

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**NETSPHERE, INC.,
MANILA INDUSTRY, INC.,
AND MUNISH KRISHAN**

PLAINTIFFS,

v.

**JEFFREY BARON AND
ONDOVA LIMITED COMPANY,**

DEFENDANTS

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CIVIL ACTION NO. 3:09-cv-0988-L

**JEFFREY BARON’S SUPPLEMENT TO OBJECTION
TO THE RECEIVER’S REQUEST, AS SUPPLEMENTED,
FOR APPROVAL OF FINAL ACCOUNTING, APPLICATION
FOR PAYMENT AND REQUEST FOR ORDER OF FINAL DISCHARGE**

[Relates to ECF Docs 1397, 1398 and supplements ECF Doc 1400]

TO THE HONORABLE SAM A. LINDSAY,
UNITED STATES DISTRICT JUDGE:

NOW COMES, Jeffrey Baron (“Baron”), and hereby files this SUPPLEMENT TO OBJECTION TO THE RECEIVER’S REQUEST FOR APPROVAL OF FINAL ACCOUNTING, APPLICATION FOR PAYMENT, AND REQUEST FOR ORDER OF FINAL DISCHARGE FILED BY PETER VOGEL, and for cause, would respectfully show:

I. BACKGROUND

1. On April 19, 2013, the Fifth Circuit issued its Mandate concerning its Opinion in *Netsphere, Inc. v. Baron*. 703 F.3d 296 (5th Cir. 2012). The Fifth Circuit stated in the *Netsphere* Opinion the following:

In light of our ruling that the receivership was improper, equity may well *require the fees to be discounted meaningfully* from what would have been reasonable under a proper receivership. Fees already paid were calculated on the basis that

the receivership was proper. ***Therefore, the amount of all fees and expenses must be reconsidered by the district court.*** Any other payments made from the receivership fund may also be reconsidered as appropriate.

Id. at 313 (emphasis added).

2. This Court entered a Scheduling Order on April 5, 2013, that required all fee applications to be filed on or before April 17, 2013. ECF Doc. 1220. On April 17, 2013, the Receiver filed a fee application claiming fees for the Receiver, and twenty-three professionals engaged by the Receiver, including his main counsel, Dykema Gossett, PLLC, and his former main counsel, Gardere Wynne Sewell, LLP.¹ ECF Doc 1233. Additionally, Daniel J. Sherman, Ondova's bankruptcy trustee, filed his fee application (ECF Docs 1229 & 1230); Gardere Wynne Sewell, LLP, filed a separate fee application (ECF Doc 1232); and Dykema Gossett, PLLC filed a separate fee application (ECF Doc 1234).

3. On May 29, 2013, this Court (Furgeson, J) entered *Order on Receivership Professional Fees* ("Receivership Fee Order"). ECF Doc 1287. In purporting to fulfill the Fifth Circuit's mandate, Judge Furgeson re-evaluated the fees of the Receiver, two of the receivership professionals, Dykema Gossett, PLLC and Gardere Wynne Sewell, LLP, and one non-receivership professional, the Ondova Trustee. Thus Judge Furgeson did not comply with the mandate of the Fifth Circuit to re-evaluate and meaningfully discount all professional fees and expenses.

4. On January 6, 2014 this Court entered an order directing the Receiver to wind down the receivership and directing that the Receiver file a "final accounting for the court's approval" by March 7, 2014. ECF Doc 1351.

¹ This Fee Application did not request approval of all professional fees and expenses of the Receiver - there were others.

5. On June 28, 2013, Baron filed a Notice of Appeal to the Fifth Circuit as to the Receivership Fee Order. ECF Doc 1297. The appeal was docketed before the Fifth Circuit as Case No. 13-10696.

6. On April 14, 2014, Receiver filed Receiver's Accounting Report of April 14, 2014 [Docket 1396], containing over 1,500 pages of financial data and on the same day filed Request for Order of Final Discharge [docket 1397].

7. On July 18, 2014, Baron filed his principal appellate brief, a true and correct copy of which is attached hereto as Exhibit "A". Novo Point, LLC and Quantec, LLC filed their principal appellate brief, a true and correct copy of which is attached hereto as Exhibit "B".

II. ARGUMENTS AND AUTHORITIES

8. In preparing Appellant Baron's Brief (Exhibit "A" hereto), counsel for the first time, had the opportunity to address in detail the procedures followed by Judge Furgeson in purporting to fulfill the Fifth Circuit's mandate in *Netsphere*.

9. It became clear that the Receivership Fee Order did not address all of the fees and expenses as mandated by the Fifth Circuit. The total fees and expenses identified in the Accounting Report exceed \$10 million and encompass over 40 payees, including more than twenty 25 professionals. However, the Receivership Fee Order only addressed the professional fees and expenses of the Receiver, two Receivership professionals, Dykema and Gardere, and one non-Receivership professional, the Ondova Trustee.

10. In reviewing the Accounting Report again, counsel discovered that the report does not comport with the court's requirement to provide an accounting of the receiver's activity. For example, the report:

- a. Does not provide a summary of revenues expenses of the Receiver;

- b. Does not provide a summary of revenue or expenses by category;
- c. Does not provide a summary of revenue or expenses by payee; and
- d. Does not segregate revenues or expenses by receivership entity.

11. In essence, the 1,500 pages provided by the receiver in the Receivership Report is little more than a document dump of the various bank statements of accounts administered by the receiver and a purported list for each account of the individual expenditures and revenues. However, the list and the bank statements have numerous inconsistencies and unidentified expenses and revenues.

12. In *Netsphere*, the Fifth Circuit determined that receivership fees and expenses would be appropriate given equitable considerations. However, the court did not determine that such fees could be paid from assets or parties (Novo Point and Quantec) over which the district court lacked jurisdiction. Baron's Appellate Brief points to controlling Supreme Court and Fifth Circuit precedent that calls into question whether the district court had the authority to pay fees and expenses of the receivership out of assets belonging to Novo Point and Quantec and assets of Baron that were not subject to the jurisdiction of the district court in the first instance. Rather than regurgitate such arguments here, Baron would incorporate herein as though fully set forth the arguments and authorities advanced by Baron in his attached Appellant's Brief.

13. In order for the Court implement the Fifth Circuit's Mandate, it is necessary for the Receiver to file a proper accounting, comporting with generally accepted accounting and controlling legal principles announced by the Supreme Court and Fifth Circuit, that provides the Court with the necessary information to determine each recipient and amount of fees and expenses that the Receiver paid out of each of Novo Point, LLC, Quantec, LLC, Baron, individually, or any other receivership entity.

After the Receiver files its accounting, the Court should conduct a hearing, after providing the parties with opportunity for discovery, to determine those receivership fees and expenses in compliance with the Mandate, and apply the legal principles described in Baron's Appellant's Brief attached hereto as Exhibits "A".

III. REQUEST FOR RELIEF

WHEREFORE, Jeffrey Baron prays that the Court review the appellate briefs attached hereto, and conduct a hearing, after providing the parties with an opportunity for discovery, to determine the receivership fees and expenses in compliance with the mandate of the Fifth Circuit in *Netsphere*, Baron requests such other and further relief as is just.

Respectfully submitted this 23rd day of July 2014.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served via ECF on all parties receiving ECF Notices in the above-captioned case on July we 23, 2014.

/s/ Leonard H. Simon