

# No. 04-0194

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In The  
Supreme Court of Texas

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**EMZY T. BARKER, III AND AVA BARKER D/B/A BRUSHY CREEK  
BRAHMAN CENTER AND BRUSHY CREEK CUSTOM SIRES,**  
*Petitioners,*

v.

**WALTER W. ECKMAN, INDIVIDUALLY AND AS NOMINEE AND TRUSTEE,  
ECKMAN, INC., AND LARRY ECKMAN,**  
*Respondents.*

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On Petition for Review from the  
First Court of Appeals, Houston, Texas  
No. 01-01-00079-CV

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## **PETITIONERS' REPLY BRIEF ON THE MERITS (FEE ISSUE)**

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TO THE HONORABLE SUPREME COURT OF TEXAS:

**SUMMARY OF THE ARGUMENT**

Eckman’s brief fails to refute the Barkers’ arguments that errors both at trial and on appeal require reversal. *First*, if this Court agrees that the statute of limitations bars most of Eckman’s damages, Eckman does not dispute that the trial court’s contrary ruling probably caused the jury to render an improper award of attorneys’ fees. It simply cannot be said that such a significant change in Eckman’s damages, from \$111,983.58 to \$16,180.14, would have had no effect on the size of the jury’s \$244,500 fee award. Therefore, a new trial on fees is required.

*Second*, Eckman does not dispute that the court of appeals failed to review the evidence supporting the fee award in light of its own holding limiting the “amount of money involved in the case and the results obtained” to \$16,180.14. This Court requires courts of appeals to undertake a meaningful review of certain factors relevant to an award of fees, including the amount involved and results obtained. Thus, at a minimum, a remand is required.

Moreover, the Court should take this opportunity resolve the lower courts’ confusion over how to integrate the general factual sufficiency standard of review with the requirement that courts meaningfully review specific factors such as the amount involved and results obtained. Like the court below, some courts simply follow the general standard and hold that even significant disparities between fee awards and the amount involved or results obtained are not dispositive. Other courts acknowledge, however, that meaningful review of such disparities will require reversal under a factual

sufficiency standard in appropriate cases. This Court should grant review to reconcile these divergent approaches and explain the proper role of the amount involved and results obtained in a factual sufficiency review.

Finally, Eckman's strident rhetoric cannot obscure the legal errors made by the trial court and the court of appeals. Eckman spends much of his brief discussing the work done by his attorneys, their testimony at trial, and the state of the Barkers' records regarding claims long barred by limitations. The fundamental question for this Court, however, is not about whether Eckman provided sufficient evidence to support the fee award. Rather, it is a question of legal process: did the trial court permit the jury to weigh the proper factors in setting the fee award, and did the court of appeals properly review the fee evidence in light of those factors? The answer is no. Because neither the jury nor the court of appeals correctly considered the issue of attorneys' fees, this Court should reverse.

## **ARGUMENT**

### **I. Because The Trial Court's Limitations Error Probably Caused The Rendition Of An Improper Judgment On Fees, A New Trial Is Required.**

As explained in the Barkers' prior briefing, the court of appeals correctly held that most of Eckman's claims are barred by limitations as a matter of law. *See* Pet'rs Merits Br. at 22-23; Cross-Resp'ts Merits Br. (Limitations) at 9-17. If this Court agrees with the Barkers on the limitations issue, Eckman cannot and does not dispute that the trial court's refusal to bar those claims probably caused the rendition of an improper judgment on

attorneys' fees as well as damages. Therefore, a new trial on fees is required. TEX. R. APP. P. 44.1, 61.1.

Eckman points to evidence of the work done by his attorneys and asks this Court simply to defer to the jury's award. Yet that award was corrupted by the trial court's limitations error, which prevented the jury from weighing the proper factors when setting the fee award in the first place. Specifically, the trial court's refusal to bar most of Eckman's claims erroneously inflated a key component of the jury's fee determination – “the amount of money involved in the case and the results obtained” (CR 550) – from \$16,180.14 to \$111,983.58. Because it must be presumed that the jury followed its instructions and considered this latter, legally improper figure in setting the fee award of \$244,500, the trial court's limitations error probably caused the rendition of an improper judgment regarding attorneys' fees. *See* Pet'rs Merits Br. at 23. Put another way, because it cannot be said that the trial court's limitations error affected only the damages part of the controversy, the judgment must be reversed and a new trial ordered with respect to attorneys' fees. TEX. R. APP. P. 44.1(b), 61.2.

Eckman's only response to this argument is waiver. *See* Cross-Pet'rs Resp. Br. at 34. Yet Eckman does not dispute that the Barkers properly preserved their legal challenge regarding limitations in the trial court. CR 37-38, 554-59; Supp. CR 9-16; 5 RR 4. Because the trial court's error regarding limitations also affected the fee part of the controversy, Rules 44.1(b) and 61.2 mandate a new trial on fees. The Barkers were not required to do anything else to secure that relief.

When an error has been properly preserved, Eckman offers no authority holding that additional preservation hurdles must be cleared before an appellate court will determine the scope of the harm caused by that error. To the contrary, several courts have held that when a legal challenge to liability or damages succeeds in substantial part, the proper remedy includes a new trial on attorneys' fees.<sup>1</sup> Eckman has no answer for these cases. Given that the Barkers' limitations challenge bars most of Eckman's claims and substantially reduces his damages, a new trial on attorneys' fees is necessary.

Moreover, the Barkers properly moved for a new trial on attorneys' fees on the ground that the fee award was excessive and unsupported by factually sufficient evidence. CR 597-98. On appeal, their briefs explained that an appellate judgment substantially reducing "the amount of money involved in the case and the results obtained" on limitations grounds would drastically alter a key fact that the jury considered in awarding fees, requiring a new trial. Appellants' Br. at 28; Reply Br. at 24-25; Supp. Br. for Appellants at 7-8. After the court of appeals entered such a judgment, the Barkers repeated their request for a new trial in their petition for review. PFR at 13-

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<sup>1</sup> *E.g.*, *Allison v. Fire Ins. Exch.*, 98 S.W.3d 227, 263 (Tex. App. – Austin 2002, pet. granted, judgment vacated w.r.m. by agr.) ("We cannot say . . . that the award . . . is still reasonable, given that we have significantly reduced the damages awarded by the jury. We remand the determination of attorneys' fees to the district court for further proceedings . . ."); *Burns v. Miller, Hiersche, Martens & Hayward, P.C.*, 948 S.W.2d 317, 327 (Tex. App. – Dallas 1997, writ denied) ("We note that Burns does not challenge certain items . . . , and therefore, portions of the turnover order are unaffected by this appeal. However, because of our disposition of Burns's first five points of error, the turnover order is so significantly altered as to merit the trial court's reconsideration of reasonable attorneys' fees."); *Chilton Ins. Co. v. Pate & Pate Enters., Inc.*, 930 S.W.2d 877, 896-97 (Tex. App. – San Antonio 1996, writ denied) (Green, J.) (reversing liability in part, rendering judgment reducing actual damages, and then remanding attorneys' fee award for retrial in light of the changed "amount recovered" and "success of the parties on their causes of action and damages theories"). Eckman notes that *Chilton* involved changes in the damages recovered by both parties, but that distinction makes no difference to the principle that a substantial change in liability or damages requires a new trial on fees.

14; *see Bunton v. Bentley*, 153 S.W.3d 50, 53 (Tex. 2004) (per curiam) (“A complaint that arises from the court of appeals’ judgment itself . . . may be raised either in a motion for rehearing in the court of appeals or in a petition for review in this Court.”). For all these reasons, the Barkers properly preserved their complaint and this Court should grant their request for a new trial on attorneys’ fees.

**II. At A Minimum, Because The Court Of Appeals Failed To Consider The Changed Amount Involved And Results Obtained, A Remand Is Required.**

Even if this Court does not grant a new trial, it should remand for the court of appeals to review the fee award in light of the true “amount of money involved in the case and the results obtained.” CR 550. In its opinion, the court of appeals correctly held that most of Eckman’s claims were barred by limitations and reduced his damages to \$16,180.14 as a matter of law. Yet despite this legal change in the maximum amount Eckman could recover in this case, the court proceeded to “review the factual sufficiency of the attorney’s fees . . . in light of the jury’s award of \$111,983.58” in damages. Pet’rs Merits Br., Tab C, at \*3. Eckman does not dispute that the lower court failed to use the changed “amount involved” and “results obtained” in reviewing the jury’s fee award.

This Court has made clear that it has jurisdiction to determine whether a court of appeals applied the correct standard when conducting a factual sufficiency review. *Pool v. Ford Motor Co.*, 715 S.W.2d 629, 634-35 (Tex. 1986). Regarding attorneys’ fees, the Court has instructed courts of appeals to “[d]etermine the factual sufficiency of the evidence . . . in light of the standards prescribed in Rule 1.04,” which include “the amount involved in the case and the results obtained.” *Bocquet v. Herring*, 972 S.W.2d

19, 21 (Tex. 1998); *Arthur Andersen & Co. v. Perry Equip. Corp.*, 945 S.W.2d 812, 818 (Tex. 1997); *see also* CR 550. The court of appeals disobeyed these cases by reviewing the fee award “in light of the jury’s award” of \$111,983.58 in damages, not in light of the correct “amount involved” and “results obtained,” which it had just held could not exceed \$16,180.14 as a matter of law. This legal error in the court’s review requires reversal.

Eckman argues that the reduction of his damages should not lead to reversal of the jury’s fee award because he presented other evidence to support his fees. Cross-Pet’rs Resp. Br. at 26-27;<sup>2</sup> *see also id.* at 5-7, 12-15. But that question of factual sufficiency is not what the Barkers have asked this Court to decide, nor is it an issue this Court has jurisdiction to decide. *See* TEX. GOV’T CODE ANN. §§ 22.001, 22.225(a) (Vernon 2004). Rather, the question is one of legal process: whether the court of appeals properly considered the reduced amount involved and results obtained, evaluating it along with the other *Arthur Andersen* factors to determine whether the fee award was unsupported by factually sufficient evidence and should be reversed. It is undisputed that the court of appeals did not apply this standard of review.

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<sup>2</sup> Eckman cites only two cases for this proposition. One case, *Hironymous v. Allison*, 893 S.W.2d 578 (Tex. App. – Corpus Christi 1995, writ denied), involved a stipulated fee and thus has no relevance here. In the other case, the court of appeals reduced a damage award from \$146,862.42 to \$97,742.42 but upheld the trial judge’s \$30,000 fee award under an abuse of discretion standard, not a factual sufficiency standard. *Gutierrez v. Elizondo*, 139 S.W.3d 768, 777 (Tex. App. – Corpus Christi 2004, no pet.). *Gutierrez* merely stands for the proposition that the changed results obtained did not make the fee award an abuse of discretion on the facts of that case. It does not authorize courts of appeals to disregard changed results in reviewing fee awards. To the contrary, the many cases cited in Eckman’s opening brief confirm that courts of appeals *should* consider changed results in reviewing fee awards for factual sufficiency. *See* Pet’rs Merits Br. at 13-16.

Finally, Eckman again attempts to take refuge in waiver. He notes that the Barkers did not object to his failure to segregate his attorneys' fees between barred and non-barred claims, and he argues that segregation would be improper in any event because those claims are interrelated. *See* Cross-Pet'rs Resp. Br. at 8, 30. This argument is a red herring because the Barkers are not urging a segregation challenge. Instead, they are making a factual sufficiency challenge.<sup>3</sup>

The Barkers complied with the preservation requirements of TEX. R. CIV. P. 324(b) by asserting a factual sufficiency challenge to the jury's fee award in their motion for new trial. CR 597-98.<sup>4</sup> On appeal, they argued that the award was excessive and unsupported by the evidence in light of the *Arthur Andersen* factors, one of which is "the amount of money involved in the case and the results obtained." CR 550; *see* Supp. Br. for Appellants at 1-6; Appellants' Br. at 25-27. Thus, they were entitled to have the court of appeals review their argument that the \$244,500 fee award is excessive, especially given that the maximum amount of damages available to Eckman is \$16,180.14. The

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<sup>3</sup> A segregation challenge addresses whether recovery of the claimed fees is authorized by statute or contract. *See Flint & Assocs. v. Intercont'l Pipe & Steel, Inc.*, 739 S.W.2d 622, 624 (Tex. App. – Dallas 1987, writ denied). In contrast, a factual sufficiency challenge addresses whether a fee award is excessive in a case where it is legally authorized. Texas courts routinely distinguish between these two different challenges. *E.g.*, *Air Routing Int'l Corp. v. Britannia Airways, Ltd.*, 150 S.W.3d 682, 688-89 (Tex. App. – Houston [14th Dist.] 2004, no pet.); *O'Farrill Avila v. Gonzalez*, 974 S.W.2d 237, 248-50 (Tex. App. – San Antonio 1998, pet. denied).

<sup>4</sup> The new trial motion included a general objection to the factual sufficiency of the evidence supporting fees. CR 597 (jury's answers to fee question are "against the overwhelming weight of the evidence and the damages awarded by the jury . . . are excessive"). The Barkers also objected that the fee award was "excessive for a case involving damages which were approximately half the amount of attorney fees claimed for the trial . . . ." CR 598.

court of appeals' erroneous refusal to consider this argument is contrary to the standard of review and must be reversed.

A simple example will illustrate the point. Assume that a plaintiff pursues three claims worth \$600,000 against a defendant but prevails on only one claim worth \$60,000. If the plaintiff proves that his claims are interrelated, he may be able to defeat a segregation challenge and recover his actual attorneys' fees of \$500,000 for pursuing all three claims. Yet the defendant may still challenge the fee award on factual sufficiency grounds, arguing that an award of \$500,000 is excessive as compared to the \$60,000 result obtained. Similarly, regardless of whether a segregation objection was made or whether Eckman's claims are interrelated, the Barkers are entitled to appellate review of their properly-preserved factual sufficiency challenge to the excessiveness of the fee award.

Eckman next argues that the Barkers waived their factual sufficiency challenge by failing to tender a correct jury question regarding limitations and failing to object to the court deciding the issue. Cross-Pet'rs Resp. Br. at 8, 31. This argument makes no sense because the Barkers' complaint is not about charge error. As a threshold matter, Eckman's argument fails because there were no factual disputes for the jury to resolve regarding limitations. *E.g.*, Cross-Resp'ts Merits Br. (Limitations) at 6-7, 28-29. Thus, it would have been error for the trial court to submit the legal issue of limitations to the jury. 4 McDonald & Carlson, TEXAS CIVIL PRACTICE § 22:11 (2d ed. 2001).

Moreover, there was nothing wrong with the questions submitted in the charge. If the trial court had sustained the Barkers' repeated legal objections to Eckman's time-

barred claims, the jury would properly have considered only Eckman’s viable claims when weighing the *Arthur Andersen* factors specified in the attorneys’ fee question – including the “amount involved” and “results obtained.” CR 550. Thus, the Barkers have not waived their argument that the court of appeals was required to review the factual sufficiency of the evidence regarding attorneys’ fees in light of the legally correct amount involved and results obtained. Because it failed to do so, this Court should reverse and remand.

**III. This Court Needs To Clarify The Role Of The *Arthur Andersen* Factors – Including The “Amount Involved” And “Results Obtained” – In Reviewing Fee Awards.**

This case offers much more than an opportunity to correct the legal errors below. To resolve confusion among the courts of appeals, the Court should grant this petition and explain how courts should use the *Arthur Andersen* factors in reviewing the factual sufficiency of the evidence regarding attorneys’ fees. Specifically, the Court should clarify whether “the amount of money involved in the case and the results obtained” has any meaning in the context of a factual sufficiency review. If it does, lower courts must have a meaningful power to review that factor. It would serve little purpose to send this case back to the court of appeals if that court could simply dismiss the amount involved and the results obtained as irrelevant in light of Eckman’s other evidence of fees.

The parties in this case have set out sharply different visions of the role of the *Arthur Andersen* factors in reviewing factual sufficiency. These differences reflect the divergent approaches taken by the courts of appeals. For example, Eckman contends that “[t]he fact that the fees constitute a greater amount of the total award than do damages

will not require a reversal,” and that the “reduction of the damages award” in this case “does not require or support reversal of the jury’s attorney’s fees award. “ Cross-Pet’rs Resp. Br. at 19, 26. Some courts adhere to this view, dismissing even significant disparities between fee and damage awards with a throw-away remark that results obtained are “not dispositive” in reviewing a fee award. *Haggar Apparel Co. v. Leal*, 100 S.W.3d 303, 316 (Tex. App. – Corpus Christi 2002), *rev’d per curiam on other grounds*, 154 S.W.3d 98 (Tex. 2004); *see also, e.g., Cordova v. S.W. Bell Yellow Pages, Inc.*, 148 S.W.3d 441, 448 (Tex. App. – El Paso 2004, no pet.) (“[T]he amount of damages awarded is but one factor in determining the reasonableness of a fee award.”); Cross-Pet’rs Resp. Br. at 19-20. The court of appeals below took this approach to the extreme, refusing to discuss individual factors and instead reviewing the fee award “globally” under a factual sufficiency standard. Pet’rs Merits Br., Tab C, at \*3.

On the other hand, as the Barkers have explained, many courts acknowledge that particular *Arthur Andersen* factors – such as a significant disparity between a fee award and the amount involved or results obtained – will require reversal under a factual sufficiency standard in appropriate cases. *See* Pet’rs Merits Br. at 9-10 & n.8; *Chilton Ins. Co.*, 930 S.W.2d at 896 (“attorney’s fees must . . . bear some relationship to the amount recovered”); Scott A. Brister, *Proof of Attorney’s Fees in Texas*, 24 ST. MARY’S L.J. 313, 330 (1993) (“One of the most frequent grounds for [remitter] is an award of fees that is substantially higher than the verdict.”). Courts also have recognized that reversal may be especially appropriate when this disparity increases on appeal due to a substantial reduction in damages. *See* Pet’rs Merits Br. at 13-15.

This disagreement regarding how the *Arthur Andersen* factors work in a factual sufficiency review springs from the tension between two lines of this Court’s cases. As Eckman notes, to decide whether actual damages are excessive, this Court has instructed courts of appeals to use the same general test as for any other factual sufficiency question. *Pope v. Moore*, 711 S.W.2d 622, 624 (Tex. 1986) (per curiam). Under this test, a court affirming an actual damages award need not detail all the evidence supporting that award. *Ellis County State Bank v. Keever*, 888 S.W.2d 790, 794 (Tex. 1994). More recently, however, the Court has emphasized that “the law requires appellate courts to conduct a *meaningful* evidentiary review of [compensation awards].” *Saenz v. Fid. & Guar. Ins. Underwriters*, 925 S.W.2d 607, 614 (Tex. 1996) (emphasis added). Moreover, with respect to attorneys’ fees, it has required courts of appeals to “[d]etermine the factual sufficiency of the evidence . . . in light of the standards prescribed in Rule 1.04” – that is, the *Arthur Andersen* factors. *Bocquet*, 972 S.W.2d at 21; *Arthur Andersen*, 945 S.W.2d at 818.

As these cases reveal, there is some tension between a general factual sufficiency standard and a requirement that particular factors be meaningfully reviewed. In the context of punitive damages, this Court reconciled a similar tension by directing courts to “detail the relevant evidence in [their] opinion[s], explaining why that evidence either supports or does not support the . . . award in light of the [relevant] factors.” *Transp. Ins. Co. v. Moriel*, 879 S.W.2d 10, 31 (Tex. 1994); *see* Pet’rs Merits Br. at 11-12, 14-15.

How should lower courts review attorneys’ fee awards in light of these divergent authorities? Should they conduct a general factual sufficiency review without

considering the evidence supporting individual factors, or should they conduct a meaningful review in light of the particular *Arthur Andersen* factors? Moreover, can a particular factor require reversal in an appropriate case? Each question is cleanly and squarely presented by this case, and the Court should answer them here.

At a minimum, the Court should hold that the court of appeals applied the wrong standard of review. Even though it may not be necessary for a court to detail the evidence *supporting* each relevant factor, it must at least consider the evidence *against* the fee award raised by the opposing party and explain why that evidence does not require reversal. The court of appeals did not do that here. Although the Barkers' briefing extensively discussed the amount involved and results obtained, the court's opinion completely failed to address that factor.

As discussed above, the court of appeals was legally required to review the fee award in light of the amount involved and results obtained. Because it failed to do so, this Court should at a minimum reverse and remand for the court of appeals to review the award again under the correct standard. If "the amount of money involved in the case and the results obtained" is to have any meaning as a standard for measuring attorneys' fees, it must be meaningfully reviewed as required by *Bocquet*, *Arthur Andersen*, and *Saenz*.

Eckman responds that requiring meaningful review is an "astounding . . . affront" to a long history of this Court's decisions deferring to the jury's resolution of disputed facts. Cross-Pet'rs Resp. Br. at x. This argument is simply a throwback to the now-discredited theory that meaningful factual sufficiency review infringes an inviolate right

to trial by jury. *See Cropper v. Caterpillar Tractor Co.*, 754 S.W.2d 646, 653-56 (Tex. 1988) (Robertson, J., dissenting); *Dyson v. Olin Corp.*, 692 S.W.2d 456, 458-59 (Tex. 1985) (Robertson, J., concurring). In fact, the purpose of this Court's jurisdiction to determine the legally correct standard of review for factual sufficiency questions is to ensure that the standard identifies verdicts that are against the weight of the evidence while also respecting the jury's role. *Pool*, 715 S.W.2d at 633-35. The Court should exercise that jurisdiction here and clarify the standard of review.

#### **IV. Eckman's Factual Assertions Cannot Alter The Lower Courts' Legal Errors.**

Finally, Eckman spends much of his brief arguing that the reduction of his damages does not require reversal of the jury's fee award because his other evidence regarding fees was sufficient to support the award. As explained above, however, this Court does not have jurisdiction to consider that argument. Eckman's evidence is simply irrelevant to the legal questions before this Court: whether the *jury* was able to weigh the evidence properly in setting the fee award, and whether the *court of appeals* properly reviewed the award in light of the required factors. Because the jury was not, and the court of appeals did not, reversal is required.

Nevertheless, two of Eckman's factual arguments warrant a brief response. First, he argues that that trial testimony regarding the reasonable value of his three attorneys' services is binding as a matter of law because it was uncontroverted. Cross-Pet'rs Resp. Br. at 11-13. This argument misplaces the burden of proof. It was Eckman's burden to offer evidence of the factors necessary to support an award of fees, not the Barkers' burden to disprove those factors. *Cass v. Stephens*, 156 S.W.3d 38, 70 (Tex. App. – El

Paso 2004, no pet. h.). Thus, this Court has held that even uncontradicted testimony does not mandate an award of the amount claimed if the evidence is unreasonable. *Ragsdale v. Progressive Voters League*, 801 S.W.2d 880, 882 (Tex. 1990) (per curiam). In addition, even if the testimony regarding the time Eckman's attorneys spent and the reasonableness of their hourly rates were binding, these are only two of the many factors that are to be considered in determining whether a fee is reasonable. CR 550; *Arthur Andersen*, 945 S.W.2d at 818. As discussed in prior briefing, other factors – particularly the amount involved and results obtained – show that a fee over 15 times larger than Eckman's maximum damages is excessive and unreasonable. Pet'rs Merits Br. at 19-22.

Second, Eckman asserts that the Barkers' recordkeeping and allegedly abusive tactics support the fee award. This blatant appeal to prejudice has no basis in either law or fact. As to the law, abusive tactics was not one of the elements the jury was instructed to consider in this case. *See* CR 550. By failing to request an instruction that the jury consider abusive tactics in awarding fees or to object to its omission, Eckman has waived his argument that the jury's award can be supported by evidence of abusive tactics. TEX. R. CIV. P. 279.

Regarding the facts, Eckman's complaints involve the Barkers' production of documents. But his record citations establish nothing more than that the Barkers produced the requested documents in the form they were kept, which cannot possibly constitute abusive litigation tactics during discovery. Moreover, given that Eckman sought documents covering a period of over fifteen years, it is hardly surprising that the form in which the records were kept would have changed and that some records might be

out of order. In fact, the state of these old records perfectly illustrates the reason why Texas has a four-year statute of limitations that bars Eckman from litigating his stale claims regarding decade-old transactions.

Eckman offers only one concrete example of what he says was falsification or alteration of documents by the Barkers. He contends that he was entitled to payment for a shipment of bull semen that documents show was made to a third party, and that the Barkers falsely prepared other documents showing this semen was shipped to one of Eckman's co-owners in order to avoid paying Eckman. Mrs. Barker testified, however, that there were actually two separate shipments – one to the co-owner and one to the third party – with one set of valid documentation for each shipment. *See* 4 RR 163-67; PX 51A, 51C. A third document showed that both shipments went to the third party, but Mrs. Barker explained that this was the result of a computer error common to the program being used. 4 RR 165-67; PX 51B. Given Mrs. Barker's explanation, this Court should not credit Eckman's inflammatory rhetoric about falsification of documents.

Moreover, given that these shipments occurred in **1986**, not 1996 as Eckman asserts,<sup>5</sup> his claim for payment is barred by limitations and any alleged "obstacles" he faced when investigating that stale claim cannot support the fee award. Because the jury's award of attorneys' fees was tainted by the trial court's limitations error and the court of appeals did not review that award in light of the correct "amount of money involved in the case and the results obtained," reversal is required.

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<sup>5</sup> *Compare* 3 RR 148-51 *with* Cross-Pet'rs Resp. Br. at 5.

## CONCLUSION AND PRAYER

Petitioners respectfully request that this Court grant their petition for review, reverse the court of appeals' judgment in part, and remand the case to the trial court or, at a minimum, to the court of appeals for reconsideration of attorneys' fees. Petitioners also request that the Court either deny Eckman's cross-petition for review or affirm the court of appeals' judgment in part on the issue of limitations. Finally, Petitioners request all other relief to which they may show themselves justly entitled.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

On April 5, 2005, a true and correct copy of Petitioner's Reply Brief on the Merits was served by U.S. certified mail, return receipt requested, on all counsel of record as listed below in compliance with Rule 9.5(e) of the Texas Rules of Appellate Procedure:

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