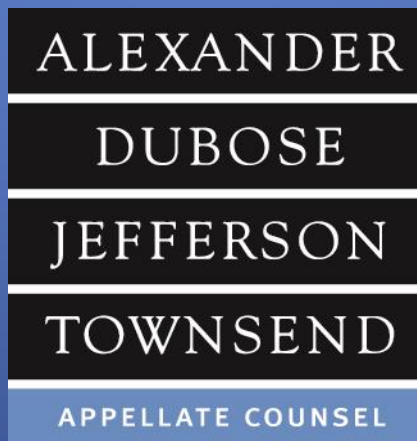


Finding Your Way Through the Morass:  
*Making Findings of Fact and Conclusions of  
Law Work for You*

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The 8 most important points to remember about findings of fact and conclusions of law:

**No. 1:** If you represent the losing party and plan to appeal (or think you *might*), **always** request FF/CL

Why?

## Findings and conclusions:

- **inform** the court of appeals the factual and legal **bases** supporting the judgment
- **narrow** the issues for the appeal

## Without findings and conclusions:

- the trial court's judgment **implies all necessary** factual findings
- if appellate court concludes the deemed findings support the judgment, it **must affirm** the judgment **on any legal theory** supported by the evidence

**See Paper §II at 1.**

## A request for FF/CL:

- **Extends** the appellate time table, unless . . .
  - The order is an appealable **interlocutory order**
  - The request is **not appropriate**

*See Paper §IV.E at 3.*

No. 2: Know when it is appropriate to request FF/CL, and when it is not.

*See Paper §IV at 2-3.*

**No. 3:** Understand how the existence or omission of FF affects the **presumptions** on appeal.

*See Paper §VII at 4-5.*



## No FF/CL and No Reporter's Record

- Court must **presume** all findings necessary to support the judgment were made.
- Court will indulge every presumption **in favor** of the judgment .

## No FF/CL, but Reporter's Record *is* Filed

- Implied FF/CL **not conclusive**.
- Appellant **may challenge** implied findings for legal and factual sufficiency.

No. 4: Know the timetables for  
requesting FF/CL

*See Paper §V at 3.*

**No. 5:** Make sure the trial or hearing is on the record, and that the **Reporter's Record** is requested and filed.

**No. 6:** Ensure that the FF address **all elements** of the claims and affirmative defenses upon which the case was tried.

No. 7: Request **additional FF** if the court's findings omit an entire claim or defense or a material element of one.

Why?

If the FF do not include *any findings* on a ground of recovery or defense, the party relying on that ground of recovery or defense *must timely request* additional FF or the ground is *waived*.

TEX. R. CIV. P. 299

When the FF include one or more elements of a claim or defense, but **omits** others, the omitted elements will be **presumed** (if supported by the evidence) unless a party timely files a **request for additional** FF asking the court to make **specific findings** regarding the omitted elements.

**TEX. R. CIV. P. 299**



When the FF **omit** elements, the omitted elements will be **presumed** (if supported by the evidence) unless a party timely **requests additional FF** asking the court to make findings **regarding** the omitted elements.

**No. 8:** When drafting FF, focus on the **material facts** that support each element of your claim or defense, but **do not overreach** with immaterial findings or findings on **evidentiary** issues.

# How to Draft FF/CL

- Review the **judgment** and the **live pleadings** at trial.
- Determine which **causes of action**, counter-defenses, etc., were **proven** by the evidence.
- Write out the **elements** of each and other controlling issues.
- Draft findings that **address** each of these elements and other controlling issues.

# When requesting additional/amended FF/CL

- Be specific about what the trial court **omitted**.
- Request **specific** additional findings.
  - Must be **consistent** with the judgment.
  - Only **material** findings.
  - No **evidentiary** issues.

# Tom Petty 1950 - 2017



# Application

- Tom Petty agrees with The Heartbreakers to record an album together.



- Petty then decides to record the album with Bob Dylan and the Traveling Wilburys.



# Application

- The Heartbreakers sue Petty for **breach of contract** and **fraudulent inducement**.
- Petty alleges that The Heartbreakers **repudiated** the contract, leading him to sulk away and find new bandmates.

# Application

- The suit is tried to the court, which rules in favor of The Heartbreakers for \$40 million.
- Petty's counsel timely requests FF/CL.
- The court asks counsel for The Heartbreakers to prepare FF/CL.



# Application

- What findings of fact should **The Heartbreakers'** counsel submit for the court's signature?
- How **specific** should they be?

# Application

- Include all facts **material** to the elements of the **contract claim**:
  - The parties had a meeting of the minds.
  - Terms of the agreement.
  - The particular portions of the agreement Petty failed to comply with.
  - How Petty's breach caused The Heartbreakers' damages.
  - The specific damages they incurred.

# Application

- Include all facts **material** to the elements of the **fraudulent-inducement claim**:
  - Petty made material representation.
  - His representation was false.
  - When he made it, Petty knew the representation was false; alternatively, he made it recklessly without knowledge of the truth as a positive assertion.
  - Petty intended The Heartbreakers to act on his representation when he made it.
  - The Heartbreakers acted in reliance on it and thereby suffered injury.

# Application

- The Heartbreakers' attorney submits FF/CL addressing each element of both claims.
- However, the FF/CL that the trial court signs and files:
  - include all FF related to the **contract claim**, including damages, but **omit** any FF material to how Petty's breach of the agreement **caused** The Heartbreakers \$40 million in damages
  - **omit** all FF regarding the **fraudulent-inducement claim**

# Application

- Should **The Heartbreakers** file a request for additional FF?
- If so, what proposed FF should they submit?

# Application

- They should **point out the omission** of findings relative to fraudulent-inducement claim and **request** additional FF related to that claim, as their attorney believes the evidence at trial supports all elements of that claim.
- Otherwise, the Heartbreakers will waive that claim, such that the judgment can be affirmed only on the contract claim, not both claims.

# Application

- Should **Petty** file a request for additional FF?
- If so, what proposed additional FF should he submit?

# Application

- He should **point out the omission** of any findings on his **repudiation affirmative defense** and **request** specific FF material to all of its elements consistent with the judgment (i.e., FF supporting the rejection of the affirmative defense).
- Otherwise, Petty **waives** his ability to seek reversal of the judgment based on his affirmative defense, and **waives** his challenge to the omission in the original FF/CL.



# Application

- Petty also should point out the court's omission of FF on the **causation** element and request specific FF on that element.
- Otherwise, all FF material to causation will be implied by the appellate court.
- Petty also will not be able to attack the court's failure to make FF on causation in the original FF/CL.

# Application

- In his request for these additional FF, Petty should state language specifically preserving his right to appeal those findings and all other FF/CL made by the trial court in support of the judgment.

*See Paper §VII.D at 6.*

# Additional tips from the lyrics of Tom Petty

- Be patient with the trial court after filing your request for FF/CL, because *“waiting is the hardest part.”*
- If the trial court does not timely file FF/CL, rather than lamenting that *“It’s so painful when something that’s so close is still so far out of reach,”* file a Notice of Past-Due FF/CL instead.

# Additional tips from the lyrics of Tom Petty

- What not to say in your Notice of Past-due FF:
  - *“Stop draggin’ my heart around!”*
  - *“Breakdown! Go ahead and give it to me!”*

# Additional tips from the lyrics of Tom Petty

- What not to say to the court in any manner when it files FF/CL against your client:
- *“Don’t do me like that!”*

# Tom Petty 1950 - 2017



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