mis-interpreted and/or misapplied the decisional law presented by the "Havner" and "Capitol Metro" cases.

"lost" is a word that, pursuant to common usage and ordinary meaning [definition pursuant to §311.001 & §312.002 Gov. Code], includes future, and well as past, "wages, salary, other income" "taken, damaged, or destroyed" by the Appellant. Compensation, to be adequate, as required by our Texas Constitution and Statute ancillary to our Constitution, Subchapter C of §103, cannot be below that established by fact evidence.

Fact evidence established $707,741 as "the sum of money owed to the petition" for "wages, salary, or other income lost" by uncontroverted fact evidence "beyond a preponderance of the evidence" as truth of Public Record. Truth is fact on which the law must be administered. Truth cannot, lawfully, be overruled or denied. By a preponderance of the evidence, as a matter of law, what has been presented into the public record by me, the Appellee, is truth. The trial court erred in reducing the established fact of entitlement to $707,741 to $400,000. The Final Judgment must be reformed, as a matter of law, to provide an additional $307,741 in recovery to Appellee pursuant to §103.105(a)(2). This is in addition to the $400,000 for my, Appelle's, business property destroyed.

The Final Judgment must be reformed by adding an additional $707,741 ($307,741 + $400,000) to the Final Judgment to be adequate to meet the requirement of the Law pursuant to §103.105(a)(2) and §17 of Article 1 of our Texas Constitution.

TRIAL COURT ERROR ON "DETERMINATION OF SUM OF MONEY", §103.105(B), DAMAGE RECOVERY PLAINTIFF IS ENTITLED TO

Decision Law; "the Havner Standard" and "Capitol Metro"
Review of administration of decisional law as applied to the facts of this case

"Havner", also known as "the Havner Standard", Merrell Dow Pharmaceuticals, Inc. v. Havner, No. 95-1036 (Tex. 07/09/1997), published as 935 S.W.2d 706, concerns (1) **causation** experts, and (2) **scientific** evidence in the field of medicine. The standard does not apply to **damage** experts or **financial** evidence. Our Texas Supreme Court cautioned against misapplication of this standard to review of expert testimony:

> "The Court today fails to heed its own warning that "the examination of a scientific study by a cadre of lawyers is not the same as its examination by others trained in the field of science or medicine." ___ S.W.2d at ___ (internal citations

omitted). I agree that the Havners' expert witness testimony is not legally sufficient **evidence of causation**. However, as a judge, and not a scientist, I am uncomfortable with the majority's ambitious scientific analysis and its unnecessarily expansive application of the Daubert standard. The majority's opinion, replete with dicta**, gives courts no practical guidance outside the context of Bendectin litigation.** Accordingly, I concur only in the judgment of the Court. Justice Spector, concurring." (emphasis added):

The wise and honorable Judges of this Court of Appeals apparently concur. See Allison v. Fire Insurance Exchange, 98 S.W.3d 227(Tex.App. Dist.3 12/19/2002) of record in this Court under file No. NO. 03-01-00717-CV. (emphasis added, paragraph reference is per Versus Law; www.versuslaw.com);

> [50] The question in Havner was whether the experts' foundational data was sufficiently reliable to show that the drug Bendectin caused birth defects.
> [47] We now determine whether the district court abused its discretion in excluding the testimony of Allison's causation expert witnesses.
> [78] If a party is attacking the legal sufficiency of an adverse finding of an issue on which it did not have the burden of proof, the attacking party must demonstrate [Appellant-government in this case] on appeal that there is no evidence to support the adverse finding. See Croucher v. Croucher, 660 S.W.2d 55, 58 (Tex. 1983).
> [54] If the evidence supporting an element rises to a level that would enable reasonable, fair-minded persons to differ in their conclusions, **then more than a scintilla of evidence exists.** Havner, 953 S.W.2d at 711.

The cause of plaintiff-appellees damages is not an issue now subject to review. It was established by this Court, in prior judgment, and by Final Judgment of August 14, 2003, and by stipulation of the Defendant-Appellant in the Trial of July 25, 2005 now on appeal (TR1, 48, 17-19) the Defendant-Appellant was the cause of Appellee's damages.

Furthermore; Havner involved 'scientific' evidence. This case required no 'scientific' evidence. This case involved numbers. And the numbers presented were from

an expert with knowledge of where to find, how to analyze of the numbers, and present those numbers. He relied on numbers provided by our government of our United States, a credible source. His function was similar to that of a Professional in the practice of Law as one who knows where to find the Law, how to analyze the Law, and how best to present the Law for the application of the Law to the Facts. Finance and Accounting, like Law, are not "scientific", like medicine, chemistry, physics (as example) fields of study. Finance and Accounting, like Law, are fields requiring knowledge and logical analysis (reason) rather than a study of nature with experimentation by questionable methods.

Here; The Trial Court utilized Havner for an alternative purpose; for "Preliminary questions concerning the qualification of a person to be a witness"; quoting Texas Rules of Evidence, 104(a). Rule 104(b) mandates the court "shall admit it". The evidence at issue here is the Expert's written report, and the Business Plan plaintiff offered. A plan utilized by the Expert to perform a financial evaluation to determine a value for the property the defendant destroyed. The Trial Court's application of Havner was misplaced. Havner simply does not apply to the Financial Expert's testimony.

Rule 601 provides "Every person is competent to be a witness". The exception being Insane persons and Children. Defendant presented no evidence the Expert Witness from Rimkus Consulting was insane or a child. The Business Plan was entered to support the analysis the expert performed. His testimony, and the supporting fact evidence, Exhibit 1 & 22, are clearly relevant and material to a "determination of a sum of money" [§103.105(b] plaintiff is entitled to for "wages, salary, other income lost" [§103.105(a)(2)] and "property taken, damaged or destroyed" [§17, Art 1], and "rise to a level" of "more than a scintilla of evidence" (id. Allison v. Fire Insurance, above).

The Expert's credentials were not challenged, nor was the methodology he utilized in his analysis discredited by defendant with any evidence. This court addressed this in Coalition for Long Point Preservation v. Texas Commission on Environmental Quality, 106 S.W.3d 363 (Tex.App. Dist.3 05/08/2003) of record in this court under file No. 03-02-00642-CV [paragraph reference is per Versus Law; www.versuslaw.com] supporting the analysis of the Financial Experts who testified directly and indirectly:

> [50] A challenge to the reliability of an expert's methodology has been linked to the legal sufficiency of the evidence. See Merrell Dow Pharm., Inc. v. Havner, 953 S.W.2d 706, 712-14 (Tex. 1997). We therefore construe such a complaint in the motion for rehearing as preserving the substantial evidence challenge but not the challenge to the admissibility of the evidence. Because the Coalition did not assert error relating to the admissibility of Mr. Young's testimony in its motion for rehearing, it has not preserved the issue for our review.
>
> [55] However, the evidence in the record amounts to more than a bald assurance by Mr. Young that his methodology is valid and generally accepted.

The Expert from Rimkus Consulting, who testified in the Trial, did not present opinions with a "bald assertion". His credentials were not challenged. His opinions and conclusions were backed up with a Report with numbers from several credible sources, including statistics provided by our government of the United States. There was nothing out of the ordinary in his analysis. His methodology is customary, standard, for a determination of wages or salary lost do to an act or actions of a defendant.

As one formally educated, trained, certified, and experienced in property appraisal I can testify his method for appraising the value of the business I owned was standard and customary for the profession. The Defendant-Appellant did not present any Expert, any

Evidence, any testimony to controvert plaintiff's experts and the facts presented by them, with the exception of the testimony of the Trial Court Judge.

The Trial Court Judge is barred, by the Rules of Evidence, from testifying – her testimony is inadmissible, not legally cognizable, not evidence of weight to detract from the weight of the facts. The Trial Court Judge intervened to testify as an Expert for the Defendant to counter the Plaintiff's Financial Expert. Rule 605 provides that "No objection need be made" in order to "preserve the point" that "the judge presiding at the trial may not testify in that trial as a witness". In this case, the Judge presiding substituted her testimony for that of the Expert Witnesses. Thus, the trial court erred by utilizing "Havner" to refuse to admit the Business Plan into the evidence or to discount the Expert's appraisal of value. The judge presiding erred by substituting her testimony for that of the Expert Witness. The Judge substituted her financial analysis to exclude or discount fact evidence of an Expert.

"Capitol Metro", referring to Longhorn v. Capitol Metro, 114 S.W.3d 573 (Tex.App.-Austin, 2003, rev.den'd), concerns the common law right to recovery lost profits from a party who committed a 'common law' wrong, sometimes referred to as a 'tort'. In this case, the recovery the plaintiff-appellee asserts is for a Statutory Law entitlement, a Legal Right secured by §103.105(a)(2), grounded in §17 of Art. 1 Constitutional Law providing recovery of "wages, salary, other income lost" (also known as 'property' or 'economic damages') due to the actions of the defendant-appellant, where the defendant was the "proximate" or "primary cause" of the damages. Note; here I, the Appellee, substitute the decisional law definitions of the phrase "as a direct result" = "proximate" / "primary" cause.

The trial court erred by characterizing "wages, salary… lost" as "lost profits", depriving Appellee of his property / economic loss. This appears to be on assumption that Plaintiff-Appellee is or was somehow barred from the employment market because he, at one time in his life, choose to be self-employed and an entrepreneur. Following this rather illogical presumption, the Plaintiff-Appellee was not permitted to present evidence of his value in the employment market to substantiate wages, salary he lost??? Nor was consideration given to the evidence of future wages, salary lost with defendant-appellant as the proximate or primary cause for what Plaintiff-Appellee has lost, depriving him of the Equal Justice under the Law provided to other Individuals in our Courts.

"Blind Maker". The analysis performed by this Court in Springs Window Fashions Division, Inc. v. Blind Maker, Inc., 184 S.W.3d 840 (Tex.App. Dist.3 01/20/2006) provides a more accurate model for determining Appellee's recovery, and review by this Court, than Havner and Capitol Metro. I, as Plaintiff, am only required to provide more than a scintilla of evidence to prove a vital fact for the evidence of a fact to be legally admissible. Pursuant to this Court's finding in ¶ 228 (per versuslaw) in "Blind Maker"See also Appellee's "Cross-Appellant Brief" incorporated herein by reference as if fully restated in this brief for additional support of cross-issue argument.

POST SUBMISSION ISSUES:

As 'post submission issues', Appellee is entitled to "all expenses incurred by the petitioner in connection with all associated criminal proceedings and appeals…including reasonable attorneys fees for prosecuting this lawsuit", pursuant to §103.105(a)(1). Appellee has a well-established Right equal to the right of any other party / litigant, to recover all his expenses from this appellate process requested by the appellant, including

any process that follows that is necessary to enforce the Judgment of our Judicial Division of our government for our State of Texas.

As of this date, in spite of numerous requests directed to both the Attorney General and our Comptroller, the payment ordered by this Court of Appeals in Judgment over 3 years ago, 03-02-00151-CV for half of the costs of the appeal, the Defendant STATE OF TEXAS has not paid. The decree of this Court has been treated with contemptuous disregard. On instructions from the Attorney General to the Comptroller, acting as agent of the Attorney General, rather than as a servant of the people subject to orders from this Court, I, Appellee, have subjected to additional deprivation of property I am own by Judgment and Order of this Court.

Appellee is also entitled to the recovery for his injury and damages for what is known, in common law, as a Substantive Right to protection from Abuse of Process and Barratry. This protection of the Law has now been established as a Statutory Legal Right in Chapters 9 & 10 of our Civil Practice and Remedies Code. This is the 'tort reform' / 'lawsuit abuse' protection the people of the State of Texas have demanded. Protection from Attorneys employed in government, as well as in the Private Sector.

This legal entitlement is also provided in the Rules established by our Texas Supreme Court as Law that governs our Court of Appeals in Rule 45. Appellee raised these issues in prematurely filed Motions of record in this Court. (see pending Motion to Reconsider). Appellee may provide post-submission filings to more fully address his additional entitlements.

Timing of Compensation

§ 103.052 of Chapter 103, titled "Amount and Timing of Compensation", is under Subchapter B. It is applicable only to the Administrative Process. It is not binding on petitioners who bring their claim pursuant to Subchapter C. Applicable to C is:

§ 103.152. PAYMENT OF COMPENSATION.
(a) Not later than November 1 of each even-numbered year, the comptroller shall provide a list of claimants entitled to payment under Subchapter B or C and the amounts due for each claimant to the governor, the lieutenant governor, and the chair of the appropriate committee in each house of the legislature so that the legislature may appropriate the amount needed to pay each claimant the amount owed.
(b) Not later than September 1 of the year in which an appropriation under this chapter has been made by the legislature, the comptroller shall pay the required amount to each claimant.

"Once a finding is made that a person is entitled to compensation under this chapter, notice is given to the governor, lieutenant governor, and the appropriate committee chairs in the legislature so that the legislature may appropriate the funds to pay compensation. Id. § 103.152(a)." [¶14] State v. Oakley, 181 S.W.3d 855 (Tex.App. Dist.3 12/16/2005). This Court made finding of Appellee's entitlement to compensation under this chapter in Judgment of 03-02-00151-CV January 30, 2003. The Trial Court made finding of Appellee's entitlement to compensation in Final Judgment of August 14, 2003. Of Public Record, as maintained by our Clerk of our District Court under file GN100142 is proof of prompt and numerous notice to "the governor, lieutenant governor, and the appropriate committee chairs in the legislature" well in advance of the regular legislative session prior to September 1, 2005. The funds to pay this claim have been appropriated. If not, the Officials Responsible have no excuse. It is now up to the Officers of the Judgment-Debtor to adjust their accounts to satisfy the Order of this Court.

Prompt Payment is required by Law, pursuant to Chapter 2251 of our Texas Government Code, and in the Public Interest to save the sovereign of this State any additional imposition on their State Treasury for post-judgment interest.

PROMP PAYMENT IN THE PUBLIC INTEREST

On information and belief the funds necessary for payment of the Final Judgment of this Court has been appropriated. Prior to November 1, 2004, I provided notice to all Officials required to receive notice, of the liability of the STATE OF TEXAS and requested appropriation of $2,000,000. See CR2, 324, **Appendix C**, warrant February 2, 2004. This request is of Public Record, 10-25-2004, noted on CR2, 573, the Clerk's "Register of Actions" titled "Writ (order) to Comptroller" when I again served notice on the Comptroller and other Officers in advance of the Legislative Session. The district clerk, on instruction from the Attorney for the Appellant, Ms Alexander, omitted this Record in the copies of the Clerks Record to our Appellate Clerk[11]. However, reference to it, with supplement, is found on CR2, 315 and associated pages.

The Legislative Division of our government appropriated $2,170,000 to the fund, known as "a fund for payment of miscellaneous claims and wrongful imprisonment", from which this claim is to be paid, partly in response to my requests. The funds for payment of my claim on September 1, 2005, or thereafter, have been appropriated.

Prompt Payment Law

Our Legislators have enacted prompt payment statute that impose penalties on Agencies of our State government that delay payment to 'vendors'. Pursuant to the 'supreme Law of the Land' I am equal to any person that may be defined as a 'vendor'.

[11] My objection is of Public Record in this Court and the District Court. I have instructed the Clerk to supplement the Record and offered to advance payment on behalf of Appellant to facilitate the Judicial Process, avoid any additional delay to the 'due course of justice'.

The people of the State of Texas and a citizens of this State, expect Justice. Justice in the form of the 'benefit' of fidelity to our Texas Constitution; and, in this case, Justice in compensation paid without delay for my property "taken, damaged or destroyed". If appropriation to accounts for payment of my claim have not been made by the Legislature, or has now been applied to "miscellaneous claims" that were made after my claim, the Agency known as our Office of the Attorney General is responsible for payment from funds appropriated to the Agency, pursuant to §2251 of our Texas Government Code generally, and this provision;

§ 2251.055. RIGHTS AND REMEDIES NOT EXCLUSIVE.
The rights and remedies provided by this subchapter are in addition to rights and remedies provided by this chapter or other law.

The Public Fisc

It is in the Public Interest that this debt of our government be paid promptly. It is beyond dispute that our Legislative Division of our government has a duty to manage the fiscal affairs of our government through the appropriations process. But when an institution of our government attempts to convert that duty into a power not delegated to it by the people, it is an abuse of power; Or, in other words, an assumption of an authority without jurisdiction. It is also a dereliction of duty. The legal interest provided by our Constitution to our Legislative Division is limited to insuring the fiscal affairs of our State Government are properly managed. However, this duty imposed by the people of the State of Texas was not a grant of 'special privilege' to our Legislative Division entitling this Division, singularly or in violation of the separation of powers, Article 2 of our Texas Constitution, to deprive the people of the State of Texas, of which I am one, of our Substantive Right to Remedy. This is a violation of the Public Trust granted to

government. It is a duty, obligation, and responsibility of an Independent judiciary to preserve our Republican Form of government and protect the people of the State of Texas, of which I am one, from abuse of power by the other Divisions of government. In this case this means administering the law by ordering prompt payment of the compensation I am entitled to for my property "taken, damaged, or destroyed".

Our Right, as Individuals, to Remedy, is a Substantive Right. As such, it predates our Constitution and any other Law of the body of Human Law. Our Constitution was established "to secure this Right" (see Law of the Land, July 4, 1776). This Right includes, but is not limited to, "adequate compensation for property" "taken, damaged, or destroyed", by government of our State under pretense it is for "public use" as evidence of a crime. How this property is "applied" by the entity that took this property is immaterial and irrelevant to the person who has a Right to compensation for what was taken. The application has no bearing on the Right to compensation for what was taken. To say that it does is the equivalent of saying that if a thief donates property to a charity of the thief's choice, then the victim of the theft has no right to recovery from the thief.

All that is relevant and material to this case is the previously adjudicated fact the defendant did not have lawful authority, also known as 'jurisdiction', to take the property. The defendant, by and through it's Legislative Division, among others, has had able notice to have "**secured by a deposit of money"** (§17, Art. 1) the money to compensate this victim of the "taking, damage, or destruction" of this victim's property.

Of Public Record in the District Court, in the file Numbered GN100142, are copies of my notice to the Legislators of our State, and all who have a duty to advise the Legislators of our State (Comptroller, Lieutenant Governor, those employed on the staff

of the Legislative Budget Board) of this debt and the Constitutional, as well as Statutory, duty of the Legislators to "secure by a deposit of money" an appropriation to our Comptroller of our State. Of record is my notice to the Governor, as Chief Budgetary officer of our government. See Clerks Record _____. The defendant has no excuse for further delay of the justice I am justly, and legally, entitled to. How the defendant now chooses to arrange their internal fiscal matters is something the Officers of the defendant will need to work out. The duty of this Court is to order the compensation paid promptly or, failing to do so, order the Officers responsible held in contempt of court.

Our government of our State may 'represent' the people of the State of Texas, but I, as one of the people of this State, and a citizen, 'embody' the people and citizens. Our government's lawful authority (jurisdiction) to represent the People of the State of Texas is limited by Law. It extends to representing the people before foreign persons, Artificial or Real. In criminal proceedings, it may represent, as an 'Attorney' a complainant but only if the complainant has a legitimate complaint. The complainant had no legitimate, legally cognizable, complaint, in the underlying cause 674066. For this, our government is strictly liable pursuant to the waiver of immunity mandated by the sovereign, Free People, citizens of the State of Texas, in Article I of our Texas Constitution.

The Attorney General is not, in this cause GN100142, representing 'the people of the State of Texas'. He is representing the government of our State. An Artificial Person, a Fiction of Law, that has no 'Substantive Rights', but only 'Legal Rights' limited by the constraints of our Texas Constitution, with 'duties, obligations, and responsibilities'. Our Judiciary must keep our government of our State, and our Attorney General, within the

boundaries of the Law, and accountable to the supreme Law of the Land so the people of the State of Texas can have the 'benefit' of a law abiding government - LIBERTY.

What a person, artificial or real, does with the property they take, damage, or destroy, is immaterial and irrelevant to the Right of their victim to full Remedy, compensation without limitation, for the economic damages of their victim. Liability attaches to the sovereign vicariously through the negligence of the employee by virtue of the doctrine of respondeat superior. The act of the Attorney for the State, although illegal, was allowed by a Judge of the State, thus imposing liability on the State.

§17 of Article I imposes a duty on the government to make a "deposit of money" in advance, to provide for contingencies, where the person known as government might take property from the people of the State of Texas. Whether or not it is for 'public use', or the character of that 'use' of the property, is not the responsibility of the wronged party to establish. The only responsibility imposed on the victim is to prove the "taking, damage, or destruction" of their property was illegal. Heimlich, Appellee, has done so to the satisfaction of the Courts of the State of Texas.

JUDICIAL SPUR

There was a time in our history when all granted by the people the privilege to serve in our government were required to establish proof of financial responsibility prior to assuming their position of public trust. (The privilege to serve the public, in exchange for emoluments from the public, is a privilege just as a license to drive a motor vehicle is a privilege. A person is "licensed" by election or appointment, and appointment includes those persons hired for employment). In the early days of the Texas Republic they did so

by Bond. If they did not have financial resources, they purchased an insurance policy from a bonding Agent, what is known today as an insurance company.

In the interest of the Legislature to manage the fiscal resources of our State Treasury, our Legislature should be encouraged, by our Judicial Division of government, to re-institute this policy. Our Legislative Division would then be relieved of the responsibility imposed by §17 of Article I of "securing by a deposit of money" an appropriation sufficient to cover any and all "taking, damage or destruction" of personal property by the Executive Division of Government, by and through it's actors acting as Prosecutors or in our Office of the Attorney General, in cases such as this one.

Our Constitution, Art. 1, also bars our Judicial Division from giving the artificial person, the entity known as government of our States, commonly referred to as "THE STATE OF TEXAS" an "irrevocable or uncontrollable grant of special privileges or immunities". The function of the Judicial Division is to protect the people, of which I am one, from other Divisions of government, or Actors therein, who presume their position of Public Trust entitles them to be privileged to be immune from any law (above the law).

If our Legislative Division abused the appropriation process, then our Judiciary should spur our Legislative Division, as was recently done with school financing, to insure Agencies who violate our Rights are given the incentive of a Judicial order funds not appropriated as required by constitutional provisions be paid from State Agency funds. If our Comptroller no longer has funds in the account providing for payment of Appellee's claim, then the funds should be ordered drawn from the funds appropriated to our State Agency known as the Office of the Attorney General; An agency that apparently has an abundance of funds with which to burden the people of the State of

Texas with unnecessary litigation expense of frivolous appeals that, if the law is properly administered to the facts, will only impose upon the public additional costs.

PUBLIC POLICY / PUBLIC INTEREST & THE RIGHT TO REMEDY

Alexander, speaking for Greg Abbott, asserts the people of the State of Texas established a Constitution so that the people, through those franchised to vote (the citizens of the State) could elect representatives to deprive the people of their Substantive Rights secured in Article I of our Texas Constitution. Right of the Individual that date back 800 years to English Common Law in the Magna Carta and the English Bill of Rights enacted in 1689[12]. Failing to deprive the people of their Substantive Rights, Alexander asserts the representatives in the Legislative Division were created by the Constitution to delay compensation for violations of Substantive Rights. Alexander asserts this is 'Public Policy'. Alexander's reasoning fails to recognize that the Public is 'the people of the State of Texas'; And, that Justice delayed is a form of deprivation. This is a deprivation of the English Common Law Right of the Individual noted by the Honorable Tom Phillips in his work citing an extensive number of authorities incorporated herein by reference. Titled "THE CONSTITUTIONAL RIGHT TO REMEDY"[13]. See **Appendix B** – electronic media. In that work he states;

"Most state bills of rights are longer than the first ten amendments, and thus they contain rights and guarantees not found in the federal constitution. The most widespread and important of these unique state provisions is probably the guarantee of a right of access to the courts to obtain a remedy for injury. It is one of the oldest of Anglo-

[12] **http://www.yale.edu/lawweb/avalon/england.htm** - Yale Law School Avalon Project
[13] Provided via electronic media to the Appellate Clerk for distribution to the Judges of this Court

American rights rooted in the Magna Carta and nourished in the English struggle for individual liberty".

To the credit of the Founders of our Law for our Land of Texas, Our Bill of [Individual] Rights was not added as Amendments; But, was put first and foremost in Article I. Our Bill of [Individual] Rights existed before the entity, known as government, was created by Amendment to our Constitution via Articles added later. He incorporates, by footnote, chapter 29 of the 1225 version of Magna Carta:

> **No freeman shall be taken or imprisoned or disseised of any freehold, or liberties, or free customs, or outlawed, or banished, or in any other way destroyed, nor will we go upon him, nor send up on him, except by the legal judgment of his peers <u>or by the law of the land</u>. To no one will we sell, to no one will be deny, <u>or delay right or justice</u>."**

Public Policy of our (the people's) State of Texas

Our Public Policy is set forth in the Language of our Texas Constitution. This is the Policy that governs the government of our State. It is the Policy established by the people of the State of Texas, binding all Government Actors to it. Statutory Laws, acts of the Legislative Division of our Government, are Public Policy to the extent they conform to the confines, the boundaries, set forth by the sovereign in the document that created the Legislative Division, and imposed limits on this Division. See §29, Art. 1, and Art. 2.

The jurisdiction granted by the people of the State of Texas, to their Executive Division of government, and to those elected to serve in our Legislative Division of our government, to establish Public Policy, is limited by "the Constitution and Laws of the United States and of this State" pursuant to §1, Art. 16. The Attorney General, as a

member of the Executive Division of Government, and our Legislators, do not have jurisdiction to dictate to our Judicial Division of government of our State what will be Public Policy of our State. The sovereign did not grant them this power.

It has long been recognized the people of the State of Texas are the sovereign:

"The same feudal ideas run through all their jurisprudence, and constantly remind us of the distinction between the Prince and the subject. **No such ideas obtain here; at the Revolution, the sovereignty devolved on the people**; and they are truly the sovereigns of the country, but they are sovereigns without subjects (unless the African slaves among us may be so called) and have none to govern but themselves; the citizens of America are equal as fellow citizens, and as joint tenants in the sovereignty." CHISHOLM v. STATE OF GA., 2 U.S. 419 (1793) [Emphasis added]

The Public Interest

It is in the "Public (people's) Interest" that the integrity of our Texas Constitution be "preserved, protected, and defended". This is the "benefit" of government the people sought when they "instituted for their benefit" "government" for their State, on their, the people's, "inherent authority"; §2, Art. 1, Texas Bill of [Individual] Rights. By this provision of the Texas Constitution, the people of the State of Texas are the sovereign. Their / our government for our State is not the sovereign; it is their / our servant.

Through their Representatives in the Legislative Division of their government, the people have granted to me additional security for the Right to Remedy secured to me by our Texas Constitution. Legislative Law, also known as Statutory Law, is ancillary to the paramount Law, the Decree of my people in our Texas Constitution. Pursuant to §29 of Art. I, our Texas Bill of [Individual] Rights, our Legislators, as the people's servants, are prohibited from overruling our Texas Constitution. Any such ruling is void or voidable.

This benefit, also known as 'the Rule of Law' where government is governed by a Constitution, is not subject to reasonable dispute. This is clear by the language of the

Oath to our Constitution that is a pre-requisite to acceptance of the function of an Office or position of Employment in government. The Alamo Flag is emblazoned with the number "1824" to symbolize the cause for rebellion, and then independence. The government of the State of Mexico refused to honor ("preserve, protect, defend" / enforce) the Constitution of 1824 by which the sovereign of Mexico, the people, intended their government to be governed. See Turtle Bayou Resolution evincing the 'common law' of the people of the State of Texas, June 13, 1832:

> **"The colonists of Texas have long been convinced of the arbitrary and unconstitutional measures of the administration of Bustamante; as evinced: First: By their repeated violations of the constitution and laws and the total disregard of the civil and political rights of the people. [Individuals]**

This was recognized by this Court, of record as 03-05-00007, State of Texas v. Oakley:

> Although the concept of sovereign immunity stems from the feudal fiction that "the King can do no wrong," Texas has abandoned that fiction…….. Wichita Falls State Hosp., 106 S.W.3d at 697.

This "feudal fiction" was abolished from this Land of Texas, by declaration of the Law for this Land not later than 1836, and from our larger Land known as the United States, by declaration of the Law for this Land in 1776 and dates back as far as 1225.

There is remarkable similarity between what was written in 1225, and what is written now in our Texas Constitution in Section 17 of Article I. A recognition of Natural Rights of the Individual restated in the Law of our Land for our Nation on July 4, 1776, as "Inalienable" and "self-evident", referred to in today's legal lexicon as "Substantive", a Right to Remedy secured by Law, not limited by any pretense of Law. A security for, in the words of Tom Phillips, "the basis of individual liberty and human dignity" and

quoting Justice William J. Brennan of the United States Supreme Court, “protection from government oppression”.

Contemporaneous Legal Climate

In the contemporaneous legal climate, what We, the People of the United States of America, and of Texas, established as Law of the Land for this Land is known as “popular sovereignty”. ‘Popular sovereignty’ has been recognized by our Representatives in the Legislative Division of our Texas Government; “**Under the fundamental philosophy of the American constitutional form of representative government that adheres to the principle that government is the servant and not the master of the people….**” §552.001, Gov. Code. NOTE the reference to this philosophy as “fundamental”, and the word “constitutional”. Some recognize that we have a “representative government” but fail to recognize it is limited by a “constitutional form” to secure to Individuals their Rights from abrogation by a represented collective.

‘Popular sovereignty’ and Individual Rights are now recognized around the world in the cotemporaneous definition of the word “Democracy” secured by “the Rule of Law”. Our Model of government, known as a “Republican Form of Government”, where government is divided into three separate divisions, is now the most common form of government for securing the “inherent right of the Human Person to Human Dignity” as the essence of what is referred to as Democracy secured by the Rule of Law. Our Federal government has a duty, imposed by section 4 of Article IV of our Constitution of the United States of America to guarantee to every State (properly, the people of a State) in this Union a Republican Form of Government.

The "inherent right of the Human Person to Human Dignity" is quoting the contemporaneous words of our supreme Law of the Land expressed in International Law (Treaty). This International Law (http://www.ohchr.org/english/law/ccpr.htm) was proposed by our United States to the International Community in 1948. It has now been made a part of our "supreme Law of the Land"[Art. VI, US Const.] by ratification of Congress of this International treaty in 1992. In relevant part is provides:

Article 9 (5) Anyone who has been the victim of unlawful arrest or detention shall have an **enforceable** right to compensation.

"States", meaning governments, that deprive Individuals of their inherent Rights, the Right to an Enforceable Remedy (justice), are now denounced as "Rogue States".

Law that is not enforceable is only a pretense. It provides no security, offers no protection. Defendant-Appellant in this case, by and through it's Attorney, with unnecessary litigation, is attempting to prevent my right to compensation from being "enforceable" and to delay enforcement / justice, without concern to the integrity of our constitution and laws, or the burden to the people of the State of Texas in the cost to the reputation of their State and their State Treasury. This is contrary to the duties, obligations, and responsibilities of the Attorney representing the Defendant.

The Defendant-Appellant's Attorney looks to the Legislative Division to violate our Texas Constitution and for aid in preventing the people of the State of Texas, of which I am one, from enforcement of their Constitution, an "enforceable right to compensation". The defendant failed to preserve this error, but even if the defendant had, a law enacted in absence of jurisdiction provided by the sovereign is void ab initio. The Judicial Division has a duty to refuse to administer the pretense or declare it void.

ISSUE 1; EXPANDED RESPONSE

With the foregoing assertions, I will now address the other issues raised by Alexander in response to her request for re-litigation of previously settled issues. I incorporate my Brief on Actual Innocence, of record, and address the additional concerns of the Attorney for the Appellant raised in her brief.

LIBERTY – Our Form of Government

Pre American Civil War opinions have no application in a Post World War II environment. Nor does any opinion contrary to the Declarations of Law for this Land made by the Founders of our Law for our Land of Texas, and the greater land of the United States prior to it. Contemporaneous opinions of our Supreme Court are relevant. Wichita Falls State Hospital v. Taylor, 106 S.W.3d 692 (Tex. 03/06/2003):

[37] Under our form of government, the state derives its authority from "the people." E.g., Tex. Const. art. I, § 2 (stating that "[a]ll political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit"); see also Alden v. Maine, 527 U.S. 706, 759 (1999) (noting that the federal Constitution began "with the principle that sovereignty rests with the people").

Absent a waiver of the sovereign immunity enjoyed by the people of our State of Texas, the people of this State, as Individuals, as Human Persons (“beings” of Nature / God), enjoy immunity from suit or liability prosecuted by government, THE STATE OF TEXAS. “It is inherent in the nature of sovereignty not to be amenable to the suit of [a government] without its consent. This is the general sense and the general practice of mankind” Wichita Falls State Hospital v. Taylor, 106 S.W.3d 692 (Tex. 03/06/2003) [27]

Government in this case is a Person, with no greater rights than a Human Person

The ‘waiver’ of immunity from suit and liability for the type of wrong addressed by Chapter 103 is (1) a Substantive Right of an Individual secured by Constitutional

Provision, §17. Our Legislative Division of government cannot abrogate this Right in any way, by stipulations or limitation. (2) The 'waiver' is by Constitutional Provisions. Legislative enactment, codified in Chapter 103, are merely ancillary, additional security for the people of the State of Texas who might be victims of this, the most egregious, of wrongs THE STATE OF TEXAS, government, can inflict upon the people of the State of Texas (of which I am one, and a citizen of this State). Appellant refers to §311.034 of our Texas government Code;

§ 311.034. WAIVER OF SOVEREIGN IMMUNITY.
In order to preserve the legislature's interest in managing state fiscal matters through the appropriations process, a statute shall not be construed as a waiver of sovereign immunity unless the waiver is effected by clear and unambiguous language. In a statute, the use of "person," as defined by Section 311.005 to include governmental entities, does not indicate legislative intent to waive sovereign immunity **unless the context of the statute indicates no other reasonable construction.** Statutory prerequisites to a suit, including the provision of notice, are jurisdictional requirements in all suits against a governmental entity.

"we do not insist that the statute be a model of perfect clarity". Wichita Falls State Hospital v. Taylor, 106 S.W.3d 692 (Tex. 03/06/2003) quoting City of LaPorte v. Barfield, 898 S.W.2d 288, 291-92 (Tex. 1995).

The context of the statute codified as Chapter 103 leaves no doubt about the Legislature's intent. Nor can it when viewed pursuant to constitutional provisions wherein the people, as the sovereign, waived immunity of the government of their State, and in view of the contemporaneous legal climate mandating the Rule of Law. The legislature did not use the word "person" in the statute, but the context of the statute, the wrong it is intended to address, leaves no doubt that when Chapter 103 is cited in a petition through Judicial Process for Remedy, the government of the State of Texas is a "person". A person that is **not** more equal than I, a Natural / Human person / Individual.

It is clear and unambiguous from the plain language of §17, as well as the intent, this constitutional provision does NOT exclude Remedy when the government takes, damages, or destroys property but the taking is not for "public use". The language only requires "a deposit of money" in advance of a taking that is for "public use". It is clear a taking that was not for public use imposes a duty on government for a "deposit of money" to the victim **after** the taking.

Consent to Suit

The 'consent' to suit was made by the representatives of THE STATE OF TEXAS when they initiated this case by bringing cause no. 674066 against me in the name of THE STATE OF TEXAS. Equal Rights, Equality under the Law, and Equal Protection of the Law now apply as my entitlement to counter-suit. This is now the "general sense and the general practice of mankind" (Wichita Falls, [27]) enjoyed by all peoples around the world where Liberty, also known as the 'Rule of Law' protecting people (the protection of the law) from government using law for oppression, prevails.

However, while the people of the State of Texas and of the United States, as individuals, enjoy immunity, absent waiver by clear and unambiguous language, as a Substantive and Constitutionally secured, Fundamental, Paramount Right, the government, THE STATE OF TEXAS, is not entitled to any such immunity. The people of the State of Texas waived any such pretense of immunity for Artificial Persons, entities known as government, in numerous sections of Article I of the Texas Constitution. Of particular relevance to this case is the waiver provided in §13 and §17 of Article I. In these sections of our Texas Constitution, the "will of the sovereign" (quoting Alexander Hamilton, the Federalist No. 81) is clearly expressed. "Consequently, to waive

immunity, consent to suit must ordinarily be found in a **constitutional provision** or legislative enactment." (emphasis added) [¶32] Wichita Falls State Hospital v. Taylor, 106 S.W.3d 692 (Tex. 03/06/2003).

The Federalist No. 81, at 487 (Alexander Hamilton) (Clinton Rossitor ed., 1961) and our contemporaneous Supreme Court of our United States have made clear, "sovereign immunity" of a State Government is a protection from "Citizens of another State, or by Citizens or Subjects of any Foreign State." I, the petitioner in this suit, am NOT a citizen of another State, nor a citizen or subject of a Foreign State. I am a citizen of the State of Texas. Enjoying dual citizenship, as a citizen of the United States, does not make me a citizen of a Foreign State as Texas is a State of the United States.

Immunity of the Individual

The Honorable Judges serving in this Court, in the district known as the Fourteenth, characterized the immunity of the Individual from suit or liability prosecuted by the government, STATE OF TEXAS, as "legal insufficiency of the evidence". In today's language, utilized around the world as well as on this Land known as Texas, and the larger land known as the United States of America, this is known as 'THE RULE OF LAW' in contemporaneous speech. In the past this was referred to as LIBERTY. A Right secured by an Independent Judiciary, if truly an Independent division of government.

The Founders of Law for this Land, in the First Law enacted an Independent Nation on July 4, 1776, a Law that still exists in the Statutes at Large[14], never repealed, as Law for our Land known as the United States of America, the people's representatives, by unanimous vote, referred to "LIBERTY" as an "Inalienable Right". As inalienable, it is a Right not granted by Legislators, the representatives of the People, but granted by

[14] "law" but not codified; See http://memory.loc.gov/ammem/amlaw/lwsl.html

"the Laws of Nature and Nature's God" and existing as a "Self-Evident Truth". As inalienable, it is referred to in today's legal lexicon as a 'Substantive Right'. As a 'Truth', it is a FACT that no person titled 'Judge', in this Land or any other, has jurisdiction to disregard, deny, or overrule. Most on our Land learn this in grade school.

It is not within the jurisdiction of the Legislative Division to exclude persons acquitted on the basis of "legal insufficiency of the evidence". Statutory Law is ancillary to the Substantive Right to Liberty secured to a person by our Laws. Liberty also secures to Individuals a Right to Remedy when their protection of the law, protection from arbitrary acts by government, is violated. As an inalienable / Substantive Right, secured by our Texas Constitution, it cannot be 'taken' by legislators without violating §17.

It is axiomatic (self-evident) that where the people enjoy liberty, the people are immune from prosecution when there is "legal insufficiency of the evidence". The government of a State, where the Rule of Law is respected, has no jurisdiction to prosecute one of the people, absent a waiver of Individual immunity, the protection of the law, by clear and unambiguous language of the people representatives.

A 'Lawsuit' / 'Judicial Process', as opposed to an 'Administrative Process'

Summarizing Alexander's' Opinion, expressed in pages 10 through 25 of her brief, she is of the opinion that the Courts of Texas, also known as the Judicial Process, should be closed to people of the State of Texas, of which I am one. This is prohibited by §13, §17, and many other provisions of Article 1 of our Texas Constitution. These provisions, pursuant to §29 of Article I, not require ratification by our Legislative Division via statutory Law, nor can they be abrogated by the Legislative, or any other Division of our Republican Form of Government. The people of the State of Texas, the

sovereign, by pronouncement of the Law in Article I, disagree with her opinion. So too did the Legislative Division when then enacted the provisions of the statute codified as Subchapter C of Chapter 103 of our Texas Civil Practice and Remedies Code providing for Judicial Process, as an option to a more expedient Administrative Process.

"Habeas Standard" for defining "Actual Innocence"

Alexander is apparently confused, or intentionally attempting to confuse this Court. Chapter 103 provides two means for a person to assert their Right to the Remedies secured by the statute codified therein. Subchapter B provides for Administrative Remedy, requiring a declaration of Actual Innocence from an Administrative Body in the Executive Division of our Government. In such a review, the "Habeas Corpus standard" utilized by our Judicial Division might be looked to for reference in a determination.

A 'question of fact', <u>not</u> a 'question of law'

However this action, now subjected to a second review by this Court of Appeals, is pursuant to Subchapter C, providing the people of the State of Texas with the option of a lawsuit / Judicial Process, to enforce their Right to Remedy. Subchapter C in clear and unambiguous language, passed by the full Legislative Body into Law, places the jurisdiction for determination of Actual Innocence into the province of <u>Judicial Process</u> as <u>a Fact Issue</u> to be determined <u>by a Preponderance of the Evidence</u> §103.102 in Court.

§ 103.102. Standard of Proof
The petitioner must establish by a preponderance of the evidence that the petitioner is entitled to compensation…..

The 'legal definition' of the phrase, 'Actual Innocence', as utilized in the criminal venue of our Court in Habeas Corpus proceedings, in irrelevant and immaterial to the jurisdiction of this Court in a civil case. Appellee is no longer a prisoner, thus he does not

need to plead for his body (corpus) to brought before a court to have (habeas) to determine if is imprisonment is lawful / without jurisdiction. The Court of Criminal Appeals has already reviewed this question and determined Appellee's imprisonment was unlawful. The jurisdiction of this Court of Review is for review of the issue established by the legislature as an issue of fact, for abuse of discretion by the Trial Court in finding Appellee's innocence to be actual.

First, this court made this finding in judgment of record as 03-02-00151-CV. Second; as a matter of Law "legal insufficiency of the evidence" is "actual innocence" in a State where the Rule of Law / Liberty prevails.

"Factual insufficiency of the evidence" might cause speculation a person is 'actually guilty', but could not be proven guilty, requiring a review of the question of Actual Innocence by the standard established by the legislature in §103.102; that is, by a 'preponderance of the evidence'. See plain language of Statute codified as §103.102.

"Legal insufficiency of the evidence" clearly means there are no facts to prove guilt by any standard of review. The person committed no wrong cognizable in this State as a violation of penal law. In a State under the Rule of Law, the people as Individuals are immune from suit or liability prosecuted by the government of the State, absent clear and unambiguous language in statutes making their acts unlawful. This is a Substantive Right known as Liberty. **Liberty, an inalienable (Substantive) Right, provides that a Human Person's innocence is Actual, 'self-evident', as a Matter of Natural Law.**

In a 103 Subchapter C petition for compensation for Wrongful Imprisonment, the Petitioner / Plaintiff, absent the introduction of newly discovered evidence of guilt that would prove, beyond a preponderance of the evidence, Actual Guilt, is entitled to an

assumption of Actual Innocence. Appellant presented no new evidence in the trial court. This includes the Trial on the question of my entitlement to compensation, pursuant to a 'preponderance of the evidence' [§103.102] held July 17, 2003, with Final Judgment entered on August 14, 2003, CR1, 226. Appellant waived right to appeal this finding of 'Actual Innocence' for review by this Court. The review of the issue of my 'Actual Innocence' and this Court's Jurisdiction to review waiver of "suit and liability" is time barred and barred by res judicata.

SPECIES OF LAW FOREIGN TO THIS JURISDICTION

Alexander advocates for a species of Law, and a system to enforce that law, that is foreign to this jurisdiction.

A. PURE MONARCHY;

The Substantive Right of the Individual to 'own', in other words have 'title' to property, real and personal (including their body), and have the title protected by the Law, is the distinguishing characteristic between our 'system of laws', for this jurisdiction known as Texas, and the larger jurisdiction known as the United States, and the 'system of laws' that operate in jurisdictions where a Monarchy has 'title' to ALL property managed by an Aristocracy. An opinion of our Supreme Court from the period when this form of government and system of laws was common may be helpful:

It will be sufficient to observe briefly, that the sovereignties in Europe, and particularly in England, exist on feudal principles. That system considers the Prince as the sovereign, and the people as his subjects; it regards his person as the object of allegiance, and excludes the idea of his being on an equal footing with a subject, either in a Court of Justice or elsewhere. That system contemplates him as being the fountain of honor and authority; and from his grace and grant derives all franchises, immunities and privileges; it is easy to perceive that such a sovereign could not be amenable to a Court of Justice, or subjected to judicial control and actual constraint....The same feudal ideas run through all their jurisprudence, and constantly remind us of the distinction between the Prince and the subject. **No such ideas obtain here; at the Revolution, the sovereignty devolved on**

the people; and they are truly the sovereigns of the country, but they are sovereigns without subjects (unless the African slaves among us may be so called) and have none to govern but themselves; the citizens of America are equal as fellow citizens, and as joint tenants in the sovereignty." CHISHOLM v. STATE OF GEORGIA, 2 U.S. 419 (1793)

That is; a system where the Monarch as the 'Divine Right to Rule' as God on Earth or as God's sole representative within the Realm of the Monarch. The people as Individuals are, in fact, are property of the monarch. It is a form of slavery known as 'Feudalism'. In our jurisdiction, our people are 'Free Persons'. Our government is not our 'King' with 'title' to 'own' the people. Our Law-Givers, the Founders of Law for this Land, entitled the Individual to LIBERTY securing to each "the Rights of Man". Our State government is the subject of the people, governed by the Texas Constitution.

§17 of Article I prohibits our government from granting any special privileges or immunities to our State government. Our Legislature may only regulate franchises it creates. Our Legislature did not create the people of the State of Texas. The people created it. Our Judges are not grated a 'title' but the duty, obligation, and responsibility to protect the Rights of the Individual from abrogation or deprivation by government.

B. COMMUNISM;

The Substantive Right of the Individual to 'own', in other words have 'title' to property, real and personal (including their body), and have the title protected by the Law, is the distinguishing characteristic between our 'system of laws', for this jurisdiction known as Texas, and the larger jurisdiction known as the United States, and the 'system of laws' that operate in jurisdictions under a system known as Communism.

Under Communism 'the State', also known as 'government', Rules without restraint from the people as set forth in their Constitution. It is a system where only

members of the Soviet are "government Actors" and can exercise unlimited jurisdiction subject only an Authoritarian hierarchy. An environment where a Constitution, if it exists, is a mere pretense. Their Constitution carries no weight and is unenforceable. Individuals have no Substantive Rights. It promises everything and delivers nothing. The 'collective', governed by the government, by and through party members, 'owns', in other words has 'title' to all property, including the body of the Individuals that are members of the collective.

Our Values, Our Way of Life

The Attorney for the Appellant appears to advocate for the adoption of the foregoing, a Pure Monarchy or Communism, to replace our system of laws based on the premise that the People are the sovereign, the People govern their Government through their Constitution, and government exists to secure the Substantive Rights of the Individual members of the people that exist, as creations of God or Nature, in this jurisdiction, known as Texas, and the larger known as the United States.

Appellee asks only that the Honorable Judges of this Court "preserve, protect, and defend" our Values and our Way of Life; by and through "the constitution of the United States and of this state". And that the Laws made in pursuance thereof be interpreted pursuant to the spirit and intent of these Constitution, "the supreme Law of the Land" by which every Judge in every State is bound pursuant to Article VI of the Constitution of the United States. WE THE PEOPLE of this Land / Nation, did not create government to grant government Liberty (freedom from suit or liability, also known as a 'petition for redress of grievances'). We created government to secure to the people on this land, and their posterity, the inalienable Right of Liberty to the Individual member of the people of

the United States, and of this State; “to secure these Rights, governments are instituted among men by consent of the governed”. Quoting the Law of the Land, July 4, 1776.

CONCLUSION

The plaintiff / petitioner / claimant, herein Appellee, has a Substantive Right in this jurisdiction to private property. This Right is grounded in §17 of Article I of our Texas Constitution. Statutory Law provides Legal Rights that are ancillary, additional security, to the Right of Individuals in this jurisdiction to Private Property and Remedy.

The person, known as government of our State, is not the King on this Land. The government of our State is a person subject to the Texas Constitution as Law of the sovereign by which the sovereign, free people of Texas, govern their government.

The Judicial Division of this government was made independent of the Executive and Legislative Divisions of our government to secure the Rights of Individuals, by Art 2 of our Texas Constitution. As exemplified in the recent case involving the word “adequate” in regard to the appropriation of public funds for public education (deemed a Substantive Right of the sovereign, by the Law-givers / founders of Law for our Land).

Interpreting Statutory Law to deprive one of the people of this State, a citizen, of his Substantive Right to Remedy secured in our Texas Constitution, by the numerous self-operative, self-enacted, sections Article 1, is unconstitutional. An ‘error’ in violation of our paramount Law, depriving the people of the State of Texas, of which I am one, of Equal Rights, Equality under the Law, Equal Protection of the Law. The philosophy that forms the foundation of our Law and system of Law grounded in popular sovereignty. <u>What is know in the contemporaneous legal climate as Democracy, secured by the Rule or Law, through a Republican Form of Government providing a Independent Judiciary.</u>

The Attorney for the Appellant, in her brief, engages in obfuscation. She attempts to convert ‘questions of fact’ into ‘questions of law’ so the Facts might be avoided. At the same time, attempts to convert ‘questions of law’ into ‘questions of fact’ so the Law might be avoided. Whether this is intentional or by design is subject to adjudication. What is clear from the record Appellant has attempted to shift responsibility from the State to the Appellee to avoid the responsibility our Law imposes upon her and the person she represents, Greg Abbott as Attorney General.

Texas Government Code; Sec. 82.037. Oath of Attorney
a. Each person admitted to practice law shall, before receiving a license, take an oath that the person will:
1. **support the constitutions of the United States and this state;**

Beyond the obfuscation; the Appellant asserts the recovery ordered for the property “taken, damaged or destroyed” by the Appellant, and the ancillary Protection of the Law secured in Statutory Law under Chapter 103, the recompense, is excessive or based on speculative evidence. On cross, the Appellee asserts the recovery is not adequate based on the fact evidence that, as a matter of law, must be given due consideration. The fact evidence the Trial Court had no jurisdiction to refuse to admit and consider, and the Appellant did controvert

To be ‘adequate’, recovery cannot be less than the economic damages inflicted by the person responsible. The statute reflects the legislature's intent to compensate a wrongly convicted individual for his economic losses, Texas v. Oakley, 03-05-0007-CV.

The economic damages were proven, beyond a preponderance of the evidence, by uncontroverted fact evidence. The Trial Court, as a matter of Substantive Law, as well as the Rules of Court, including the Rules of Evidence by which ‘due course of law’ is

secured, did not have jurisdiction to exclude fact evidence of economic damages, or discount the economic damages below the figure established by uncontroverted facts.

"We credit favorable evidence if a reasonable fact-finder could"… City of Keller v. Wilson, 168 S.W.3d 827 (Tex. 2005). In reviewing the factual sufficiency of the evidence, we consider and weigh all the evidence and should set aside the judgment only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986)." Quoting Kirby v. Tjarks, this Court No. 03-05-00063-CV (03/23/2006). The Finding of the trial court, in bench trial on damages, is clearly wrong and manifestly unjust. To be reasonable and just, and comply with the §17 of Art. 1 and §103.105(a)(2) ["wages, salary, other income"]; the Final Judgment must be reformed to the legal facts established beyond a preponderance, and the recovery pursuant to §103.105(a)(3) ["medical and counseling expenses"] affirmed.

The Facts and the Law entitle the Appellee to the recovery ordered by the Trial Court, and by legal facts additional recovery of $707,741. The Final Judgment must be reformed to administer the law on the facts, fairly and impartially, for Final Judgment of $1,368,347, with post-judgment interest, to be promptly paid by the Comptroller of Public Accounts. And such further relief as the Appellee may show himself entitled to by law and facts submitted to the Court in his post submission filings.

Certificate of Service

I certify a true and correct copy of the foregoing was served on Defendant, by and through Counsel of Record, on this the 21st day of June, 2006.

Respectfully Submitted,

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Edmund Bryan Heimlich