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April 1, 2011

VIA EMAIL (and PACER)

Hon. Judge W. Royal Furgeson, Jr.
United States District Judge
1100 Commerce Street, Room 1359
Dallas, Texas 75242-1001

Re: 3-09CV0988-F *In Re Jeff Baron Receivership*

Your Honor,

We swore an oath to protect and defend the constitution. Far too many young men have shed their blood defending our constitutional rights, to allow the constitution to be subverted for expedience.

The Seventh Amendment guarantees every American, including Jeff Baron, the right to trial by jury. *E.g.*, *Ross v. Bernhard*, 396 U.S. 531, 542 (1970). I am ashamed of the attorneys working so hard to subvert the constitution for the jingle of silver.

If Jeff 'wins' and is afforded the constitutional right to trial by jury, we all win. If he loses, we all lose.

If your honor finds this letter helpful, please pay my fee. Your honor hired me to be Jeff's trial counsel, but your honor has not paid the bill for the work. There are over 700 hours of work accumulated since your honor hired me.

Very truly yours,

Gary N. Schepps
Court ordered trial counsel for Jeff Baron

Your honor may find that protecting the constitution also leads to a good result for all involved. If helpful for you honor's consideration, the moment the receivership is dissolved–it has stretched already four long months, we will ask the 'claimant' attorneys to join us at the State Bar fee dispute committee to arbitrate.

I note also that the receiver has billed a whopping sum. As your honor is aware, Jeff has been 100% neutralized in the bankruptcy court. Yet, in addition to the receiver, Ray Urbanik still came up with an **additional** half million dollar bill during this period.

Jeff funded more than a million and a half dollars to the bankruptcy to pay creditor (ie., attorney's) claims in that case in full. There is no justification for Urbanik's bill– Jeff has been out of the game in that court for four months.

Is this really what your honor intended ?

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

NETSPHERE, INC.,	§
MANILA INDUSTRIES, INC., and	§
MUNISH KRISHAN,	§
Plaintiffs.	§
	§ Civil Action No. 3-09CV0988-F
v.	§
	§ Motion for Expedited Relief
JEFFREY BARON, and	§
ONDOVA LIMITED COMPANY,	§
Defendants.	§

MOTION FOR LEAVE TO FILE: MOTION PURSUANT TO 28 U.S.C. 144

TO THE HONORABLE JUDGE ROYAL FURGESON:

COMES NOW JEFF BARON, and moves this Court to grant leave to file the following motion pursuant to 28 U.S.C. §144:

Based upon a careful review of the record of the case, and based upon the Court's ruling with respect to the 'unfounded' nature of the statements made with respect to Peter Barrett, the undersigned counsel certifies that Jeff Baron's affidavit and statements that he cannot receive fair and impartial treatment nor a fair and impartial hearing before Judge Furgeson with respect to attorneys' claims has been made in good faith.

WHEREFORE, the SECTION 144 AFFIDAVIT OF JEFFREY BARON is presented to this Court, for a determination of whether the facts and reasons set out in the affidavit give fair support to the charge of a bent of mind that *may* prevent or impede impartiality of judgment with respect the claims of attorneys and the respective defenses thereto.

Respectfully submitted,

/s/ Gary N. Schepps

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COURT ORDERED TRIAL COUNSEL FOR JEFF BARON

CERTIFICATE OF SERVICE

This is to certify that this brief was served this day on all parties who receive notification through the Court's electronic filing system.

CERTIFICATE OF GOOD FAITH

DATED: April 27, 2011.

Based upon a careful review of the record of the case, and based upon the Court's ruling with respect to the 'unfounded' nature of the statements made with respect to Peter Barrett, the undersigned counsel certifies that Jeff Baron's affidavit and statements that he cannot receive fair and impartial treatment nor a fair and impartial hearing before Judge Furgeson with respect to attorneys' claims has been made in good faith.

I am a solo practitioner and this motion was presented as quickly as I was able after the Court's ruling with respect to the Barrett issues. I carefully reviewed the material to provide this certificate and present this motion and there was delay due to 5 intervening days for which I have a firm religious commitment not to work (4 days of Passover and a Sabbath). The prior two business days have been religious holidays, and that is why this motion is filed now and not on Monday. This motion has been made in good faith and is not intended as a surprise or as a procedural maneuver.

/s/ Gary N. Schepps
Gary N. Schepps

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

NETSPHERE, INC.,	§	
MANILA INDUSTRIES, INC., and	§	
MUNISH KRISHAN,	§	
Plaintiffs.	§	
	§	Civil Action No. 3-09CV0988-F
v.	§	
	§	
JEFFREY BARON, and	§	
ONDOVA LIMITED COMPANY,	§	
Defendants.	§	

POST TRIAL BRIEF:
SPECIFIC EVIDENCE BASED DEFENSES

TO THE HONORABLE JUDGE ROYAL FURGESON:

COMES NOW JEFF BARON, and makes this post trial briefing, setting out a summary of evidence based defenses based on the 'evidence' admitted by the Court:

- **Pronske and Patel**
  - In his 'claim' affidavit Pronske swears "There are no engagement agreements relating to the representation". However, as a fiduciary, an attorney has an ethical obligation to have an agreement with their client, see e.g., *Goffney*, below.
  - Pronske Swears "True and correct copies of ALL of my invoices relating to the Representation are attached hereto as Exhibit 'A' ". However, the only invoices in Exhibit A are from February 20**11**. Pursuant to the 'claim' affidavit, there was no contract, and no invoice was provided until over a year and a half after the representation began (over six months after the representation ended).

- *Goffney v. Rabson*, 56 S.W.3d 186, 193 fn. 5 (Tex.App.- Houston [14th Dist.] 2001, pet. denied) (failure to reduce a fee agreement to writing is an ethical violation, failure to provide billing statements is an ethical violation); *Jackson Law Office, P.C. v. Chappell*, 37 S.W.3d 15, 22-23 (Tex.App.---Tyler 2000, pet. denied)(same); *Burgin v. Godwin*, 167 S.W.2d 614, 619 (Tex.Civ.App.-- Amarillo 1942,writ ref'd w.o.m)(ethical duty to keep client informed as the exact status brought about by the contractual relationship); *Burrow v. Arce*, 997 S.W.2d 229, 241 (Tex. 1999) (Fee forfeiture is remedy for attorney's clear violation of their ethical duty).
- Pronske's prior testimony established he was paid a $75,000.00 payment up front. Per his own evidence, no contrary billing was sent out until February, 2011–after this receivership and subsequent to his testimony.

➢ **Carrington, Coleman, Sloman & Blumenthal, LLP**

- Affidavit expressly not based on personal knowledge.
- No contract initially provided. 'Draft' contract signed with Ondova only.

➢ **Aldous Law Firm / Rasansky Law Firm (joint venture)**

- **Resolved in global settlement.**

➢ **Schurig Jetel Beckett Tackett**

- Does not segregate billing.
- **Settled and paid as part of global settlement agreement** as part of the supplemental settlement. Contract was entered after Shurig represented Jeff, and therefore by law must be presumed invalid. *Archer v. Griffith*, 390

S.W.2d 735 (Tex. 1964) ("There is a presumption of unfairness or invalidity attaching to the contract, and the burden of showing its fairness and reasonableness is on the attorney").

- Comparing contract terms and billing statement shows billing beyond Scope of work authorized "advice and consultation on administrative legal and tax issues associated with the foreign trusts" . Contract construed against drafter & fiduciary Schurig, and, the (i).. (vi) specifications are construed as specifications of the "advice and consultation on administrative legal and tax issues associated with the foreign trusts".
- Schurig admits she represented Mr. Baron beginning "in October 2005" (in a joint representation with Mr. Krishan). #1 Schurig was conflicted and could not ethically represent Baron in the present litigation or settlement. #2 As a matter of long established Texas law, when an attorney currently representing a client enters into a new contract or fee arrangement, the agreement is, as a matter of law, presumed to be invalid. *See Archer*, above.
- Asiatrust is a proxy of Schurig, and is not in any way controlled by Jeff Baron. Asiatrust has itself filed claims against Baron. **The amount claimed from Baron is only $1,331.50.**

➢ **Powers and Taylor**

- Were paid in full on hourly portion (in fact, *they* owe $7,500.00 to Jeff per their own paperwork), and lost the lawsuit they sued on. **No money due pursuant to the fee contract they have provided the Court**, as they did not

meet the contingency condition in their contract.

- Admits in own 'evidence' that they are simply making up their fee demand, and that it is not based on any actual contract term. Powers and Taylor sued to recover money due from the use of PhoneCards.com. Powers and Taylor failed in any way to recover on that claim. The settlement required Jeff to give up half ownership of the PhoneCards.com, and give up all the money he claimed was due him with respect to PhoneCards.com.
- The attorneys' own evidence shows that there was no billing for the now claimed contingency amount when the settlement was executed in August, 2010, or the next month in September 2010, or the next month in October 2010, or ever. This **new amount claimed**, pursuant to the lawyers' own evidence, was made for the receivership 'proceedings'.
- The attorneys' admit their fees were limited (**by agreement**) to a maximum of $10,000 per month. They admit they exceeded that limit and seem to want this Court to have them paid anyhow. Notably, that additional time now claimed does not appear on the attorney's actual billing records they themselves submitted. Per the firm's billing records, ie. per their own evidence, Jeff Baron is owed a $7,500.00 retainer refund.

➢ **Gary G. Lyon**

- Lyon's own billing evidence (All the statements prior to September) prove that Lyon's fixed hourly rate was $40.00 per hour. He clearly billed at that rate. Then, without any explanation, a new billing rate appears as of

September with almost ten fold higher at $300.00 per hour.

- Lyon swore in his affidavit that his fees were "fixed at an hourly rate". It is undisputable **that <u>his hourly rate was $40.00 per hour.</u>** This is established by his statements for May, 2010, June 2010, July 2010 and August 2010. Then, in September, **<u>contrary to Lyon's sworn statement of a "fixed .. hourly rate",</u>** Lyon attempts to unilaterally charge a fee that is almost <u>ten times higher than his fixed hourly rate</u>. What happened in September ? Lyon's co-counsel Pronske, began his 'scorched earth' policy against Jeff, testified to in the FRAP 8(1) hearing held on January 4, 2011.
- Lyon is not licensed in Texas, did not comply with disciplinary disclosure rules. Per Texas law cannot charge fee for Texas state law work. (For example, the billed for work includes "appearance before Dallas County District Court").
- Testified to a <u>substantially</u> lower bill in prior proceedings in this Court.

➢ **Dean Ferguson**

- In his hearing testimony admitted he was paid $22,000.00. Admits he agreed to give flat rate in August. At page 67 (1/4/11 hearing) "The initial retainer was five thousand dollars, and then there was an agreement to pay additional amounts of money for August**. I agreed to** reduce -- give **a flat rate** for August").
- In his affidavit 'claim' Dean Ferguson swears there was an agreed upon rate of $300.00. However, **in his sworn testimony** on January 4, 2011, Dean **Ferguson said there was "not a set agreement" for the $300.00** and he told Jeff "we needed to reach on an agreement as to the fee".

- Dean Ferguson swears his representation began on July 22, 2010 and the unsigned engagement contract he proffers is dated a week after his representation began. The contract is notably unsigned. Even if it had been signed, **as a matter of Texas law, there is a presumption of invalidity attaching to the contract terms Ferguson claims.** *Archer v. Griffith*, 390 S.W.2d 735 (Tex. 1964).

- **Bickel & Brewer**
  - **Arbitration clause.** I.e., Jeff is entitled –by contract– to have the claim heard by arbitration, and not 'summary proceedings'.
  - Billing does not segregate work, ie., Jeff vs. Ondova.
  - Includes billing for collection

- **Robert J. Garrey**
  - Per his own affidavit he worked 2 weeks on a $8500 per month agreed contract.
  - Previously made a $1 Million dollar claim.

- **Hohmann, Taube & Summers, LLP**
  - **Settled and paid as part of global settlement agreement** as part of the supplemental settlement.
  - Work clearly duplicative of other billings.

- **Michael B. Nelson, Inc.**
  - Submitted contract appears to be a doctored forgery.
  - Not licensed in Texas.

- **Mateer & Shaffer, LLP**
  - Does not segregate billing.
  - Work seems to be for Ondova.
- **Broome Law Firm, PLLC**
  - **Arbitration Clause.**
  - Contract limited to $10,000.00 per month (by own evidence), unless there is express written modification that month. No such modifications were provided (per Broome's own evidence).
  - Broome's Evidence claims to include all contract agreements and modifications.
  - No authorization shown to exceed the $10,000.00 per month limit.
  - Received $18,000 and worked 2.5 months.
- **Fee, Smith, Sharp & Vitullo, LLP**
  - **Arbitration Clause.**
  - Per own evidence, signed only in capacity of Ondova (per their own evidence).
  - Work not segregated, seems work for Ondova. Ie., bankruptcy issue.
- **Hitchcock Evert, LLP**
  - **Settled and paid as part of global settlement agreement** as part of the supplemental settlement.
- **Reyna Hinds & Crandall**
  - Receiver did not produce affidavit for the undersigned counsel to review.

- **Three Key Overall Issues**

  - There is clearly duplicative, unreasonable billing. However, evidence of such requires the opinion of an Expert and the Court would not allow Jeff to retain an expert to provide such evidence.
  - Discovery and document production such as requests for the attorneys demand letters and responses and sufficient time to investigate and respond is required to properly defend the claims. These were requested but not provided.
  - These 'claims' are from almost exclusively non-diverse 'claimants' (the diverse are under $75,000.00). Non-diversity means lack of Subject Matter jurisdiction over the claims. Similarly, no pleadings filed by the claimants or on the claims and thus no Subject Matter jurisdiction over the claims.

Respectfully submitted,

/s/ Gary N. Schepps

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FOR JEFFREY BARON

CERTIFICATE OF SERVICE

This is to certify that the forgoing document was served this day on all parties who receive notification through the Court's electronic filing system.

/s/ Gary N. Schepps
Gary N. Schepps

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

NETSPHERE, INC.,	§
MANILA INDUSTRIES, INC., and	§
MUNISH KRISHAN,	§
Plaintiffs.	§
	§ Civil Action No. 3-09CV0988-F
v.	§
	§
JEFFREY BARON, and	§
ONDOVA LIMITED COMPANY,	§
Defendants.	§

MOTION FOR LEAVE TO FILE: MOTION TO SUPPLEMENT RECORD WITH NEWLY DISCOVERED EVIDENCE

TO THE HONORABLE JUDGE ROYAL FURGESON:

COMES NOW JEFF BARON, and moves this Court to grant leave to file the following motion to supplement the record with the evidence attached as Exhibit A and Exhibit B:

A. WHAT THIS EVIDENCE PROVES

EXHIBIT A - THE LYON EMAIL

This email:

(1) Completely discredits Mr. Lyon. Even after September 2010, Lyon is clearly charging $40.00 per hour, not the $300.00 he is now claiming. In this evidence Mr. Lyon, in his own words, states that his rate is $40 per hour. He notes that allows ‘more bang for the buck’. There is no ambiguity.

(2) Evidences that multiple claimants have personal knowledge exonerating Jeff with respect to the claims, but they have sat in silence. For example:

a. Mr. Broome and Mr. Cox were fully aware that Lyon's fee was $40.00/hour– it is Broome who sent Cox the email from Lyon. Yet, Broome and Cox have been silent, allowing this Court to falsely believe that Jeff owed Lyon money and failed to pay it.

b. Broome, Lyon, and Cox were all personally aware that in this email chain, Mr. Taylor is 'proposing' a contingency fee of $42,000.[1] This is about half of what Mark Taylor now claims is the contingency fee. Even though each of these attorneys knew that Taylor was doubling the amount of the 'proposed' contingency fee, they have all sat and kept their silence. Not one claimant attorney has come forward to tell the Court the truth—even though they have personal knowledge of the facts.

[1] Notably, Taylor's original 'proposal' is inconsistent with his billing and his contract. Taylor's 'proposal', although half the amount of his 'receivership claim', is itself discredited by Exhibit B to this motion. Taylor's statements in August were that a subsequent "small bill" in September should be the last one. It should also be noted that, per Taylor's own 'claim affidavit', Taylor held $10,000.00 in retainer from Jeff. Thus, the $2,500.00 "60 day old" invoice mentioned in Exhibit B, was not outstanding as there was a $10,000.00 retainer balance. (Today, there is still a $7,500.00 retainer balance due Jeff and it should be returned to Jeff).

In other words, this email evidence establishes that **multiple** 'claimant' attorneys have **personal knowledge** that the 'claims' of other attorneys are false and fraudulent. However, each and every 'claimant' attorney has kept his mouth shut as to the false claims another attorney is making. Not a single 'claimant' attorney has stood up and come forward to the Court with the facts **within their personal knowledge** exonerating Jeff.

EXHIBIT B - THE TAYLOR EMAIL

This email:

(1) Discredits Taylor's claim for a right to a 'contingency' fee. Exhibit B proves that after the settlement had been entered and approved (in July 2010), Taylor made no claim to any additional 'contingency' fee due, and instead stated expressly **"We'll probably have a very small bill that will go out at the first of September, but that should be the last one."**[2] Notably, Powers Taylor's own billing 'evidence' supports this. **What happened between August 26, when this letter was sent, and October ? Pronske engaged in his 'scorched earth' policy against Jeff. Suddenly, multiple attorneys, all in contact with Pronske (as**

[2] Note that although the email asserts there is an outstanding balance, since Jeff had a $10,000.00 retainer still with Taylor, there was actually no balance due. The Powers Taylor 'claim' plainly admits that there is a $7,500.00 balance due to Jeff based on the hourly fees billed and paid.

seen from the attorneys' own billing records), started asserting new claims against Jeff for fees well beyond those they had agreed to, and those they had previously billed. Pronske, Lyon, Taylor, Broome, etc. All in communication with each other, and all with their hands out.

(2) This email evidence proves that **there was no claim alleged or asserted by Taylor for any 'contingency' amount due prior to Pronske's "scorched earth" campaign against Jeff.**

B. WHY THE EVIDENCE WAS NOT RAISED EARLIER

The undersigned counsel is a solo practitioner. As a physical matter of available time in the day, it is not possible for counsel to have reviewed all the materials relevant to each of the multiple claims.[3] The receiver was requested to provide key materials to make review of the 'claims' more efficient, but the receiver after first promising to produce, refused to produce. Accordingly, the undersigned counsel has not physically had the available hours to review all of the material at hand (let alone material in the possession of the receiver and claimant

[3] In addition to counsel's duties as appellate counsel (which were undertaken by the agreement of counsel), and counsel's duties as trial counsel (which was placed upon counsel by this Court, over objection, for which this Court has not paid for those services nor provided funding for expenses or support), counsel still has pre-existing duties to other clients. If counsel had no other work to perform, that would mean still that only approximately one work day was allowed to investigate, review all the material and search for relevant evidence, research, and respond to each of the 'claims'. Since the receiver and trustee have flooded counsel with an avalanche of paperwork, both in the trial court and in the court of appeals, the available time to review each claim has amounted to a fractional part of a day, per claim. In such circumstance, it is simply not possible as a matter of available time to review much of the available material for each case.

attorneys which has been withheld), and can only raise that evidence once counsel has, as a matter of physical time, been able to review and find the material.

C. RELIEF REQUESTED

Jeff Baron requests the Court to consider this evidence with respect to the Court's consideration of the receiver's motions.

Jointly and in the alternative Jeff Baron requests this Court to reconsider its ruling with respect to entering a stay pending appeal because such ruling was based in material part on the Court's belief that Mr. Baron had "abused" Mr. Lyon and not paid him his fee. The new evidence proves that Mr. Lyon's fee was $40 per hour and not the $300 per hour billing rate Mr. Lyon has constructed his unpaid fee claim upon. If this Court would have been aware that Mr. Lyon's claim was based on his claim for a $300 per hour fee, and that (as shown by this evidence) his fee was actually $40 per hour and that he had been paid in full at that rate (as shown by Mr. Lyon's statements), the decision on relief pending appeal may have been handled differently.[4]

[4] Notably, this is also true for other evidence now before the Court. For example, Mr. Broome, whose "withdrawal" in the bankruptcy court was offered to show good cause for the receivership, has now produced his contract. The contract proves that his fees were capped– he was not authorized under the contract terms [page 3 term "2"] (without a written modification authorizing such work) to work more than $10,000.00 in billing for any month. He withdrew in November, 2010 with a maximum (per Broome's accounting) 'claim' for $3,314. Accordingly his 'claim' for almost ten times that amount ($28,737.00) is not supported by his retainer agreement.

Similarly, with attorney after attorney producing contracts with monthly fee caps, Pronske's claim that he received $75,000.00 up front but Jeff actually told him to bill as much as he wanted lacks credibility. This is true especially where Pronske had sent no bills, no engagement letter, no receipt, no work statements, no statements of the status of any retainer, nothing to indicate that

Respectfully submitted,

/s/ Gary N. Schepps

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COURT ORDERED TRIAL
COUNSEL FOR JEFF BARON

CERTIFICATE OF SERVICE

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CERTIFIED BY: /s/ Gary N. Schepps
Gary N. Schepps

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the $75,000.00 was anything other than an up-front flat fee payment. It is also especially true where Pronske averred in his bankruptcy court counterclaim that when Pronske was first hired, Jeff had stated he was not going to be paying Pronske any fee payments.

IN THE UNITED STATES DISTRICT COURT
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NETSPHERE, INC.,	§
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Plaintiffs.	§
	§ Civil Action No. 3-09CV0988-F
v.	§
	§
JEFFREY BARON, and	§
ONDOVA LIMITED COMPANY,	§
Defendants.	§

MOTION FOR LEAVE TO FILE: SECOND MOTION TO SUPPLEMENT RECORD WITH NEWLY DISCOVERED EVIDENCE

TO THE HONORABLE JUDGE ROYAL FURGESON:

COMES NOW JEFF BARON, and moves this Court to grant leave to file the following motion to supplement the record with the evidence attached as Exhibit A:

A. WHAT THIS EVIDENCE PROVES

EXHIBIT A - THE RECEIVER'S EMAIL

This email:

(1) Establishes that the receiver is not an impartial and indifferent person. The email proves the receiver is clearly an advocate and not acting with impartiality, and has therefore breached their duty as receiver and their assessment is invalid because it is an assessment of an advocate. *See Texas American Bancshares, Inc. v. Clarke*, 740 F.Supp. 1243, 1253

(N.D.Tex.1990) (receiver "owes a duty of strict impartiality").

(2) The email also establishes that receiver's assessment has not been reasonable, nor unbiased. For example:

a. The email proves that to the receiver's assessment, evidence that Mr. Lyon's billing rate was $40.00 per hour is "not evidence" and does change the receiver's assessment nor (to the receiver's mind) controvert Mr. Lyon's claim for payment at the rate of $300.00. The fact that Mr. Lyon was paid at $40.00 per hour, and the evidence proves he was billing at that rate, to the receiver is "no evidence".

Notably, the evidence the receiver views (and argues) as "no evidence" clearly and unambiguously establishes that even after September 2010, Lyon was clearly charging $40.00 per hour, not the $300.00 he is now claiming. In this evidence Mr. Lyon, in his own words, states that his rate is $40 per hour. He notes that allows 'more bang for the buck'. Yet, to the receiver's view, this is not evidence which controverts Mr. Lyon's 'claim' that his rate was $300.00 per hour, and is therefore due over $75,000.00.

b. The receiver views the proof that after the global settlement was reached Taylor made no claim to any additional 'contingency' fee due, and instead stated expressly **"We'll probably have a very small bill that will go out at the first of September, but that should be the last one"** as "no evidence" to controvert Taylor's current claim that he has a near $80,000.00 past due fee.

B. WHY THE EVIDENCE WAS NOT RAISED EARLIER

This material was in the exclusive possession of the receiver.

C. RELIEF REQUESTED

Jeff Baron requests the Court to consider this evidence with respect to the Court's consideration of the receiver's motions.

Jointly and in the alternative Jeff Baron requests this Court to remove the receiver as biased, and if a receiver is to be appointed, appoint an unbiased and impartial receiver who is not an active advocate against Jeff.

Respectfully submitted,

/s/ Gary N. Schepps

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COURT ORDERED TRIAL
COUNSEL FOR JEFF BARON

CERTIFICATE OF SERVICE

This is to certify that this document was served this day on all parties who receive notification through the Court's electronic filing system.

CERTIFIED BY: /s/ Gary N. Schepps
Gary N. Schepps

IN THE UNITED STATES DISTRICT COURT
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DALLAS DIVISION

NETSPHERE, INC.,	§	
MANILA INDUSTRIES, INC., and	§	
MUNISH KRISHAN,	§	
Plaintiffs.	§	
	§	Civil Action No. 3-09CV0988-F
v.	§	
	§	
JEFFREY BARON, and	§	
ONDOVA LIMITED COMPANY,	§	
Defendants.	§	

MOTION FOR LEAVE TO FILE: SUR-REPLY TO STAN BROOME'S FALSE, MISLEADING, AND FRAUDULENT REPLY [DOC 478] AND AFFIDAVIT [DOC 478-1]

TO THE HONORABLE JUDGE ROYAL FURGESON:

COMES NOW JEFF BARON, and moves this Court to grant leave to file the following sur-reply to Stan Broome's false, misleading, and fraudulent reply [DOC 478] and affidavit [DOC 478-1]:

A. AGAIN A FALSE AND MISLEADING ATTORNEY'S AFFIDAVIT, AGAIN A FRAUDULENT ATTORNEY'S CLAIM

1. Mr. Broom asserts on page 1 of his reply [DOC 478] that:

> "Baron states that his contract with the Broome Law Firm, pllc was capped at $10,000.00 per month. **This is simply not true.**"

2. Mr. Broom then swears in his affidavit [DOC 478-1] that:

> "4. Jeff Baron signed an engagement letter with Broome Law Firm, pllc. **The engagement letter stated** that

> Broome Law Firm, pile **would not <u>invoice</u> more than $10,000.00 in fees in anyone calendar month**. If the fees in any one month were to exceed $10,000.00, **those fees would not be waived, but would <u>rollover</u> and be invoiced the next month,** or the next month in which fees did not exceed $10,000.00."

3. Mr. Broome's assertions – sworn to under oath – are straightforward. There is no ambiguity in his claim. Mr. Broome swears that there was no cap on his fees. Mr. Broome swears he was authorized to work as much as he desired, and the only limit was the amount he could **invoice** in any one month for "cash flow" considerations. Mr. Broome swears that he was authorized to work as much as he desired, and could "roll over" fees for as many months as necessary. Notably, Mr. Broome does not dispute that he was paid $10,000.00 per month for the months he worked, but swears his agreement with Mr. Baron did not cap his fees at that amount.

4. Jeff Baron's practice, as should now be clear to the Court, was to set a fixed monthly fee cap with each lawyer he retained so that he could control the fee obligation incurred in any month. The attorneys were paid at their <u>agreed</u> rates. Stan Broome is no different. **Stan Broome's sworn statements to the contrary are false, misleading, and fraudulent.**

THE PROOF AGAINST STAN BROOME:

5. If Mr. Broome's own *original* claim affidavit is examined closely, we see

that on page 3 of his contract with Mr. Baron (produced by Mr. Broome as evidence) that what the agreement actually provides is:

> 2. **BLF will <u>not</u> *incur* fees in anyone calendar month that exceed $10,000.00 without obtaining the written permission** (through e-mail or some other writing) **from Client.** Client agrees to promptly respond to any notification that the projected fees may exceed **<u>this capped amount</u>** in any calendar month, and give clear instructions on how to proceed.

6. In other words, **directly contrary to Mr. Broome's latest <u>sworn affidavit</u>, his contract <u>expressly</u> "capped" the amount of fees to be incurred in any calendar month. The contract is explicit.** "BLF will <u>not incur fees</u> in any one calendar month that exceed $10,000 without obtaining the written permission .. from Client".

7. Since Broome drafted the agreement, any ambiguity is construed as a matter of law against him. However, there is no ambiguity. The contract is clear and explicit. Broome agreed to "cap" his "fees" not to exceed $10,000.00 in any calendar month. This provision is distinct from the provision limiting per month invoicing.[1]

[1] The per month invoicing limit for cash flow purposes is numbered "1". The separate invoicing provision states "Fees <u>invoiced</u> in anyone calendar month shall not exceed $10,000.00. If the fees in anyone month shall exceed $10,000.00, those fees shall not be waived, but shall roll over and be invoiced the next month, or the next month in which fees do not exceed $10,000.00." That provision, numbered "1", is clearly distinct from the provision numbered "2" capping the amount of fees which could be ***incurred*** in any one month.

8. Stan Broome, wants to collect for more than the capped $10,000.00 fee limit he agreed to. Accordingly, Mr. Broom did not disclose nor mention the second paragraph of his fee cap terms, which expressly capped fees at $10,000.00 monthly. Instead, Mr. Broome mentioned only the first part of the fee terms, relating to invoicing. Mr. Broome is an attorney, and his trick is a sophisticated one. But it is still a trick. Mr. Broome's affidavit is false, misleading and fraudulent. His claim is based on fraud. There is no other word to describe it. Mr. Broome is an attorney, and clearly knows what he agreed with Jeff. Broome simply falsely represented the terms of that agreement.

9. Notably, there is a clear pattern with respect to 'claims' against Mr. Baron. Attorneys worked for flat fees or capped monthly rates. They 'aver—under oath– various facts which, an examination of their own records proves to be false.

THE KEY ETHICAL ISSUES:

10. Mr. Broome feigns unawareness as to any 'ethical' violation on his part. The issue is as follows: As was established in evidence during the January 4, 2011 FRAP 8(a) evidentiary hearing, Mr. Chesnin vigorously attempted to secure Mr. Broome's cooperation to substitute in as counsel for Broome. It was clear this Court and the bankruptcy court were concerned with allegations that Jeff was firing lawyers. An attorney has the duty not to work against their client's interest, or take steps to the injury of their client. Broome refused to allow substitution, and

insisted on filing a motion to withdraw. That was used to the detriment of his client, as an express 'basis' of the receivership motion. **Most disturbing, as testified to in the February 4, 2011 hearing, the receivership motion was filed <u>less than 60 minutes</u> after Mr. Broome filed his motion to withdraw.**

11. It is simply not credible that Mr. Urbanik could prepare, and present his receivership motion– based in part on Mr. Broome's withdrawal– less than 60 minutes after notice of that withdrawal was filed. The circumstances evidence that Mr. Broome had sold out his client, and was working in coordination with Mr. Urbanik. **There is no rational basis for Broome to refuse allowing Mr. Chesnin (an AV rated trial lawyer) to file for substitution.** The only **apparent motivation for Broome's refusing to allow substitution was that Mr. Broome desired, apparently to serve as grounds for Mr. Urbanik's motion, to file a motion for *withdrawal*.** Broome was clearly under the ethical duty to avoid taking actions detrimental to his client. He clearly breached that obligation.

Respectfully submitted,

<u>/s/ Gary N. Schepps</u>

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CERTIFICATE OF SERVICE

This is to certify that this document was served this day on all parties who receive notification through the Court's electronic filing system.

CERTIFIED BY: /s/ Gary N. Schepps
Gary N. Schepps

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

NETSPHERE, INC.,	§	
MANILA INDUSTRIES, INC., and	§	
MUNISH KRISHAN,	§	
Plaintiffs.	§	
	§	Civil Action No. 3-09CV0988-F
v.	§	
	§	
JEFFREY BARON, and	§	
ONDOVA LIMITED COMPANY,	§	
Defendants.	§	

MOTION FOR LEAVE TO FILE: THIRD MOTION TO SUPPLEMENT RECORD WITH NEWLY DISCOVERED EVIDENCE

TO THE HONORABLE JUDGE ROYAL FURGESON:

COMES NOW JEFF BARON, and moves this Court to grant leave to file the following motion to supplement the record with the evidence attached as Exhibit A:

A. WHAT THIS EVIDENCE PROVES

EXHIBIT A - THE CRANDALL INVOICE

This invoice:

(1) This invoice establishes once again the fraudulent basis of once again an attorney's false claim. Mr. Crandall falsely stated under oath that during the course of her representation her fees were fixed **at an hourly rate**. That is false, untrue. **As proved by Exhibit A, Ms. Crandall billed at a flat rate.** Contrary to Ms. Crandall's claim that her signed agreement

was to receive $300.00 per hour (an agreement she never produced), page two of **her own invoice states unequivocally, "(Flat Rate) $5,000.00".** There is no ambiguity about it.

(2) Once again, the receiver invited an attorney to make a 'claim', clearly false, that the attorney was to be paid $300.00 per hour, but was paid less. Exhibit A proves that, just as with one after another of the attorney 'claimants', the attorneys agreed to flat or capped rates, and were paid at their agreed rate. The 'claims' against Jeff Baron, as demonstrated by yet another false and fraudulent affidavit filed by yet another 'claimant' attorney solicited by the receiver, are false. Clearly, attorneys do not just show up at a court's doorstep with false claims– someone solicited them to come.

(3) Notably, we have asked the receiver to produce the complete billings, all demand letters, all response correspondence for each attorney claim. The receiver has refused. As this invoice establishes, the reason is clear. With all due respect these 'claims' are garbage. For example, from Pronske, who was paid a $75,000.00 fee up front, never sent out an engagement letter or contract, never sent out an invoice, never sent out a billing statement, never sent out a report as to any 'retainer' or retainer balance, but when the settlement agreement was to be finalized,

demanded a quarter million dollar bonus, claiming the $75,000.00 was a retainer that had long ago been used up (just Pronske didn't get around to sending out any billing or notice of that at the time), to Stan Broome who claimed the limit on his work was merely a per month invoicing limit that rolled over to the next month-– but where, contrary to his sworn testimony, his contract clearly capped incurring fees to $10,000.00 per month without express written content to exceed that cap in any month, to Lyon who fraudulently claimed his billing rate was $300 per hour and $75,000.00 in fees were past due, when his rate was really $40.00 per hour, and he had been paid, to Taylor who now claims a large 'contingency' fee, but who did not mention such a fee to his client when the settlement was entered, and represented to his client that "We'll probably have a very small bill that will go out at the first of September, but that should be the last one.", and now to Crandall who fraudulently makes the claim that during the course of her representation of Jeff, her fees were at an hour rate. Her own invoice clearly establishes that during the course of the representation her rates were fixed at a flat rate, not an hourly rate. Out and out false factual claims made under oath.[1]

[1] The attorneys' claims have now been shown over and over and over to be based on the attorneys' false sworn statements. But, it is Jeff Baron who is in receivership, based on these 'claims'. In retrospect, a receivership should never have been imposed based on mere 'claims'. To cover up the fraudulent nature of the attorney's claims there is now an attempt to burn a hole

B. WHY THE EVIDENCE WAS NOT RAISED EARLIER

The undersigned counsel is a solo practitioner. As a physical matter of available time in the day, it is not possible for counsel to have reviewed all the materials relevant to each of the multiple claims.[2] The receiver was requested to provide key materials to make review of the 'claims' more efficient, but the receiver after first promising to produce, refused to produce. Accordingly, the undersigned counsel has not physically had the available hours to review all of the material at hand (let alone material in the possession of the receiver and claimant attorneys which has been withheld), and can only raise that evidence once counsel has, as a matter of physical time, been able to review and find the material.

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in the Constitution and cut out Jeff's Seventh Amendment right to a trial by jury. The attorneys know their claims are garbage. Although they all swore to uphold the constitution, now they don't want due process when it comes to investigating and testing their claims. Jeff has been prevented from hiring an investigator, Jeff has been prevented from hiring an expert, Jeff has been denied discovery and denied access to the underlying evidence that clearly relates to the 'claims'. As time is allowed counsel to review the material carefully: over and over the claims are revealed to be false and fraudulent**.** The receiver and the attorneys yell at the Court that due process is not necessary, that rushed 'summary proceedings' are a good idea. But due process, in large and liberal quantities, is exactly what is necessary here.

[2] In addition to counsel's duties as appellate counsel (which were undertaken by the agreement of counsel), and counsel's duties as trial counsel (which was placed upon counsel by this Court, over objection, for which this Court has not paid for those services nor provided funding for expenses or support), counsel still has pre-existing duties to other clients. If counsel had no other work to perform, that would mean still that only approximately one work day was allowed to investigate, review all the material and search for relevant evidence, research, and respond to each of the 'claims'. Since the receiver and trustee have flooded counsel with an avalanche of paperwork, both in the trial court and in the court of appeals, the available time to review each claim has amounted to a fractional part of a day, per claim. In such circumstance, it is simply not possible as a matter of available time to review much of the available material for each case.

C. RELIEF REQUESTED

Jeff Baron requests the Court to consider this evidence with respect to the Court's consideration of the receiver's motions.

Respectfully submitted,

/s/ Gary N. Schepps

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