October 27, 2001

John Gregory Lambros
Reg. No. 00436-124
U.S. Penitentiary Leavenworth
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Michael E. Gans, Clerk
U.S. Court of Appeals for the Eighth Circuit
Thomas F. Eagleton Court House
Room 24.329
111 S. 10th Street
St. Louis, Missouri 63102
U.S. CERTIFIED MAIL NO. 7001-0320-0003-3596-6674

RE: APPEAL NO. 01-2037, LAMBROS vs. FAULKNER

Dear Mr. Gans:

Attached for **FILING** in the above-entitled action is one (1) original and five (5) copies of the following:

a. APPELLANT LAMBROS OPPOSES THE JUDGMENT ENTERED BY THE CLERK ON OCTOBER 17, 2001, AND REQUESTS THE CLERK TO SUBMIT THE OCTOBER 17, 2001 JUDGMENT TO A PANEL OF THREE (3) JUDGES TO ACT. RULE 27B. **Dated: October 27, 2001.**

b. PETITION FOR REHEARING (FRAP 40) WITH A SUGGESTION FOR PETITION FOR REHEARING EN BANC (FRAP 35). **Dated: October 27, 2001.**

Thanking you in advance for your continued assistance in this matter.

Sincerely,

John Gregory Lambros

CERTIFICATE OF SERVICE

I hereby state under the penalty of perjury that a true and correct copy of the above-entitled MOTIONS, both dated October 27, 2001, was served on the following this **27th DAY OF OCTOBER, 2001**, via U.S. Mail within an envelope, stamped, through the legal mailbox at U.S.P. at U.S.P. Leavenworth, to:

1. Michael E. Gans, Clerk of the Eighth Circuit Court of Appeals as addressed above via U.S. Certified Mail;
2. Attorney Donna Rae Johnson and Attorney Deborah Ellis, 700 St. Paul Bldg., Six West Fifth St., St. Paul, Minnesota 55102;
3. Internet release and posting to the BOYCOTT BRAZIL web site.

John Gregory Lambros, Pro Se

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

JOHN GREGORY LAMBROS, Appellant, vs. Charles W. Faulkner, sued as Estate/Will Business Insurance of Deceased Attorney Charles W. Faulkner; Sheila Regan Faulkner; Faulkner & Faulkner, Attorney-at-Law; John and Jane Doe, persons employed by Attorney C.W. Faulkner, Sheila Regan Faulkner and Faulkner & Faulkner in the representation of John Gregory Lambros. Appellees.	*	APPEAL NO. 01-2037 Appeal from the United States District Court for the District of Minnesota, Case No. CIV-98-1621-DSD/JMM. **AFFIDAVIT FORM.**

APPELLANT LAMBROS OPPOSES THE JUDGMENT ENTERED BY THE CLERK ON OCTOBER 17, 2001, AND REQUESTS THE CLERK TO SUBMIT THE OCTOBER 17, 2001 JUDGMENT TO A PANEL OF THREE (3) JUDGES TO ACT. RULE 27B.

The Appellant, JOHN GREGORY LAMBROS, appearing pro se, hereby submits, pursuant to the United States Court of Appeals Rules for the Eighth Circuit, **RULE 27B. Orders**, his OPPOSITION to the action taken by the Clerk of this Court, Michael E. Gans on October 17, 2001, JUDGMENT, as Clerk Gans, signed the Judgment:

> "Order Entered at the Direction of the Court:
> Clerk, U.S. Court of Appeals, Eighth Circuit."

RULE 27B. Orders (a) Orders the Clerk May Grant clearly states that:

> "The clerk has discretion to enter orders on behalf of the court in procedural matters including, but not limited to:
>
> . . . .
>
> If any party opposes the action requested in any of the above matters or seeks reconsideration of an order entered under this section, the clerk MUST submit the matter for a ruling by a judge of this court." (emphasis added)

Therefore, Appellant LAMBROS requests Clerk Gans' October 17, 2001,

2. of five

JUDGMENT to be submitted to a judge of this court and preferably to a panel of three (3) judges for a ruling on the merits of Appellant's BRIEF, MOTION FOR SANCTIONS AGAINST ATTORNEY ELLIS AND JOHNSON, and PETITION FOR REHEARING WITH A SUGGESTION FOR PETITION FOR REHEARING EN BANC.

UNSWORN DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that the foregoing is true and correct. Title 28 U.S.C.A. § 1746.

EXECUTED ON: October 27, 2001

Respectfully submitted,

John Gregory Lambros, Pro Se
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UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

JOHN GREGORY LAMBROS, Appellant, vs. Charles W. Faulkner, sued as Estate/Will Business Insurance of Deceased Attorney Charles W. Faulkner; Sheila Regan Faulkner; Faulkner & Faulkner, Attorney-at-Law; John and Jane Doe, persons employed by Attorney C.W. Faulkner, Sheila Regan Faulkner and Faulkner & Faulkner in the representation of John Gregory Lambros. Appellees.	*	**APPEAL NO. 01-2037** Appeal from the United States District Court for the District of Minnesota, Case No. CIV-98-1621-DSD/JMM. **AFFIDAVIT FORM.**

PETITION FOR REHEARING (FRAP 40)

WITH A SUGGESTION FOR PETITION FOR

REHEARING EN BANC (FRAP 35)

The Appellant, JOHN GREGORY LAMBROS, (hereinafter Movant), appearing pro se, hereby submits, pursuant to F.R.A.P. 40 and F.R.A.P. 35, the following as to his request for a PETITION FOR REHEARING with a suggestion for PETITION FOR REHEARING EN BANC.

Appellant LAMBROS understands this petition is made to direct this Court's attention to one or more of the following situations:

1. A material fact or law overlooked in this Courts decision.

2. This Court's opinion is in conflict with a decision of the United States Supreme Court, this Court, or another court of appeals, and the CONFLICT IS NOT ADDRESSED IN THIS COURTS October 17, 2001, JUDGMENT, which stated:

> "This court has reviewed the original file of the United States District Court. It is ordered by the court that the judgment of the district court is summarily affirmed and the motion for sanctions is denied. See, Eighth Circuit Rule 47A(a)."

4. of 5

Movant believes that had this Court given consideration to the following material matters of law and fact which where overlooked in deciding this case, it would probably have brought about a different result. See, NATIONAL LABOR RELATIONS BOARD vs. BROWN & ROOT, INC., 206 F.2d 73 (8th Cir. 1953).

1. SUMMARY OF THE ISSUES

ISSUE I: **DID THE DISTRICT COURT ERR IN DISMISSING THE COMPLAINT AGAINST GOVERNMENT OFFICIALS ON GROUNDS OF OFFICIAL IMMUNITY WITHOUT DETERMINATION THAT THE COMPLAINED-OF ACTS WERE OFFICIAL ACTS?**

In Movant's judgment, the panel overlooked United States Supreme Court decisions of material law within Movant's APPEAL BRIEF. The panel did not offer an opinion within the judgment, thus conflict with the United States Supreme Court. The panel only accepted the district court's original file and summarily affirmed same. Movant relies on TOWER vs. GLOVER, 81 L.Ed.2d 758 (1984); SCHEUER vs. RHODES, 40 L.Ed.2d 90 (1974).

ISSUE II: **WHETHER THE DISTRICT COURT ERRED IN RULING THAT APPELLANT LAMBROS WAS NOT PREJUDICED BY APPELLEE'S DEFICIENT PERFORMANCE THAT LEAD TO AN INCREASED PRISON SENTENCE FOR APPELLANT LAMBROS?**

In Movant's judgment, the panel overlooked a United States Supreme Court decision of material law within Movant's APPEAL BRIEF. The panel did not offer an opion within the judgment, thus conflict with the United States Supreme Court. The panel only accepted the district court's original file and summarily affirmed same. Movant relies on GLOVER vs. U.S., 148 L.Ed.2d 604 (2001).

ISSUE III: **WHETHER THE DISTRICT COURT ERRED WHEN IT GAVE RETROACTIVE EFFECT TO A MINNESOTA SUPREME COURT JUDICIAL DECISION, WHERE THERE WAS NOTHING IN THE DECISION INDICATING THAT IT WAS TO HAVE RETROACTIVE EFFECT, THAT GAVE IMMUNITY TO STATE PUBLIC DEFENDERS, NOT FEDERAL PUBLIC DEFENDERS, WHEN THE UNITED STATES SUPREME COURT HAS DENIED FEDERAL COMMON LAW IMMUNITY TO COURT-APPOINTED ATTORNEYS SUED FOR MALPRACTICE BY HIS OWN CLIENT?**

In Movant's judgment, the panel overlooked a United States Supreme Court decision of material law within Movant's APPEAL BRIEF. The panel did not offer an opinion within the judgment, thus conflict with the United States Supreme Court. The panel only accepted the district court's original file and summarily affirmed same. Movant relies on CHEVRON OIL CO. vs. HUSON, 30 L.Ed.2d 296 (1971).

ISSUE IV: **WHETHER THE DISTRICT COURT ERRED IN RULING THAT THE ISSUE OF CAUSATION, UNDER MINNESOTA STATE LAW, IS A MATTER OF FACT TO BE DECIDED BY A JUDGE?**

In Movant's judgment, the panel overlooked decisions by the Minnesota Appeals Court, as to State of Minnesota material law within Movant's APPEAL BRIEF. The panel did not offer an opinion within the judgment, thus conflict with the Minnesota Appeals Court as to Minnesota law. The panel only accepted the district court's file and summarily affirmed same. Movant relies on ST. PAUL, FIRE & MARINE INSURANCE COMPANY vs. HONEYWELL, 2000 WL 685007 (Minn. App. 2000).

ISSUE V: **WHETHER THE DISTRICT COURT ERRED IN GRANTING SUMMARY JUDGMENT WITH RESPECT TO THE RACKETEERING (RICO) CLAIMS UNDER TITLE 18 U.S.C. § 1962(c) and (d) WHEN THERE ARE GENUINE ISSUES OF MATERIAL FACT REGARDING THE COMMISSION OF PREDICATE ACTS?**

In Movant's judgment, the panel overlooked a United States Supreme Court decision of material law within Movant's APPEAL BRIEF. The panel did not offer an opinion within the judgment, thus conflict with the United States Supreme Court. The panel only accepted the district court's original file and summarily affirmed same. Movant relies on SEDIMA, S.P.R.L. vs. IMREX CO., 87 L.Ed.2d 346 (1985).

ISSUE VI: **WHETHER THE EIGHTH CIRCUIT COURT OF APPEALS ALLOWS MOTIONS BY APPELLEES FOR SUMMARY DISPOSITION, AS A MATTER OF PRACTICE, TO REPLACE BRIEFS OF APPELLEES?**

In Movant's judgment, the panel overlooked its own clear decision of material law within Movant's motion entitled, "APPELLANT LAMBROS REQUESTS THIS COURT TO SANCTION ATTORNEY DEBORAH KAY ELLIS AND ATTORNEY DONNA RAE JOHNSON FOR THE

JULY 18, 2001, FILING PURSUANT TO RULE 47A, EIGHTH CIRCUIT RULES OF APPELLATE PROCEDURE," dated July 26, 2001. The panel did not offer an opinion within the judgment, thus conflict with its' own established ruling in FAYSOUND LTD. vs. WALTER FULLER AIRCRAFT SALES, INC., 952 F.2d 980, 981, Head Note 1 (8th Cir. 1991) The panel only accepted the district court's original file and DOES NOT STATE IN ITS' JUDGMENT IF IT EVEN READ APPELLANT LAMBROS' BRIEF, thus half-briefing (which is not allowed in the Eighth Circuit), as full-briefing is required, as a matter of practice, and summarily affirmed the judgment of the district court. Movant relies on FAYSOUND, at 981, Head Note 1.

EIGHTH CIRCUIT'S UNPUBLISHED JUDGMENT IN THIS ACTION:

The above conflicts are not addressed in the Court's October 17, 2001 JUDGMENT.

2. ARGUMENTS

ISSUE I: **DID THE DISTRICT COURT ERR IN DISMISSING THE COMPLAINT AGAINST GOVERNMENTAL OFFICIALS ON GROUNDS OF OFFICIAL IMMUNITY WITHOUT DETERMINATION THAT THE COMPLAINED-OF ACTS WERE OFFICIAL ACTS?**

The panel's decision in denying the above claim is in conflict with the United States Supreme Court decision in TOWER vs. GLOVER, 81 L.Ed.2d 758 (1984), which held that there is no immunity when a public defender deliberately conspires with a prosecutor to intentionally deprive defendants of their constitutional rights, and therefore, public defenders are subject to suit under 42 U.S.C. § 1983. The defendants-appellees in this action were appointed private attorneys that were paid a hourly rate to function as FEDERAL PUBLIC DEFENDERS. The district court states that they are entitled to official immunity for their official acts, OZIUBAK vs. MOTT, 503 N.W.2d 771 (Minn. 1993). The court noted that a Federal Public Defender is a Federal official, with all the protections pertaining thereto, including official immunity, the District Court stopped. No investigation or analysis ensued to determine

if defendant-appellees' complained-of acts were within the outer scope of their official duties, or, totally different, were acts in knowing violation of plaintiff-appellant's constitutional rights, thus stripping defendant-appellees of their office, leaving them to act as individuals, who, of course, have no official anything, including immunity.

The panel in this action made no findings as to the merits of the above agrument and this panel should grant a REHEARING with a suggestion for REHEARING EN BANC.

ISSUE II: **WHETHER THE DISTRICT COURT ERRED IN RULING THAT APPELLANT LAMBROS WAS NOT PREJUDICED BY APPELLEES' DEFICIENT PERFORMANCE THAT LEAD TO AN INCREASED PRISON SENTENCE FOR APPELLANT LAMBROS.**

The panel's decision in denying the above claim is in conflict with the United States Supreme Courts decision in GLOVER vs. U.S., 148 L.Ed.2d 604 (2001) (an attorney's deficient performance at sentencing that results in a sentence longer than the defendant deserved due to an error in the court's sentencing calculations is "PREJUDICIAL" without regard to the length of the INCREASED SENTENCE.)

United States Judge Doty stated that Appellant LAMBROS was NOT PREJUDICED IN ANY WAY BY APPELLEES. See, ORDER, Filed February 14, 2001, pages 3 & 4 and exact quote contained on page fourteen (14) of Appellant's BRIEF.

On September 8, 1995, this Court ORDERED Appellant's sentence vacated and remanded for resentencing, stating, "Defendant [Lambros] who was convicted of a conspiracy to distribute cocaine WAS NOT subject to statute's mandatory life sentence, where statute DID NOT take effect until well after conspiracy and date charged in indictment." U.S. vs. LAMBROS, 65 F.3d 698, Head Note I (8th Cir. 1995).

Because the above conflict was not addressed by the panel, this Court should grant REHEARING with a suggestion for REHEARING EN BANC.

ISSUE III: **WHETHER THE DISTRICT COURT ERRED WHEN IT GAVE RETROACTIVE EFFECT TO A MINNESOTA SUPREME COURT JUDICIAL DECISION, WHERE THERE WAS NOTHING IN THE DECISION INDICATING THAT IT WAS TO**

HAVE RETROACTIVE EFFECT, THAT GAVE IMMUNITY TO STATE PUBLIC DEFENDERS, NOT FEDERAL PUBLIC DEFENDERS, WHEN THE UNITED STATES SUPREME COURT HAS DENIED FEDERAL COMMON LAW IMMUNITY TO COURT-APPOINTED ATTORNEY'S SUED FOR MALPRACTICE BY HIS OWN CLIENT.

The panel's decision in denying the above claim is in conflict with the United States Supreme Courts decision that established the STANDARD OF RETROACTIVITY, CHEVRON OIL CO. vs. HUSON, 30 L.Ed.2d 296 (1971), that has consistently been used by this court to determine whether a decision should be given NONRETROACTIVE EFFECT, MURPHY vs. FORD MOTOR CREDIT CO., 629 F.2d 556, 560 (8th Cir. 1980).

On February 14, 2001, United States District Court Judge Doty gave Appellees IMMUNITY from state tort claims, as per the **AUGUST 6, 1993** decision in DZIUBAK vs. MOTT, 503 N.W.2d 771, by the Minnesota Supreme Court.

Appellant's jury trial ended in **JANUARY 1993**, seven (7) months before the DZIUBAK court held that full-time state public defenders are immune from suit for malpractice.

This Court in WHITE vs. BLOOM, 621 F.2d 276 (8th Cir. 1980) followed the U.S. Supreme Court decision in FERRI (involving a state malpractice action) and applied the reasoning in FERRI in DENYING IMMUNITY to a court-appointed attorney. The Fifth Circuit stated in COX vs. SCHWEIKER, 684 F.2d 310, 311, Head Note 9 (5th Cir. 1982), "In a case involving a judge-made COMMON-LAW PRINCIPLE, NO RIGHT VESTS OR EVEN ARISE UNTIL THE JUDGE HAS DECLARED WHAT THE LAW IS whereas in case of a statute the entitlement vests once a person fulfills statutory requirements and it vests despite the fact that an adjudicator has misapplied the statute, ..."

Judge Doty stated within his March 30, 2001, ORDER that the DZIUBAK decision was a new interpretation of the law that the District Court is extending its grant of immunity to court-appointed defense counsel in federal criminal cases. Therefore, this is an issue of first impression for the EIGHTH CIRCUIT, as it was for the District Court.

Because the above conflict was not addressed by the panel, this Court should grant REHEARING with a suggestion for REHEARING EN BANC.

ISSUE IV: **WHETHER THE DISTRICT COURT ERRED IN RULING THAT THE ISSUE OF CAUSATION, UNDER MINNESOTA STATE LAW, IS A MATTER OF FACT TO BE DECIDED BY A JUDGE?**

The panel's decision in denying the above claim is in conflict with the current controlling decision by the Minnesota Appeals Court as to CAUSATION. Under MINNESOTA CASE LAW, the issue of CAUSATION is a matter of fact to be decided by a jury, NOT A JUDGE. See, ST. PAUL, FIRE & MARINE INSURANCE COMPANY vs. HONEYWELL, 2000 WL 685007 (Minn. App. 2000), (holding CAUSATION is a question of fact for the jury's finding and therefore, in concluding appellant failed to establish CAUSATION, the district court "impermissibly weighed evidence and judged witness credibility.) (Citation omitted).

The procedure of presenting the evidence and facts that should of been offered at the PLEA BARGAINING NEGOTIATIONS and at TRIAL of this underlying action is known as a "SUIT-WITHIN-A-SUIT" or "TRIAL-WITHIN-A-TRIAL." This is the accepted and traditional means of resolving the issues involved in the underlying proceeding in LEGAL MALPRACTICE ACTIONS. See, TOGSTAD vs. VESLEY, OTTO, MILLER & KEEFE, 291 N.W.2d 686 (Minn. 1980); CHRISTY vs. SALITERMAN, 288 Minn. 144, 179 NW2d 288 (1970).

The objective of the trial-within-a-trial concept is to establish CAUSATION, i.e. that the attorney's negligence caused injury, which means that the plaintiff does not have the burden of proving two cases in one lawsuit. See, CHRISTY vs. SALITERMAN, 288 Minn. 144, 179 N.W.2d 288 (1970).

CAUSATION: In other words, this Appellant must show, AS HE HAS AND THIS COURT HAS IN U.S. vs. LAMBROS, 65 F.3d 698, Head Note 1 (8th Cir. 1995)(vacated mandatory life sentence), that more likely than not, the attorney's [Appellees'] conduct was a substantial factor in causing the unfavorable result. See, 2175 LEMOINE AVENUE CORP. vs. FINCO, INC., 272 N.J.Super. 478, 640 A.2d 346 (1994); KEISTER vs. TALBOTT, 182 W.Va. 745, 391 S.E.2d 895 (1990); SHERRY vs. DIEKOKS, 29 Wash.App. 433, 628 P.2d 1336 (1981).

On October 31, 2000, Magistrate Judge Mason stated within his REPORT

AND RECOMMENDATION, Page 14, "[B]ased on this evidence, it appears that there is no genuine issue of material fact as to whether C.W. Faulkner's actions were the cause of Plaintiff's injury, and that Plaintiff CANNOT ESTABLISH THE CAUSATION ELEMENT of his malpractice claims." (emphasis added)

Because the above conflict was not addressed by the panel, this Court should grant REHEARING with a suggestion for REHEARING EN BANC.

ISSUE V: **WHETHER THE DISTRICT COURT ERRED IN GRANTING SUMMARY JUDGMENT WITH RESPECT TO THE RACKETEERING (RICO) CLAIMS UNDER TITLE 18 U.S.C. § 1962(c) and (d) WHEN THERE ARE GENUINE ISSUES OF MATERIAL FACT REGARDING THE COMMISSION OF PREDICATE ACTS?**

The panel's decision in denying the above claim is in conflict with the United States Supreme Court decision in SEDIMA, S.P.R.L. vs. IMREX CO., 473 U.S. 479, 87 L.Ed.2d 346 (1985) (it was held that the plaintiffs' complaint was not deficient for failure to allege either an injury separate from the financial loss stemming from the alleged predicate acts of mail and wire fraud, or prior convictions of the defendants), Marshall, J., joined by Brennan, Blackmun, and Powell, JJ., dissented on the ground that 18 USCS § 1964(c) contemplates recovery for injury resulting from the confluence of events described in 18 USCS § 1962 and not merely from the commission of a predicate act. "RICO IS TO BE READ BROADLY." See, SEDIMA, 87 L.Ed.2d at 359.

If a genuine issue of MATERIAL FACT exists as to ANY MATERIAL RICO element, SUMMARY JUDGMENT IS INAPPROPRIATE. See, FEDERAL INS. CO. vs. AYERS, 772 F.Supp. 1503 (E.D.Pa. 1991)(denying SUMMARY JUDGMENT "because there are genuine issues of material fact regarding the commission of the alleged predicate acts").

The BUT-FOR CAUSATION requirement is eliminated in RICO CLAIMS and replaced by the more restrictive PROXIMATE CAUSATION REQUIREMENT between the injury and the harm alleged. See, BOWMAN vs. WESTERN AUTO SUPPLY CO., 985 F.2d 383, 388 (8th Cir. 1993).

Appellant LAMBROS alleged within his complaint that he was harmed by the following RICO predicate acts: Title 18 U.S.C. (a) §1341 (relating to mail fraud); (b) §1343 (relating to wire fraud); (c) §1503 (relating to obstruction of justice); (d) §1512 (relating to tampering with witness, victim, or an informant); and (e) §201 (relating to bribery). This court stated, "[W[e hold that standing to bring a civil suit pursuant to 18 U.S.C. § 1964(c) and based on an underlying conspiracy violation of 18 U.S.C. § 1962(d) is limited to those individuals who have been harmed by a § 1961(1) RICO predicate act committed in furtherance of a conspiracy to violate RICO." See, BOWMAN, 985 F.2d at 388.

For over one (1) year Appellees used the U.S. Postal Service and Telephone to commit the above RICO predicate acts, that is Appellees knowingly and/or intentional participation in scheme, in furtherance of all court proceedings in the criminal trial of Appellant, including PLEA BARGAIN NEGOTIATIONS, MOTIONS, STRATEGY FOR TRIAL, and SENTENCING.

In U.S. vs. EISEN, 974 F.2d 246, 247 (2nd Cir. 1992), Head Note 1, the Court stated:

> ". . . MISREPRESENTATION IN PLEADING AND PRETRIAL SUBMISSIONS were made in hope of fraudulently inducing settlement before trial, and alleged misconduct was intended to defraud the civil adversaries. Title 18 U.S.C.A. § 1341." (emphasis added)

Also see, EISEN, 974 F.2d at 247, Head Note 3:

> "Where fraudulent scheme falls within scope of mail fraud statute and other elements of RICO are established, use of mail fraud offense as RICO predicate act CANNOT be suspended simply because perjury is part of means for perpetrating the fraud. 18 U.S.C.A. §§ 1341, 1961(1)." (emphasis added)

Appellees used numerous legal instruments and discussed the effects of same over the telephone and through the mail to defraud Appellant LAMBROS as to his legal rights and defenses he had under Federal Law and Brazilian Law. Therefore, Appellant Lambros believes his case is similar to BROWN vs. LaSALLE NORTHWEST NATIONAL BANK, 820 F.Supp. 1078, 1079, Head Note 5 (N.D. Ill. 1993) (Borrower sufficiently

alleged pattern of **RICO** activity to support **CIVIL RICO CLAIM** against bank which lent her money for automobile purchase by claiming that bank used numerous insurance agents and numerous automobile dealers to defraud numerous customers of their RIGHT TO NOTICE OF DEFENSES THEY HAD UNDER FEDERAL LAW AGAINST BANK'S COLLECTION OF LOANS ON AUTOMOBILE TRANSACTIONS THAT WENT BAD. Title 18 USCA § 1961 et seq.) (In its opening brief, defendant argued that an omission can never support a **RICO** complaint . . . Where there is a duty to disclose, an elaborate coverup, a violation of fiduciary duty, or the omission is accompanied by affirmative **MISREPRESENTATION**, an omission can support a CLAIM OF MAIL OR WIRE FRAUD. BROWN, 820 F.Supp. at 1081. See also, Foot Note 3, at 1081-1083, "[S]imilar limitations are placed on claims based on MISREPRESENTATION OF LAW. See, MARCIAL vs. CORONET INSURANCE CO., 122 F.R.D. 529, 533-34 (N.D.Ill. 1998), aff'd, 880 F.2d 954 (7th Cir. 1989). To the extent the alleged misrepresentations were MISREPRESENTATIONS OF LAW, not fact, a fraud claim could still be stated.")

Appellees false and fraudulent MISREPRESENTATION OF THE LAW, BOTH U.S. AND BRAZILIAN during written and oral plea bargain negotiations was neither isolated, nor sporadic, and constitute a pattern of racketeering activity that carried thru to sentencing.

Because the above conflict was not addressed by the panel, this Court should grant REHEARING with a suggestion for REHEARING EN BANC.

ISSUE VI: **WHETHER THE EIGHTH CIRCUIT COURT OF APPEALS ALLOWS MOTIONS BY APPELLEES FOR SUMMARY DISPOSITION, AS A MATTER OF PRACTICE, TO REPLACE BRIEFS OF APPELLEES?**

The panel's decision in not ORDERING Appellees attorney's, JOHNSON and ELLIS, to file a BRIEF in this action so FULL BRIEFING would occur, is in conflict with this Courts' own ruling. See, FAYSOUND LTD. vs. WALTER FULLER AIRCRAFT SALES, INC., 952 F.2d 980, 981, Head Note 1 (8th Cir. 1991) ("Motions by appellees for summary disposition **WILL NOT** be allowed, as a matter of practice, to REPLACE BRIEFS OF APPELLEES.) (emphasis added)

The following facts occurred in this action:

a. This court docketed this appeal on May 03, 2001.

b. This Appellant's "BRIEF OF APPELLANT" with exhibits was docketed on May 29, 2001.

c. On July 18, Appellees' FAULKNER, et al. filed a motion entitled "APPELLEE'S WAIVER OF BRIEF" which stated:

> "Respondents, through counsel, Deborah Ellis, hereby expressly waive their right to file a responsive brief to Appellant's appeal pursuant to RULE 47A, Eighth Circuit Rules of Appellate Procedure. Respondents believe that the district court's order should be summarily affirmed.
>
> Should this Court desire a response or legal argument on any of Appellant's issues, Respondent shall promptly comply." (emphasis added)

d. On July 27, 2001, this Appellant filed the a motion entitled, "APPELLANT LAMBROS REQUESTS THIS COURT TO SANCTION ATTORNEY DEBORAH KAY ELLIS AND ATTORNEY DONNA RAE JOHNSON FOR THE JULY 18, 2001, FILING PURSUANT TO RULE 47A, EIGHTH CIRCUIT RULES OF APPELLATE PROCEDURE."

e. On October 17, 2001, MICHAEL E. GANS, Clerk, U.S. Court of Appeals, Eighth Circuit, entered JUDGMENT stating that " . . . It is ordered by the court that the judgment of the district court is summarily affirmed and the motion for SANCTIONS IS DENIED." It appears Clerk Michael E. Gans entered his ruling under RULE 27B ORDER. Appellant has reviewed RULE 27B(a) ORDERS THE CLERK MAY GRANT, Eighth Circuit Rules of Appellate Procedure, and finds that Clerk Gans DOES NOT HAVE DISCRETION TO ENTER ORDERS ON BEHALF OF THE COURT IN THIS PROCEDURAL MATTER.

Appellant LAMBROS DID NOT agree to have Clerk Michael E. Gans enter an order in this action and Appellant LAMBROS also OPPOSES THE ACTION TAKEN BY CLERK GANS in entering the October 17, 2001, JUDGMENT.

Appellant LAMBROS SEEKS RECONSIDERATION of the October 17, 2001, JUDGMENT entered under RULE 27B. ORDER. Therefore, Clerk Gans must submit this matter for a ruling by a judge of the court. Appellant LAMBROS believes he is entitled to a panel of three (3) judges to act in this matter.

14.

Because the above conflict was not addressed by the panel, this Court should grant REHEARING with a suggestion for REHEARING EN BANC.

3. CONCLUSION

For the above stated reasons the Appellant requests a REHEARING with a suggestion for REHEARING EN BANC on the issues presented.

4. UNSWORN DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that the foregoing is true and correct. Title 28 U.S.C.A. § 1746.

EXECUTED ON: OCTOBER 27, 2001

Respectfully submitted,

John Gregory Lambros, Pro Se
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