Stephen R. Cochell
The Cochell Law Firm, P.C.
7026 Old Katy Road, Ste. 259
Houston, Texas 77096
Telephone: (713)980-8796
Facsimile: (214) 980-1179
srcochell@gmail.com
Counsel for Jeffrey Baron

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

IN RE:	**§**	
	§	
ONDOVA LIMITED COMPANY,	**§**	**CASE NO. 09-34784-SGJ**
	§	**(CHAPTER 11)**
DEBTOR.	**§**	

JEFFREY BARON'S EMERGENCY MOTION FOR STAY PENDING APPEAL

TO THE HONORABLE JUDGE OF SAID COURT:

Jeffrey Baron ("Baron") Appellant, files this Motion for Stay Pending Appeal and would show this Court as follows:

1. On October 26, 2012 this Court entered its Findings of Fact and Conclusions of Law [Bk. Dkt. 944], Order Approving Chapter 11 Plan [Bk. Dkt. 948] and a Report and Recommendation to the District Court [Bk. Dkt. 945]. In sum, the Court confirmed a Chapter 11 Plan providing the Trustee with authority to sell certain property which includes two portfolios of domain names from Novo Point, L.L.C. and Quantec, L.L.C. to obtain funds for the Estate and allowing the transfer of the 153,000 domain names to be sold to fund a liquidating trust that will pay the Bankruptcy Trustee's attorney's fees.

2. Jeffrey Baron seeks a stay pending appeal before this court pursuant to Bankruptcy Rule 8005. The criteria for a stay pursuant to Rule 8005 are well established. The Movant must show: (1) likelihood of success on the merits, (2) irreparable injury if the stay is not granted, (3) absence of substantial harm to the other parties from granting the stay and (4) service to the public interest from granting the stay. *Hunt v. Bankers Trust Co., 799 F. 2d 1060,1067 (5th Cir. 1986)*. With regard to the likelihood of success prong, a movant should only have to present a substantial case on the merits. *S.C. of Okaloosa, Inc., 2006 U.S. Dist. LEXIS 57187(W.D. La. 2006).*

3. As this Motion is filed, Mr. Baron has not yet filed his statement of issues on appeal. Without limiting the issues to be presented on appeal, there are substantial legal questions presented including, but not limited to:

(a) whether the Court has jurisdiction over the domain names;

(b) whether the Bankruptcy Court has jurisdiction over non-debtor assets (i.e. the domain name portfolios);

(c) whether the court erred in granting a sale of assets without taking any evidence on the need for the auction;

(d) the commercial reasonableness of the Stalking Horse bid of $4.1 million;

(e) whether the Trustee breached his fiduciary duty in failing to obtain a full valuation of the assets prior to the auction;

(f) whether the marketing plan and notice allowed by the Court deprived potentially qualified bidders in the domain name market of the opportunity to bid on the Domain Names;

(g) whether, the limitations on type and format information provided to potential qualified bidders (excluding electronic information) deterred qualified bidders;

(h) whether the excessive escrow amount of $500,000 required for a qualified bidder to be allowed even an initial inspection of the Domain Names and then conduct due diligence within the two to three weeks deterred qualified bidders in this niche market; the severe loss that would be incurred if the domain name portfolios were sold in one "batch" versus sale as individual or smaller groups of domain names over a longer period;

(i) whether the Court erred in failing to issue a Show Cause Order and Grant a Continuance where, as here, the Receiver clearly violated the Order to Baron's prejudice [Bk. Dkt. 858];

(j) whether the Court erred in denying Baron's Motion to Compel Discovery and Continuance or, in the Alternative, for Exclusion of Evidence [Bk. Dkt. 934];

(k) whether the Court erred in excluding the testimony of Dr. Thies Lindenthal on the issue of automated valuations used by the Receiver in determining values of domain names in prior sales from the portfolios, and widely accepted by the domain name industry;

(l) whether the Court erred when it engaged in ex parte communications with Trans, LLC's representative and the United States Trustee;

(m) whether the Court erred in accepting the testimony of Matthew Morris as an expert in the area of domain name valuation;

(n) whether the Court erred in accepting the testimony of Peter Vogel as an expert in the area of domain name valuation;

(o) whether the Court erred in determining there was a need to sell the Domain Names;

(p) whether the Court's findings on typo-squatting or allegedly pornographic domain names violate the First Amendment;

(q) whether the Court erred by imposing default against Baron for failing to attend a one-hour deposition by Pronske & Patel, P.C. where, no notice of the deposition was served under the Rules of Procedure, Counsel for Baron was not aware of any notice setting the deposition, Counsel for Baron and Baron acted in good faith, Baron was deposed in the case on multiple days and Pronske could have attended on any of those days and participated in the deposition, and Baron offered to be deposed again for Pronske prior to the Confirmation Hearing;

(r) whether the Receiver entered into an illegal agreement with the Stalking Horse Bidder and Trans to limit information to Jeffrey Baron;

(s) whether the Court erred in denying Baron's Motion for Continuance to Obtain Evidence of the Receiver's refusal to accept bids;

(t) whether Trans, LLC and Special Jewel, LLC were sham bidders to the exclusion of qualified bidders;

(t) whether the Court erred in failing to allow sufficient discovery and had an insufficient evidentiary basis to determine if Trans and/or Special Jewel were insiders through their relationship with Domain Holdings Group;

(u) whether Baron was excluded from participating in this case by virtue of a protective order that prevented him from substantially participating in the case;

(v) whether Baron was denied basic discovery of Domain Holdings Group through the Receiver, who had "possession" and/or "control" of DHG's information, and where the Trustee moved to quash subpoenas issued in the Southern District of Florida on the basis that the subpoena sought "electronic information";

(w) whether there was a sufficient showing of not only a substantial identity between the entities to be consolidated, but also that consolidation is necessary to avoid some harm or to realize some benefit sufficient to justify the court's order of substantial consolidation. *See In re Auto-Train Corp., Inc.,* 810 F.2d 270 (Dist. of Columbia Cir. 1987);

(x) whether substantive consolidation is a power that the Bankruptcy Judge has the constitutional and judicial authority to exercise in light of *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308 (1999) and *Stern v. Marshall,* 131 S.Ct. 2594 (2011);

(y) whether it was error to use the bankruptcy to launder assets of the receivership estate;

(z) whether it is error to approve an auction where the "auctioneer" was counsel for a party in interest and excluded bona fide bidders;

(aa) whether the Court erred by approving, after ex parte conferencing between the Court, the United States Trustee, and counsel for the two bidders, an "auction" where only two bidders participated, both of them shell corporations used as fronts to obfuscate the identity of the owner-- an off-shore company in the West Indies, which is infamous for creating and

managing shell companies for tax evasion and other fraudulent and deceptive purposes;

(bb) whether the alleged "settlement" between the Trustee and the Receiver was not negotiated at arms length and/or in good faith and was essentially a sham;

(cc) whether the releases and exculpation provisions for the Trustee, Receiver, and their lawyers far exceed any legitimate use of § 363 and is nothing more than a pretext to immunize the Receiver and his agents from unlawfully seizing and selling a non-debtor's assets; and

(dd) whether the Court erred in authorizing the sale of an asset which does not belong to the Estate and is the property of a non-debtor.

5. **Likelihood of Success.**

A. No Jurisdiction Exists over Non-Debtor Property Unlawfully Seized Through the Receivership

As a threshold matter, there is no jurisdiction for the bankruptcy court over non-debtor property where, as here, no claim was ever made against the property in the receivership and where the Court of Appeals has jurisdiction over the receivership property. On one hand, the receivership property was seized as a result of the Trustees claims that Mr. Baron breached the Global Settlement Agreement by refusing to mediate claims with former attorneys. During the Confirmation Hearing, Mr. Sherman testified under oath that Mr. Vogel reported that *the former attorneys* refused to mediate with Mr. Baron. When he obtained the receivership order, Mr. Sherman falsely asserted that Mr. Baron refused to mediate with the former lawyers. [D.Ct. Dkt. 123 at 3]. Almost two years later, under oath, Mr. Sherman *admitted* that Mr. Baron did not

violate any duty owed to the Ondova Estate in the Global Settlement Agreement. [Bk. Dkt. 933, Sherman at 58].

B. The Judicial Process Was Flawed.

The process in this case was flawed from the inception and appears to have been designed to create the *appearance* of due process to reach a pre-ordained goal of selling the Domain Names. The Receiver represented to the Bankruptcy Court that the District Court had approved a sale of the Domain Names and that Baron's counsel should not be allowed to have the list of Domain Names, or any other information in electronic form. [Sept. 28, 2012 Transcript]. The Trustee and Receiver essentially started from a pre-ordained court "order" and worked *backwards* to reach the pre-ordained result. When the facts threatened to get in the way, the Trustee and Receiver resorted to opposing any discovery request, or disregarding any court order that potentially threatened an auction sale and approval of their Chapter 11 Plan. It is highly unusual to sell an asset that is worth multi-millions without first obtaining a valuation; yet, that is exactly what the Trustee and Receiver claimed happened in the instant case. In the Receiver's partial production there is mention to obtaining two pre-auction appraisals. Neither appraisal was produced by the Receiver and clearly those appraisals do not support the Receiver's position.

Similarly, the Court approved sales and auction procedures literally the day that counsel Mr. Baron entered an appearance in the case, and allowed the withdrawal of Martin Thomas. The record reflects that Thomas was instructed by Judge Furgeson to represent Baron in the bankruptcy and was paid a monthly flat fee for his services. However, Thomas did not file anything on Baron's behalf and failed to advise him about the Liquidation Plan prior to his withdrawal and considered himself a "minister without portfolio." Thomas also asserted that he

was instructed by the Receiver, the Trustee and this Court that he could not file anything for Baron, which was a surprise to Judge Furgeson, who was incensed that the Court was paying Thomas $5,000 per month but was not representing Mr. Baron. As a result of Thomas following orders, Mr. Baron was deprived of due process and was not allowed the opportunity to effectively object to the auction and sales process. Thus, appointing Thomas as Baron's counsel may have created an *appearance* of due process; however, the reality is that Baron was not represented by counsel during critical stages leading up to proposal of the Chapter 11 Plan, approval of the sales and auction procedures ultimately leading to sale of the Domain Names.

According to their testimony, neither the Receiver nor the Trustee obtained valuations of the Domain Names prior to seeking permission to sell the Domain Names. [Bk. Dkt. 933, Sherman at 78]. Moreover, it appears that they only obtained an expert to give a low valuation of the Domain Names' value in response to Baron's showing that the domain names were worth more than sixty million dollars. The Trustee and the Receiver then presented an expert witness who did not even attempt to value any of the Domain Names using the market valuation method. [Bk. Dkt. 952, Morris at 44-49]. Instead of following accepted methods of valuing each name individually, the so-called "expert" espoused a unique "portfolio" theory for valuing domain names that has never been followed in any prior valuations of any known domain portfolio, nor did the expert have knowledge of any domain names in the history of domain name sales since the inception of the internet *ever* being valued using his untested approach. [Bk. Dkt. 952, Morris at 44-49]. The Trustee and the Receiver actively concealed information from their own expert regarding prior domain sales and the market valuation methodology followed by Damon Nelson. [Bk. Dkt. 952, Morris at 43, 63-64]. The Receiver's expert, Morris, was nothing more than a professional "testifier" who was told that his goal was to value the property somewhere

near $3.5 million, which is exactly what he did in this case. [Bk. Dkt. 952, Morris at 65, 13]. There is not even a rational connection between the income to price ratio Morris came up with and domain names. There is no showing *whatsoever* that the income to equity ratio of the hand picked companies Morris used to come up with his "ratio" bears any relationship to the market value of domain names. Morris' testimony should have been excluded.

C. The Receiver Was Judicially Estopped from Objecting to Valuation Techniques that the Receiver Previously Certified to Judge Furgeson and the Fifth Circuit as Valid.

Neither the Trustee, the Receiver, nor this Court can disregard a long **established valuation methodology followed by the Receiver** in selling **millions** of dollars of domain names from this portfolio to raise cash. The Receiver repeatedly obtained relief from the Court based on sworn testimony from Damon Nelson showing that: "Estibot.com's appraisal typically are within 20% (either above or below) of the eventual sale price." However, faced with testimony showing that domain names were worth $65,000,000, the Receiver objected to the very same methodology used to persuade Judge Furgeson and the Fifth Circuit that Estibot.com and Sedo.com were appropriate measures of value. The doctrine of judicial estoppel exists to prevent this precise type of cynical "flip-flopping" where, as in this case, the Receiver contradicts prior sworn statements to the Court and completely changed his position to suit the goal of selling the Domain Names. *United States v. McCaskey*, 9 F.3d 368, 378 (5th Cir. 1993); *Ergo Science, Inc. v. Martin*, 73 F.3d 595, 598 (5th Cir. 1996).

The auction was conducted outside the ordinary course of business. The Receiver concluded that the value of the Domain Names should be based on **one** offer from an off-shore company. The Receiver purportedly relied on information that was based on negotiations with Damon Nelson over a period of years in asserting that other bargain hunters offered about three

million to three and a half million for the Portfolio; yet, the Receiver never saw any documents to support his assumption, nor did he produce them in court-ordered discovery. In fact, the Receiver violated the Court's Expedited Scheduling Order ordering that he produce all documents relating to prior negotiations for purchase or sale of the Domain Names. Similarly, the Receiver violated the Expedited Scheduling Order, and failed to produce all prior evidence of sales of domain names sold from the Portfolio by Mr. Nelson. Counsel for Baron took the deposition of Mr. Nelson only to subsequently find out that Nelson had negotiated with numerous potential bidders for sale of the Portfolio and that the Receiver had not produced court-ordered documents on that very subject. When counsel sought an appropriate order to rectify this problem, the Court denied relief because the Court reasoned that Counsel should have filed a motion to compel discovery instead of filing a Motion for Issuance of Show Cause or, in the Alternative, for Exclusion of Evidence. [Bk. Dkt.916].

The Court was presented with an Affidavit of Dr. Thies Lindenthal and a chart of prior sales comparing evidence of income to sale price of the prior domain names. The chart demonstrably shows that there is no *rational* basis for Morris' assumption that there is a ratio of 8 between income and the market value of the domain name sales. A copy of the chart is again attached for the Court's consideration as Exhibit A to this Motion. In sum, Morris' revenue theory was based on an untested, unsupported and erroneous assumption as to the ratio between domain name income in these portfolios and the domain name's market value.

The Court excluded testimony by Dr. Lindenthal that Estibot.com valued the Portfolio at $64,000,000 and that Sedo.com valued the Portfolio at $65,000,000. The Receiver is judicially estopped from denying the validity of his own valuation methods, having filed numerous

affidavits with Judge Furgeson and the Fifth Circuit representing that that the automated valuation methods were valid to within 20%.

Moreover, the decision to exclude Dr. Lindenthal's testimony regarding valuation is based on his reliance on Estibot.com and Sedo.com, and his refusal to disclose a proprietary algorithm owned by Sedo.com. However, as an expert witness, Dr. Lindenthal reasonably relied on information from sources considered reliable within his industry. See F.R.Evid. 703. In other words, "the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted." *Id.* Simply stated the Court erred in excluding Dr. Lindenthal's testimony. Lindenthal had the right to rely upon Sedo's algorithm. If the Trustee needed to see that, he needed to seek discovery from Sedo.

Dr. Lindenthal, having vastly more experience buying and selling domain names and portfolios of domain names than Morris or Vogel, *who had none*, opined that the Court should not sell the entire Portfolio where, as here, a portion of the Novo Point portfolio may well fund any indebtedness claimed by the Trustee for legal fees. The Court's reasoning that Dr. Lindenthal was not experienced or old enough to reach that conclusion is not rooted in the testimony and evidence of record. Indeed, the evidence shows that Dr. Lindenthal was the only witness who appeared before the Court who had commercial experience in the purchase, sale and valuation of domain names.

D. The Receiver Violated the Court's Expedited Scheduling Order with Impunity.

The Court imposed no sanctions for discovery misconduct by the Receiver; yet, the Court imposed default on Mr. Baron for missing a one-hour deposition that his counsel was unaware of and which had not been noticed under the Rules, and which could have been held on two

separate days prior to the confirmation hearing.[1] The contrast in the one-sided treatment of litigants is striking.

1. The Court Defaulted Baron for allegedly 'Violating' the Discovery Order by not Appearing at a Deposition Noticed only via Email but Imposed No Sanctions Against the Receiver for Multiple Substantive Violations of the Same Order.

The Court precluded Baron from cross-examining Pronske on his substantial contribution claim. At the same time, however, the Receiver violated the Expedited Discovery Order, failing to provide discovery of any documents regarding the prior sales of the Domain Names until the day before the Confirmation, and then providing only three of numerous unredacted affidavits of Damon Nelson regarding prior sales the day before the Confirmation Hearing. The Court denied sanctions and also denied continuance to rectify the Receiver's serious violation. Moreover, the Court denied sanctions or a continuance to address the Receiver's failure to produce any documents relating to Damon Nelson's alleged prior negotiations with 24 individuals and/or companies interested in purchasing the Portfolio. The Court, however, allowed the Receiver and Morris to testify to unsupported hearsay based on documents that the Court ordered produced by the Receiver. From Baron's perspective, such contradictory positions on sanctioning parties underscores bias and hostility by this Court towards him.

[1] A full transcript of the Confirmation Hearing has not been obtained, but has been ordered. Counsel requested the Court allow Baron to appear at deposition testimony at the time of granting default, and later requested permission to present Baron on the morning of October 19, 2012, prior to hearing Mr. Pronske's testimony.

2. The Court's Ruling on Substantial Contribution is Unsupported by Facts or the Law.

The unrebutted testimony by the Trustee shows that the only tasks performed by Pronske that he considered to be "substantial contribution" consisted of obtaining Baron's cooperation in the Global Settlement agreement. [Bk. Dkt. 933, Sherman at 62-63]. Getting one's client to cooperate in a transaction does not, as a matter of law, satisfy the elements of a claim for substantial contribution, as set out by the Fifth Circuit. *In re Mirant*, 354 113, 132-35 (Bankr. N.D. Tex. 2006); *In Bayou Group*, 431 B.R. 549, 561 (S.D.N.Y. 2010); *In re American Plumbing & Mechanical, Inc.* 327 B.R. 273, 279 (W.D. Tex. 2005). Even *assuming* that the Court could sustain default against Baron, the Court has an independent duty to make findings that actually support substantial contribution, as opposed to distributing over $250,000 to a lawyer who simply has a common law claim against Baron.

E. Alter Ego Findings and/or Substantive Consolidation Were Precluded by the Global Settlement Agreement and Unsupported by Evidence of Record.

The Court alluded to arguments and evidence, presumably referring to findings by Judge Furgeson regarding former attorney claims against Mr. Baron. [Bk. Dkt 944 at 9]. The district court's order, however, was extremely broad, non-specific to facts, and Quantec LLC or NovoPoint LLC did not participate in the hearing. Accordingly, the receivership order cannot be accorded collateral estoppel effect as to the LLCs. Any alleged conduct was released by the Global Settlement Agreement, which Mr. Sherman agreed Baron did not violate any provision with respect to any duty owed the Ondova estate. [Bk. Dkt. 933, Sherman at 90, 149]. Finally, the Court has not made sufficient findings of fact or law to impute alter ego liability in this case.

Substantive consolidation, or "pooling" of assets between various estates by or through a bankruptcy court is unconstitutional for the reasons set out in *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308 (1999) and *Stern v. Marshall*, 131 S.Ct. 2594 (2011). The attempt to reach the assets of creditors that have been released of all liability by settlement and Court order and which neither own nor control the debtor is unprecedented.

F. The Receiver Entered Into an Illegal Contract with the Stalking Horse Bidder and Trans, LLC.

It is axiomatic that the Court cannot approve a contract that violates law or public policy. *Elbaor v. Smith*, 845 S.W.2d 240, 250 (Tex. 1992); *Leonard v. Paxon*, 654 SW.2d 440, 441-442 (Tex. 1983). The Receiver apparently acceded to a demand by the Stalking Horse Bidder that he could not disclose any evidence to anyone who was not a "qualified bidder." The demand was inserted in a provision of the Asset Purchase Agreement. This provision was used as a pretext for excluding Baron, his attorneys and experts from receiving critical information regarding the value of the Domain Names. The provision also had the effect of limiting information to bona fide qualified bidders who may have been reluctant to deposit $500,000 just for the opportunity to review documents at the offices of Dykema Gosset. In response to a Motion for Reconsideration Regarding Order on Motion for Protective Order Filed by Jeffrey Baron filed in the district court [Dkt. 1078], the Receiver informed Judge Furgeson that the Stalking Horse Bidder threatened to withdraw his bid from the auction if the Court allowed Baron "or his attorneys" to receive electronic information regarding the Domain Names. The district court denied Baron's Motion for Reconsideration the very next day. [Dkt. 1079].

Quite clearly, the Stalking Horse exceeded any right as a potential purchaser of the Domain Names and dictated the extent to which Jeffrey Baron would receive due process in

opposing sale of the Domain Names. Judge Furgeson clearly anticipated that counsel for Baron would receive electronic or other information to assist in representing Baron, and would hold the information as "Attorneys Eyes Only" ("AEO"). [September 27, 2012]. Denying counsel and expert witnesses AEO information without good cause shown is *unprecedented*. However, it appears that the Stalking Horse Bidder overruled Judge Furgeson's ruling on September 27, 2012 that counsel would be allowed AEO information to enable him to represent Mr. Baron. Such interference with the litigation process violated due process of law under the Fifth Amendment. Allowing potential purchasers to limit any interested party's rights to oppose the purchase or sale clearly violates the law and is contrary to public policy.

As set out below, Trans and Special Jewel are *jointly* owned, and were working in concert to undermine a fair auction, deprive Baron of a fair hearing and obtain the Domain Names for $60,000,000 less than the fair market value of the Domain Names. The Stalking Horse Bidder on Baron's right to value the Domain Names was adopted and ratified by Trans, LLC when it signed the same Asset Purchase Agreement imposed by the Stalking Horse Bidder.

By virtue of the above conduct, neither Trans nor Special Jewel are entitled to bankruptcy protection under § 363 of the Code.

G. The Court's Findings of Fact Regarding the Portfolio and Baron Baron Reflect Improper Bias and Are Unsupported by Facts.

The Court made Findings of Fact and Conclusions of Law regarding the Domain Names that are not supported by the record. In pertinent part, Paragraph 12 of the Findings of Fact and Conclusions of Law where the court found that: (a) a relatively small percentage of the 153,000 Domain Names are what the court would refer to as generic names; (b) an extremely large percentage of the names are "intentionally misspelled" names ("Typosquatting Names"); and (c)

names of schools, municipalities that are not subject to trademark; (d) "Gaming Names"; and (e) a very large percentage of the Domain Names are clearly, under the 'know-it-when-you-see-it' definition of former Justice Potter Stewart, pornography oriented ('Pornography Names') with a disturbing sub-set of child pornography…and a small percentage of very disturbing racial/hate crime oriented names (the 'Race/Hate' Names')." [Bk. Dkt. 944 at 14-16.]. The Court's observations, however, admittedly were based on a review of a small portion of the Portfolio, and do not appear to be based on analysis of the entire set of 153,000 Domain Names.

Despite crediting Mr. Baron's testimony as "credible" in another part of the Findings of Fact and Conclusions of Law [Bk. Dkt. 944 at 16], the Court nevertheless concluded:

> As set forth above, a great majority of the names are centered around what is commonly referred to as typo-squatting or cyber-squatting and, essentially, involves leasing a name that is arguably subject to another person's trademark. And, while this court does not pass judgment on the societal value of the Pornography Names, certainly, it does not pass the "smell-test" (or good faith notions) to ask this court or any other court to value or protect Mr. Baron's right to Child Pornography Names such as 'naked13yearolds.com.' (emphasis supplied).

Clearly, this Court appears to have decided that Mr. Baron was not only a pornographer, but a child pornographer and made findings of fact to unnecessarily besmirch Mr. Baron. The facts of record, however, do not support this biased viewpoint.

First, Mr. Baron testified credibly about the way that the names were generated---by a computer program. The names were created and maintained in the larger portfolio of names owned jointly with Netsphere. The Court appears to confuse the distinction between a static domain name and a web site, which is vastly different. Mr. Baron's unrebutted testimony is that none of these domain names were actively developed or monetized by him personally and he was not aware of the "Pornography Names" in the portfolio. Moreover, he testified that he

would not have sold the names. While the Court makes much of the fact of its assertion that some of the names may pander to potential sex offenders, the Court may not have considered the possibility that such domain names can be used by law enforcement to develop sites to identify potential sex offenders or, on the flip side, be used by sex addiction clinics to get their messages to individuals who need help in controlling their impulses. Further, there is no evidence whatsoever that any pornography type site ever was established at any of the domain names, other than by Peter Vogel. The broad generalizations made by the Court trammel on the First Amendment in a way that chills the exercise of First Amendment freedoms.

Secondly, the unrebutted testimony establishes that Mr. Baron was not in control of the Domain Names since at least creation of the Village Trust in 2005---almost seven years ago. The Receiver, Peter Vogel, was appointed Receiver in November, 2010. Mr. Vogel and others have had complete control over the Domain Names, were well aware of their allegedly pornographic character, and did nothing to segregate or deactivate the offending names until this Court expressed its moral outrage. It is respectfully submitted that the Court has unfairly "tarred and feathered" Mr. Baron without evidence, and out of an engrained bias against Mr. Baron. The Court was perfectly accepting of the Receiver's solicitation of sex for fee customers at the child sex and rape domains—domains at which Quantec LLC had refused to do pornographic commerce. The Court should have recused itself and allowed Mr. Baron a fair hearing before another judge.

H. The Receiver Excluded Qualified Buyers From the Auction.

On November 19, 2012, the Court denied continuance to counsel for Baron to investigate information that a bidder was denied the opportunity to bid on the Domain Names. However,

counsel attaches the Declaration of Eli Pearlman to this Motion for Stay, which reveals that the Receiver ignored attempts by a bidder who attempted to contact him several times by email and by phone. As Eli Pearlman put it: "**Something very odd is going on here.** I have phoned and emailed the contact on the website about the sale– but I cannot get a response from alleged trustee or the receiver." Declaration of Eli Pearlman, Exhibit B at 3. Mr. Pearlman represents the largest portfolio owner in the United States. Indeed, this testimony clearly shows that the Receiver set up Special Jewel and Trans to be the only two bidders at the November 9th auction.

I. The Bankrutpcy Judge Abandoned Her Judicial Role As Neutral and Impartial Decision-Maker.

The auction itself was conducted by the Receiver's counsel, who allowed Trans and Special Jewel to have "representatives" bid on the property telephonically. The Trustee and Receiver took the position that there was no bid collusion, and that Trans and Special Jewel were not, in any way related to one another, thus allowing the auction to be approved. [Bk. Dkt. 927 at 20]. The fact that the two companies were both located on St. Kitts-Nevis was merely "coincidence" and nothing that should concern, much less alarm the Court.

Trans presented a lawyer-witness, Stevan Lieberman to ask the Court to find that Trans was a good faith purchaser for value. Incredibly, Lieberman refused to disclose Trans' ownership or disclose any basis for concluding that the bids were not the result of collusion by these two companies, although he represented both companies. [Bk. Dkt 953 at 10, 11-14]. Counsel for Baron challenged the testimony and moved to strike the witness' testimony as hearsay and for Mr. Lieberman's refusal to answer questions. Id. at 14. Over Baron's objections, the Court cleared the courtroom and held an *ex parte* hearing with Trans's Mr. Lieberman and the United States Trustee. The Court then sealed the *ex parte* proceedings.

After *the ex parte hearing*, Trans' representative changed his testimony and claimed that Trans and Special Jewel were not connected with each other, or with Domain Group Holdings, Inc., the monetizer for the Receiver. Mr. Lieberman then remembered that he actually represented the owners of Domain Holdings Group. *Id.* at 66. Counsel was denied discovery to confirm or refute this astonishing series of flip-flops by Trans' representative. [Bk. Dkt. 953 at 72].

By holding its secret meeting with the Trans, the Court was able to "save" the sale of the Domain Names and thereby "save" the Chapter 11 Plan. In the process, however, from the perspective of the reasonable observer, the appearance is that the Court abandoned and destroyed any pretense of impartiality and became nothing more than an advocate for the Chapter 11 Plan, which is strictly prohibited by the Code and violated Jeffrey Baron's Fifth Amendment guarantee of due process. Counsel requested the Court examine the appearance of its partiality by filing a Motion on Appearance of Impropriety. [Bk. Dkt. 938]. The Court simply denied Baron's motion without explanation. [Bk. Dkt. 940 at 44; Bk. Dkt. 948 at 4].

J. Trans and Special Jewel Are Owned by Despen Trust Company of Nevis.

Counsel expressed concern to the Court about the legitimacy and coincidence of two bidders located on St. Kitts-Nevis—an island state known for creating and shielding shell companies through its secrecy laws, and further requested discovery of the bidders to ensure the integrity of the bankruptcy process. [Bk. Dkt. 953 at 60]. As set out below, neither Trans' or Special Jewel's common origin, nor the fact that Stevan Lieberman, their representative, "happened" to represent them was "coincidence." Mr. Lieberman also "happened" to represent Domain Holdings Group as well. Trans and Special Jewel were the only two bidders at the

November 9, 2012 auction. These companies are both jointly owned by Despen Trust Ltd. of Nevis. Stevan Lieberman represented these companies at the hearing and yet did not disclose their affiliations to the Court. Indeed, it appears that Mr. Lieberman may have actively tried to conceal the ownership and control of these entities.

The evidence shows that, in February 2012, Vogel (through Damon Nelson) contracted with **Domain Holdings** to manage the Novo Point LLC and Quantec LLC domain portfolios. Accordingly, Domain Holdings has all of the inside information regarding domain performance, number of visitors, income, etc. Domain Holdings Group is owned by Name Drive U.S., a shell for **Key Drive Group**, that itself owns about 170 other shell corporations. [Bk. Dkt. 953 at 66]. Domain Holdings Group manages all of the assets of Novo Point LLC and Quantec LLC and is an "insider" within the meaning of 11 U.S.C. § 101.

On June 1, 2012 the parties were notified that the case would be set for oral argument before the Fifth Circuit Court of Appeals. By the end of August, 2012, Vogel had worked out a formal contract with **"Special Jewel"** or its 'designee' to acquire all of the assets of both Quantec LLC and Novo Point LLC for $4.1 Million through the bankruptcy court. Hearing Exhibit 40. Special Jewel, Ltd., is incorporated in Nevis. Id. The management of Special Jewel is one "**Chanelle Sturge**".[2] [Hearing Exhibit 40 at 5]. Ms. Sturge is a front—she is an employee of the Despen Trust Company of **Nevis**. See Exhibit C to this Motion.

[2] Chanelle Sturge and Despen Trust were made infamous by a NBC-New York investigative news report about setting up shell companies. Ex. C at.2. According to Facebook, Ms.Sturge has worked at Despen Trust Ltd., studied at Clarrence Fitzroy Bryant College and lives in Charlestown, Saint Kitts and Nevis. <http://www.yasni.com/ chanelle+sturgewoods/ check+people>.

The attorney who represents Domain Holdings Group's ownership is Stevan Lieberman. Mr. Lieberman also represents **"Trans, Ltd."**, the "high bidder" in the "auction". [Bk. Dkt. 953 at 5]. Notably, Mr. Lieberman was not "at liberty" to say who the officers, directors, or owners of "Trans, Ltd." actually were. *Id.*. at 8. Mr. Lieberman also represents **"Special Jewel, Ltd."**, the "Stalking Horse" bidder in the 'auction'. *Id*. at 9. Again, Mr. Lieberman claimed that he was not at liberty to identify the owners of Special Jewel. *Id*. at 11.

The competing, and "winning" bidder against "Special Jewel" was Trans, Ltd. also of Nevis. [Bk. Dkt. 953 at 26]. The representative of Trans, Ltd. is one **Dexter Bowrin**. [Bk. Dkt. 953 at 26]. After the ex parte conference with this Court, Mr. Lieberman testified that Dexter Bowrin was an owner of **Trans, Ltd**. *Id*. at 62. **Dexter Bowrin** is a front—he is an employee of the Despen Trust Company that owns "**Special Jewel**". See Ex. D to this Motion.

On November 9, 2012, only two bidders participated in the 'public auction' conducted by Vogel's counsel. **Both bidders are shell companies owned by the same owner, Despen Trust Ltd. of Nevis, West Indies** and represented by the same attorney, Mr. Lieberman. The result of the 'public' auction was that Vogel sold over $65,000,000.00 in receivership assets for only $5.2 Million.

The above evidence stands in *stark* contrast to the Court's finding that the owners of Trans and Special Jewel were not, in any way "insiders" within the meaning of 11 U.S.C. § 101(31) and did not collude or engage in any other improper means in connection with the Domain Names sale. In an age of shell corporations shielding the identity of officers and directors of off shore companies, the Courts must allow free and full discovery of off-shore companies who, as in this case, come to court refusing to disclose their identities and insist on privacy protections after bidding in a *public* auction.

From the evidence obtained after the Confirmation Hearing, it is clear that Trans, Special Jewel, Domain Holdings Group, in combination with Despen Trust Ltd. of Nevis and others conspired to illegally restrain competition at a public auction by falsely creating the *appearance* of unfettered bidding when, in truth and fact, they were secretly colluding to suppress the prices of the Domain Names. At *best*, the efforts by these two companies to subvert the auction process were aided by a Trustee and a Receiver who turned a blind eye to conduct by off-shore companies that precluded the type of visibility necessary to a public auction and excluded *bona fide* bidders form participation at the auction.

Closing on the sale should be stayed until the Fifth Circuit rules on the receivership, and until such time an Article III court can carefully review the record and rule on the matters now on appeal from this court.

K. **The Releases and Exculpation Clauses.** The Receiver and his lawyers seek immunities granted under the Bankruptcy Code to escape any potential liability for unlawfully seizing and selling property belonging to Novo Point and Quantec, and in which Mr. Baron holds an interest. The Trustee makes a claim for fees in which the Receiver agrees to pay 100% of the claim—even though the Trustee cannot articulate a legal basis for his right to recover the fee from the receivership estates. This is remarkable in the context of a receivership or bankruptcy proceeding, and even more remarkable where, as here, there is no legal theory under which the Trustee may recover in the event of a lawsuit. This alleged "settlement" is nothing more than a sham designed to launder the assets of the receivership before the Fifth Circuit can rule on the legality of the receivership, and to improperly allow the Receiver, his agents and attorneys to seek protections under the Bankruptcy Code. The provisions for release and exculpation extend

far beyond any protection afforded under the controlling case law and reveals bad faith by the Receiver and Trustee in proposing this Chapter 11 Plan.

6. **Irreparable injury to Jeffrey Baron**. As demonstrated in the record of hearing before the Court, the underlying record of various hearings throughout this proceeding, and Jeffrey Baron's objections to the Chapter 11 Plan and Motion to Strike or to Continue Auction (Bk. Dkt. 895 filed under seal). The $5.2 million auction price grossly understates the value of the Novo Point and Quantec portfolios and that sale of the Domain Names and is part of a fraud on the bankruptcy system. The value of the Domain names will not decline over the short term period of six months or even a year despite the speculation of the Receiver and his alleged expert witness. Should the Trustee sell the domain names and it is later determined, as Mr. Baron alleges, that the Trustee cannot sell the property of a non-debtor, that the auction procedures limited and/or chilled the number of qualified bidders able to participate in the auction, and/or that the conduct of the Stalking Horse bidder interfered and compromised the judicial process leading up to the auction, and/or that the two bidder auction was a sham and farce for real bidder, Despen Trust Mr. Baron may be left with no remedy for his loss. Mr. Baron can only be made whole through the rightful return of the domain names to Novo Point and Quantec.

7. **No substantial harm to interested parties**. For the same reasons as stated above, the attorneys and the Estate have little risk of actual loss. The domain names belong to Novo Point and Quantec. Thus, the Bankruptcy Estate will suffer no loss as it did not have any ownership rights in the first instance. Because the value of the domain names will not decline in the short term, no harm will occur to the Estate. Even if the value of the assets were to decline, the plan allegedly calls for the return of a $2 Million surplus to Mr. Baron. That surplus is more than enough to cover any possible depreciation in the value of the domain names. Notably, pursuant

to the same databases relied upon by the Receiver's expert, the value of domain names has been steadily increasing, and there is no indication of depreciation in the future. The customer base of internet users increases by millions of new customers *daily.*

8. **Public Interest In Granting Stay.** The public interest favors stay pending appeal of the sale of the Domain Names to enable the Fifth Circuit, which properly has jurisdiction over the property, to render a meaningful judgment in the case, and so that an Article III court may review the proceedings. The Bankruptcy Rules contemplate that there will be a stay in order for an Article III court to review sales authorized by the Bankruptcy Court.

WHEREFORE, Jeffrey Baron prays that this Court grant his Motion for Stay Pending Appeal and for such other and further relief to which it may show himself justly entitled. Request is respectfully made for a ruling on this motion by 1:30 p.m. on November 28, 2012.

Very respectfully,

/s/ Stephen R. Cochell
Stephen R. Cochell
The Cochell Law Firm, P.C.
Texas Bar No. 24044255
7026 Old Katy Rd., Ste 259
Houston, Texas 77096
(713)980-8796 (phone)
(713)980-1179 (facsimile)
srcochell@cochellfirm.com

CERTIFICATE OF SERVICE

This is to certify that, on November 27, 2012, a copy of the above was served on all counsel of record through the Court's ECF filing system.

/s/ Stephen R. Cochell
Stephen R. Cochell