

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

NETSPHERE, INC., Et. Al.	§	
<i>Plaintiffs,</i>	§	
vs.	§	Civil Action No. 3-09CV0988-F
	§	HEARING REQUESTED
JEFFREY BARON, Et. Al.	§	
<i>Defendants</i>	§	

**MOTION TO MODIFY COURT ORDER OR, IN THE ALTERNATIVE, TO
WITHDRAW REQUEST FOR APPOINTMENT AS COUNSEL, AND REQUEST FOR
EXPEDITED CONSIDERATION OF MOTION THEREON**

Movant, Stephen Cochell, requests modification of the Court’s Order, Docket 1056 Denying Stephen Cochell’s Request for Appointment as Counsel to Oppose the Liquidating Trust But Granting Stephen Cochell the Right to Appear as Counsel for Jeffrey Baron in Connection with Creation of Liquidating Trust to provide for payment, through fee applications to the court and payment by the Receiver, for services rendered on behalf of Mr. Baron in connection with opposition to creation of the Liquidating Trust. At the time of hearing, the Court did not indicate that it would deny counsel’s motion for appointment and to submit application(s) for fees to be paid through the Receiver. The Court’s order leaves the issue of covering “fees and expenses...for a later time.” If the Court had so indicated, counsel would have declined representation for the reasons set out below.

Mr. Baron is not allowed to retain and pay counsel as his assets are under receivership. Counsel was requested by Mr. Baron to seek appointment as counsel to oppose creation of the Liquidating Trust and request fees through the Court, as counsel cannot, as a solo practitioner,

afford to fund complex litigation on behalf of Jeffrey Baron. The funding provided is inadequate to cover the amount of time and resources necessary to provide adequate legal services for Jeffrey Baron during discovery and arguments on the issue of the Liquidating Trust before the Bankruptcy Court and the District Court. *It is far from certain that Mr. Baron will have any assets at the end of the day.* First, the Receiver acknowledged, in open court, that his “estimate” of a return of \$2,000,000 is contingent on Mr. Baron dropping his appeals. The Receiver’s monthly fees have been substantial and one must assume that the appeal will go forward on November 7, 2012, which may be followed by remand, rehearing or other results. There was discussion about Mr. Baron receiving a \$600,000 payment under the Global Settlement Agreement along with a \$15,000 per month licensing fees for a domain site. However, Netsphere’s attorney, Mr. McPete, stated that the \$600,000 payment would not be made. Moreover, it is unclear whether the payments of \$15,000 per month will continue if the domain names are part of the assets being sold by the Receiver or if McPete's client declines to continue these payments, in addition to declining payment of the \$600,000.00. Moreover, Mr. Baron appears to have potential obligations that have not been addressed, such as for his appellate counsel's fees.

Neither the Receiver nor the Trustee will be limited to a \$25,000 budget in their attempt to obtain approval of the Liquidating Trust and confirmation of a Chapter 11 Plan, based on the Liquidating Trust. Based on the approach that the Trustee and Receiver have suggested that they will take with discovery, the discovery of documents and depositions in this case will be time consuming and expensive. Opposing Counsel have indicated that five depositions of fact witnesses are needed, in addition to two or more expert witnesses. If the Receiver intends to use

more than one expert witness, it would be necessary to evaluate the need to retain a rebuttal expert witness, and perhaps request funds for such an expert.

The discovery period spans five weeks followed by intense preparations for the confirmation hearing before Judge Jernigan. Preparation of the Motion to Appoint [1054] involved research and preparation, as well as appearance at hearing before this Court and then the Bankruptcy Court. As stated at that time, due to the complexity of the matter, counsel will need to employ an associate and possibly a paralegal to assist in focusing on the legal and factual issues presented to the Court. Simply stated, counsel cannot simultaneously acquaint himself with the facts supporting or refuting the need for a liquidating trust, litigate in the bankruptcy and district court and adequately contest this matter with “one hand tied behind his back” through lack of resources. The number of depositions, the need to interview and retain an expert witness underscores the need for Mr. Baron’s counsel to have access to additional funds to cover all expenses and fees in the six week period prior to the confirmation hearing. The travel costs in conducting the discovery and hearings will require several thousand dollars excluding costs of accommodations if overnight stays are required. Based on prior history, it appears the Receiver and the Trustee can be expected to field at least two to three lawyers to prepare for depositions and hearings. Based on the above, counsel estimates that providing cost-effective representation will range between \$60,000 to \$70,000. Under the circumstances of this case, counsel requests the Court increase the amount of the retainer to the estimated fees of \$60,000 to assure payment. Counsel will, of course, maintain detailed time records to substantiate costs and fees. Counsel respectfully submits that the amount of retainer for expert fees be increased by an additional \$25,000, as counsel must locate a witness who has the ability, and will set aside the time

necessary to value 150,000 domain names within a three week period. Counsel does not have much time to “shop” experts to drive bargain expert rates.

If the Court is not disposed to requiring counsel fees to be paid by the receivership estate to Mr. Baron’s attorney, counsel has no economic alternative but to withdraw his request to represent Mr. Baron in this matter, as he cannot ethically discharge his duties to Mr. Baron, as well as satisfy professional commitments to other clients. Mr. Cochell respectfully submits that he should be paid with the same level of priority as the attorneys for the Receiver and Trustee.

WHEREFORE, Stephen Cochell requests the Court modify the Court’s Order [1056] to provide for appointment of Stephen Cochell and to provide for payment of his fees and costs by the Receiver, as necessary. Alternatively, Mr. Cochell withdraws his request for appointment as counsel in this matter.

Very respectfully,

/s/ Stephen R. Cochell
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CERTIFICATE OF COMPLIANCE

This is to certify, that on October 2, 2012, the undersigned contacted counsel for the Trustee and the Receiver by email and generally sought concurrence in the relief sought. Counsel for the Trustee responded stating that the Trustee would not oppose counsel submitting

attorney's fees to the court for approval. Counsel did not receive a response from the Receiver.

/s/Stephen R. Cochell
Stephen R. Cochell

CERTIFICATE OF SERVICE

This is to certify that, October 3, 2012, a copy of this Motion was served on all counsel through the Court's ECF system.

/s/ Stephen R. Cochell
Stephen R. Cochell

