

TABLE OF CONTENTS

Table of Contents	i
Identity of the Parties and Real Parties in Interest	iii
Index of Authorities	iv
Record References	vii
Definitions of Words and Phrases	viii
Statement of The Case	x
Course of Proceedings	x
Issues Presented	xii
Summary of Argument	1
Jurisdiction Statement	2
Standard of Review	3
Introduction	5
Summary of the Case	6
Identity of Parties and Subject Matter	8
Persons Party to this Case	9
Equal Justice under the Law	10
Interpreting §17 of Art. 1, Texas Constitution	11
Summary of Attorney for Appellant’s Brief	14
Statutory Law at Issue	15
Response to Issues raised by Appellant	17
Issue 1	17
Issue 2 and Cross Issue	22
Issue 3	25
Issue 4 and Cross Issue	28
Issue 5 and 7	30
Issue 6 and Cross Issue	32
Trial Court Error	
“Havner” application	34
“Captitol Metro” application	38
“Blind Maker” and Cross-Appellant Brief	39

Post Submission Issues	39
Timing of Compensation	40
Prompt Payment in Public Interest	42
Prompt Payment Law	42
The Public Fisc	43
Judicial Spur	46
Public Policy / Public Interest – Right to Remedy	48
Public Policy of the Sovereign, the people of the State of Texas...	49
The Public Interest	50
Contemporaneous Legal Climate	52
Issue 1 – Expanded Response	54
Government – Grounded in Liberty	54
Consent to Suit	56
Immunity of the Individual	57
Judicial Process vs. Administrative Process	58
Habeas Standard for Prisoners	59
A ‘Question of Fact’, NOT a ‘Question of Law’	59
Species of Law Foreign to this Jurisdiction	
A. Monarchy	61
B. Communism	62
C. Our Values, Our Way of Life	63
Conclusion	64

IDENTITY OF PARTIES AND REAL PARTIES IN INTEREST

NOTE: As the proper identity of the parties is crucial to the proper adjudication of this case, the identity of the parties will be elaborated on in the body of this Response Brief

APPELLANT, DEFENDANT IN THE DISTRICT COURT:

GREG ABBOTT, AS ATTORNEY GENERAL:

More specifically; **Artificial Person** known as **Government of the State of Texas**, A Fiction of Law represented by Greg Abbott, in his Official Capacity.

ATTORNEY OF RECORD FOR GREG ABBOTT:

Cynthia Alexander, Assistant Attorney General [Second Appeal]
State Bar No. 00790580

Seth Byron Dennis, Assistant Attorney General [Trial & First Appeal]
State Bar No. 24035455

P.O. Box 12548

Wm. P. Clements Bldg. 7th Floor

Austin, Texas 78711-2548

PH: 512-463-2080; FX: 512-495-9139

E: cynthia.alexander@oag.state.tx.us, seth.dennis@oag.state.tx.us

Appellee, Plaintiff in the District Court, standing unrepresented:

Edmund Bryan Heimlich, Natural / Human Person one of the People of the State of Texas, **Citizen** of the United States and of this State, standing unrepresented;

1111 Blalock Road, Apt. 251

Houston, Texas 77055

Tel: 713-932-0137; Fax: 801-720-4343

E: ed44@sbcglobal.net

Other Parties of Interest:

The people of the State of Texas, as the Sovereign, Real Party in Interest as Plaintiff, Ex Rel, and as Defendant as party that ultimately bears the burden of malfeasance or dereliction of duty, civil wrongs committed by the entity government of their State.

The Legislative Division of our State, composed of representatives of the Sovereign delegated authority to make Public Law for our State, with interest in compliance.

Texas Supreme Court with interest in compliance with their Rules of Court.

Steve Gibbins, Attorney entitled to a portion of ‘reasonable attorneys fees’ in the Final Judgment, for his services as Counsel for Heimlich at Trial on damages. All other that counseled Heimlich or represented him in prior proceedings have been paid.

INDEX OF AUTHORITIES

COMMON / NATURAL LAW – SUBSTANTIVE RIGHTS

Declaration of Rights, Law of the Land (Texas), March 17, 1836 Now Article I, Texas Constitution, Washington on the Brazos.	passim
Unanimous Declaration of Law of the Land, (US) July 4, 1776 Act of First Congress of our New Nation. See ‘Statutes at Large’, this act is still Law for this Land & supreme . Properly, our US Constitution is an ‘Act for Enforcement’ of this Law.	passim
Turtle Bayou Resolution, June 13, 1832	2,
# 81, Federalist Papers, Alexander Hamilton	2, 60
# 84, Federalist Papers, Alexander Hamilton	10
English Bill of Rights, 1689	54
Magna Carta, Chapter 29 of 1225 version	55

OTHER SUPREME LAW OF THE LAND

Constitutions, United States of America and Texas, As Acts for Enforcement of the Common Law / Law of the Land	passim
International Covenant on Civil & Political Rights, Treaty ratified in 1992, §5 of Art. 9	56

CONSTITUTIONS – PROVISIONS

US CONST., Art. VI (supremacy clause)	passim
TEX. CONST. §17, ART. 1	passim
TEX. CONST. §13, ART. 1	2,17
TEX.CONST. §29, ART. 1	passim
TEX. CONST. §3, ART. 1	10, 28
TEX. CONST. §3a, ART. 1	10, 28

US CONST., §10 of Art. I	10, 28
US CONST., §2 of Art. IV	passim
US CONST., 14 th AMENDMENT	4, 28
TEX. CONST. §20, ART. 1	14
TEX. CONST. §27, ART. 1	17
TEX. CONST. §19, ART. 1	17
TEX.CONST. ART. 2	43
TEX. CONST. §1, ART. 16	52
TEX. CONST. §2, ART. 1	53
CONST. OF 1824 (Texas as part of Mexico)	53
TEX. CONST. §5, ART. 5	2
TEX. CONST. §6, ART. 5	8

STATUTES

US STATUTES AT LARGE, Law No. 1, July 4, 1776 http://www.loc.gov/law/guide/uscode.html	passim
TEX.CODE CRIM. PROC. Art. 3.02	6
TEX. GOV. CODE §311.005(a) (2) & (4)	passim
TEX. GOV. CODE §312.011 (13 & (19)	passim
TEX. PENAL CODE §1.07 (26) & (38)	5
TEX.GOV.CODE §311.034	9, 48
TEX.CODE CRIM. PROC. Art. 1.04	10
TEX. CIV.PRAC. & REM. CODE §103.105(b)	15
TEX. CIV.PRAC. & REM. CODE §103.105(a)	15

TEX. CIV.PRAC. & REM. CODE §103.105 et. Seq.	16, passim
TEX. CIV.PRAC. & REM. CODE §103.105(a)(2)	3,4,6,7,18,22
TEX. CIV.PRAC. & REM. CODE §103.102	4,8,22
TEX. GOV. CODE; §311.011 and §312.002	22
TEX. GOV. CODE; § 311.032	26
TEX. CIV.PRAC. & REM. CODE §103.105(c)	26
TEX. CIV.PRAC. & REM. CODE §103.103	27
TEX. FINANCE CODE §304 Et. Seq.	27
TEX. BUSINESS & COMMERCE CODE	28
TEX. PROPERTY CODE	28
TEX. CIV.PRAC. & REM. CODE §103.105(a)(1)	39
TEX. CIV.PRAC. & REM. CODE, Chapter 9	40
TEX. CIV.PRAC. & REM. CODE, Chapter 10	40
TEX. CIV.PRAC. & REM. CODE §103.152	41
TEX. GOV. CODE Chapter 2251	41
TEX. GOV. CODE §552.001	55
TEX. GOV. CODE § 82.037	65

RULES

Texas Rules of Appellate Procedure; 49	25
Texas Rules of Appellate Procedure 53.7	25
Texas Rule of Appellate Procedure; 19	25
Texas Rules of Evidence; 104(a)	36

Texas Rules of Evidence; 104(b)	36
Texas Rules of Evidence; 601	36
Texas Rules of Evidence; 605	37
Texas Rule of Appellate Procedure; 45	40

CASES

State v. Heimlich, No. 03-02-00151-CV, Tex.App.Dist.3 Published by West; 107 S.W.3d 643	passim
State v. Heimlich, Record No. 674066, 248 th District Court, Houston	passim
Heimlich v. State, Record No. 14-95-01369-CR, (Tex.App.-Houston [14th Dist.] 1999, pet. ref'd). Published by West; 988 S.W.2d 382, 382	passim
Heimlich v. State, Record No. PD-0715-99, Texas Court of Criminal Appeals	passim
Heimlich v. Texas, No. 03-02-00151-CV, (01/30/2003) Published by West; 107 S.W.3d 643	passim
Kirby v. Tjarks, No. 03-05-00063-CV (03/23/2006)	4, 66
Moyer v. Moyer, No. 03-03-00751-CV (08/26/2005)	4, 23
Dept. of Transp. v. City of Sunset Valley, 146 S.W.3d (Tex. 2004)	passim
Davis v. City of San Antonio, 752 S.W.2d 518 (Tex.1988)	11, 25
Texas v. Jones 8 S.W.3d 636,43 Tex.Sup.Cr.J.143, 1999	11, 25
“Capital Metro” ; Longhorn v. Capitol Metro, 03-02-00483-CV (07/11/2003); published by West as 114 S.W.3d 573 (rev.den’d)	passim
“Havner” ; Merrell Dow Pharm. V. Havner, 953 W.W.2d 706	passim
State v. Oakley, NO. 03-05-00007-CV, 181 S.W.3d 860	19, 41
Commercial Standard v. Caster, 59 S.W.2d (1933)	22

Edwards v Texas, 03-03-00737-CV (08/26/2004)	24
Edinburg Hospital Authority v. Trevino, No. 13-93-278-CV (Tex.App. Dist.13 07/13/1995)	30
Edinburg Hosp. Authority v. Trevino, 941 S.W.2d 76, 81 (Tex. 1997)	30
Fort Worth Ost. Hosp. v. Reese, No. 02-1061 (Tex. 08/27/2004)	31
Allison v. Fire Insurance Exchange, 98 S.W.3d 227	35
Coalition ... Preservation v. Texas Com on Environ. This Court, No. 03-02-00642-CV, (05/08/2003); 106 S.W.3d 363	37
Springs Window v. Blind Maker; 184 S.W.3d 840	39
Chisholm V. State Of Georgia, 2 U.S. 419 (1793)	45, 52
Wichita Falls State Hosp. v. Taylor, 106 S.W.3d 692, 697 (Tex. 2003)	passim

ADDITIONAL AUTHORITIES

Turtle Bayou Resolution , proof of Intent of the sovereign	2, 51
Federalist Papers , proof of Intent of the sovereign	2, 10, 56, 57
The Constitutional Right to Remedy , by former Chief Justice, Tom Phillips	passim
Acilian Law on the Right to Recovery of Property Officially Extorted , 12 122 B.C. The Avolon Project at Yale Law School	
Magna Carta	48
English Bill of Rights enacted in 1689	48

RECORD REFERENCES

The Clerk's Record will be referenced by "CR," or "SR" for supplement to the Clerks Record. This will be followed by the volume number and then page number, e.g., "CR2, 42", or "SR1, 25". The page number will be the first page of a pleading or document but include all that constitutes that pleading or document unless specified, e.g., "CR1, 3-10".

The Reporter's Record (Statement of Facts, transcript of Oral Proceedings) will be referenced by the volume number as follows: TR1 is the first day of Trial, July 25, 2005; TR2 is the second day of Trial, August 11, 2005; TR3 is for the first post-trial hearing date, September 14, 2005; and TR4 is for the second post-trial hearing date, December 12, 2006. The Reporter's Record references will be followed by page number and line number, e.g., "TR1, 48, 6-17".

REFERENCES TO LAW

All references that mention an Article, e.g. §17, Art. I", refer to our Texas Constitution. Where an Article or Amendment of our Constitution of the United States is mentioned, it be distinguished from our Texas Constitution via "US Const." Texas Statutes will be referenced by the symbol § designating the section of the Chapter where our Statutory Law has been codified. When it is believed a designation is necessary, the Chapter of the Code will be referenced but abbreviated. Example. Government Code will be abbreviated to "Gov", Civil Practice and Remedies Code will be abbreviated to "CPR".

When using the exact language of Constitutional or Statutory Law I will put the language between quotation marks with emphasis by italics and bold lettering. When using exact language of an opinion, what may be decisional law, I will put the words between quotation marks. When words are substituted, for a more current usage of words, or inserted for clarification, the words will be put into brackets.

REFERENCE TO CASE OPINIONS

I have looked first to opinions of this Court of Appeals, Third District. These cases will be referenced by the File No. assigned by the Clerk of this Court, followed by the date of the opinion. Westlaw discriminates against persons who are not licensed by the State Bar. Therefore I rely upon Versuslaw. Versus law numbers the paragraphs for reference, as opposed to a page number provided by Westlaw in their digests. The number in brackets [¶ ___] refers to a paragraph number for reference to the quote of the opinion.

DEFINITIONS OF WORDS AND PHRASES

To avoid obfuscation (fraud upon the court, intentional or unintentional) and avoid miscommunication, the following carefully researched definitions are submitted to the Public Record, the Court, as Judicial Notice submitted with this Brief of the Appellee. Pursuant to our Code Construction Act, §311.011(a), the “common usage” and our Construction of Laws Act, §312.002(a), the “ordinary meaning”, can be found at www.onelook.com providing links to all dictionaries of our common language.

The Rule of Law / Liberty: The power of the People, government entities and actors, is limited by Laws that protect the Substantive Rights of the Individual member of the People. ‘The Rule of Law’ is synonymous with Liberty. Both refer to the Right of the Individual. Both restrain and sanction the Acts of Artificial Persons, also known as Fictions of Law or creatures of Law including but not limited to a collective represented by a government entity. Both insure Remedy for violation of Substantive Rights.

Substantive Right: A Right of the Human Person that exist independent of Human Law. Also known as “Absolute”, “Natural”, “God-given”, “Truth”

Substantive Law: Human made Law that secures Substantive Rights of the Individual.

Legal Rights: Written Rights that a person, Human or Artificial, owns. Created by Constitutions, and Legislative Laws made in pursuance of Constitutions. Also known as an “entitlement”. Cannot overrule a Substantive Right of the Individual.

Person: In Law, Persons are distinguished by two categories;

Human Person: A Human Being. A ‘being’ that exist, by natural origin, as a fact of Nature. Not created by Human Law. Also known as an **Individual**. **“Real”**.

Artificial Person: Existing by non-natural origin. A Fiction of Law created by Human Law. Recognized as possessing rights of a Human Person, with the exception of Substantive Rights. **An Entity, or an Office of an Entity.**

Jurisdiction: Put simply, it is discretion to act within the boundaries of the law. In other words; lawful authority to decide. All Persons, including “People” as Individuals, have ‘jurisdiction’. That is; inherent power to make judgments, choices based on those judgments; ie, discretion to act on their judgments. For Individuals, this is also known as freedom. More correctly, ‘self-government’. This is also known as ‘Personal Autonomy’ to distinguish it from collective self-government of a Nation of people of a Country, or geographical division or subdivision thereof. For Individuals, their jurisdiction is protected by the Law. Absent Jurisdiction, the Individual is a Slave.

For Artificial Persons, Officials and Entities created by Law, jurisdiction varies depending on the Office the Official is entrusted with, the position of employment, or limits imposed on the entity by Law. For Artificial Persons, their jurisdiction is limited by

the Law. For this reason Artificial Persons entrusted to an Office or position of Employed in government entities are referred to as ‘Public Servants’ and required to take an Oath.

Public Law: Constitutions and Statutory Law, Penal and Remedies Code, that applies to all members of the People, also know as the public. Limits jurisdiction of Individuals.

Regulatory / Administrative Law: Public Law that applies to Artificial Persons. Includes laws that specifically applies to a person acting in the capacity of a public servant. Limits jurisdiction of Artificial Persons, those created by law.

Private law: Known as Contracts. Is Law applicable only to the parties to the contract. Limits jurisdiction of parties to the contract.

Statute of Frauds: Entitlement by written law, public or private, overrules verbal contract or any other pretense of entitlement to possess, manage, control property.

To own / ownership: Entitlement possess, manage, control property - real and personal, tangible and intangible. Established and protected by Law.

Title / Entitlement: A Legal Right to possess, manage, control property.

Hierarchical Governance – Hierarchy of Law: To be ‘reasonable’, Law must be interpreted and administered pursuant to a Hierarchy. Substantive Right of Individual is supreme. Constitutional Law overrules Statutory Law. Statutory Law overrules Rules of Court. Decisional Law overrules Statutory Law or Rules of Court if these Laws are Unconstitutional or applied / administered to violate Substantive Rights.

Democracy: Systems of Laws based on the premise the People are the Sovereign. Each Individual endowed with Substantive Rights. Modern Democracy; the people govern their government by and through a Constitution binding all government actors.

Republican Form of Government: Democracy secured by three divisions of government. Most important – Independent Judiciary to secure Substantive Rights.

Citizen: A member of the People with Political Rights & additional Security of the Law, by virtue of identity with a Nation, and/or a geographical division or subdivision. Most people of the Country known as the United States have dual citizenship. They are protected by the Constitution of the United States and the Constitution of their State.

People and Public: Virtually synonymous terms. ‘Public’ is defined as “a body of people sharing a common interest”. All people on this Land have a ‘common interest’ in the Rule of Law for the Protection of their Substantive Rights as Individuals; their liberty. It is the benefit of government sought by people who instituted (created) government for this Land of Texas, and the larger Land known as the United States of America.

STATEMENT OF THE CASE

- Nature of the Case:** APPELLANT’S STATEMENT IS INCORRECT. Appellant has, throughout the proceedings of GN100142, attempted to characterize this case as a suit “under Texas Civil Practice and Remedies Code, Chapter 103.” This is, and always has been, an Action in Law for Enforcement of Substantive Rights secured by our Texas Constitution, grounded in §17 of Art. I. Chapter 103, specifically subchapter C of Chapter 103, and other Right of Remedy secured by Statute, is ancillary to plaintiff’s claim for his entitlement to Compensation pursuant to our Texas Constitution, specifically §17 without limiting his Individual Rights secured by other Law.
- Trial Court Judges, In this District:** **Suzanne Covington**, Judge presiding over trial of ‘Actual Innocence’.
Margaret Cooper, Judge presiding over other proceedings and Trial on Damages.
- Prior Dispositions:** **1-8-2002:** Judge Cooper enters Judgment for Defendant on Motion for Summary Judgment
1-30-2003: Court of Appeals reverses in part, Remands to Trial Court.
- Trial Court Dispositions, in this District:** **8-14-2003:** Judge Covington enters Judgment on issue of Liability of Defendant, Trial of Actual Innocence.
10-03-2005: Judge Cooper enters Judgment on Trial of Damages, Plaintiff to recover \$660,605.74 in compensation as Remedy from Defendant.
- NOTE:** As well as prior proceedings in the Criminal Venue of our Court; Both Trial dispositions in this District, and all related proceedings, including this Court of Appeals’ prior disposition, are challenged by New Attorney for Appellant.

COURSE OF PROCEEDINGS, not exhaustive, but of primary relevance to the Review Requested by the Appellant:

Criminal Venue; proceedings and dispositions:

1. 9-1-1993: Action initiated by Defendant, then as Plaintiff. 674066
2. 11-17-1995: Trial concludes, Plaintiff, then as Defendant, convicted.
3. 3-11-1999: Conviction reversed, Plaintiff, then Defendant, 14-95-01369-CR
4. 10-15-1999: Defendant, as Plaintiff, Petition for Review denied. PD-0715-99.

5. 11-3-1999: Acquitted by Mandate, case of Defendant, as Plaintiff, dismissed.

Civil Venue; proceedings; Roles Reversed, Defendant now Plaintiff:

- 1) 5-23-2001. Government files Plea to the Jurisdiction of the court.
11-1-2001 **DENIED** by verbal order
- 2) 11-29-2001. Government files Motion for Summary Judgment. CR1-52
FINAL JUDGMENT signed, 1-08-2002. CR1-72
- 3) 1-17-2002: First Review by this Court of Appeals, docketed as 03-02-00151-CV
1-30-2003: **JUDGMENT**, 03-02-00151-CV, affirmed in part, remanded. CR1-73
- 4) 7-2-2003: **MANDATE** of this Court of Appeals
- 6) 6-26-2003: Plaintiff's Motion for No Evidence Summary Judgment
- 7) 7-23-2003; **Trial on Actual Innocence**. Parties ordered to submit into record briefs
defining phrase "Actual Innocence". CR1-200 & CR1-223
- 8) 8-14-2003; **FINAL JUDGMENT** on Actual Innocence / Liability. CR1-226.
- 9) 5-6-2005: Plaintiff's Petition for entry of Final Judgment for \$500,000 for
presentation to Legislature for special (as opposed to general) appropriation. **Offer**
rejected by Defendant, constituting waiving right to assert statutory cap defense.
- 10) 7-25-2005; **Trial on Damages**. Defendant stipulates to liability, TR1-48
- 11) 10-3-2005; **FINAL JUDGMENT** signed, \$660,605.74, CR2-433.
- 12) 11-1-2005; Defendant's Motion for New Trial, setting issues for appeal. CR2-436
- 13) 11-2-2005; Defendant's Requests Findings of Fact and Conclusions of Law. CR2-447
- 14) 11-18-2005; Findings of Facts and Conclusions of Law filed, CR2-489.
- 15) 11-10-2005; Defendant attempts to Amend Motion for New Trial. CR2-450
- 16) 12-12-2005; **DENIED**, Defendant's Motion for New Trial. CR2-532
- 17) 12-16-2005: Defendant files Notice of Appeal, initiating this proceeding.
- 18) 1-5-2006: Verbal order of 12-12-2005, on Defendant's 11-10-2005 attempt to Amend
Motion for New Trial, signed and pleading ordered **DISMISSED** from the Record.
Defendant's filing of, their attempt to amend government's Motion for New Trial.
CS-1

ISSUES PRESENTED

By Appellant, Renumbered by Appellee. Issue 2 is, in fact, 2 Issues:

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?
2. Did the district court exceed its jurisdiction in awarding damages which are not “directly related to” the arrest, prosecution, conviction or imprisonment?
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? [§103.105(c), with attempt to add in remedies “not under this subchapter”]
4. Did Heimlich prove a cognizable takings claim pursuant to the Texas Constitution? [§17 of Article I]

Additional Issues raised by Appellant by incorporation into argument

5. 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)
6. 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.
7. 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.

CROSS-APPEAL ISSUES;

Appellant, by appealing the Final Judgment, has opened the door or Appellee to Cross Appeal the foregoing issues. On Cross Appellee appeals, requests review, of Issues 2, 4, and 6. Trial court erred or abused discretion; the recovery ordered is insufficient by plain language of our Law and uncontroverted facts. Decisional Law misapplied. Proper interpretation of §17 of Article I, Texas Constitution. **See also Cross-Appellant Brief.**

CORE ISSUES

1. Who or what is ‘the sovereign’ of this jurisdiction known as the State of Texas?
2. Is the ‘Right to Remedy’ a Substantive Right, secured in Texas by the Rule of Law, with Constitutions as paramount Law that rules (governs) this State?
3. Is the Right to Private Property a Substantive Right, secured in Texas by the Rule of Law with our Constitutions as paramount Law that rules (governs)?