

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.	§

**RECORD SUPPLEMENT RE: RECENT VOGEL OBJECTION IN
ONDOVA BANKRUPTCY**

COMES NOW JEFF BARON, and files this record supplement of the objection filed on behalf of Peter Vogel in the Ondova Bankruptcy.

Respectfully submitted,

/s/ Gary N. Schepps

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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

Jeffrey R. Fine
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ATTORNEYS FOR RECEIVER PETER S. VOGEL

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

In re: §
§ **Case Nos. 09-34784-sgj 11**
ONDOVA LIMITED COMPANY §
§ **Chapter 11 Case**
§
Debtor. §

**RECEIVER’S OBJECTION TO EIGHTH INTERIM APPLICATION OF MUNSCHE
HARDT KOPF & HARR, P.C., ATTORNEYS FOR DANIEL J. SHERMAN, CHAPTER
11 TRUSTEE, FOR THE ALLOWANCE OF FEES AND EXPENSES FOR THE PERIOD
FEBRUARY 1, 2012 THROUGH MAY 31, 2012**

Peter S. Vogel, Receiver for Jeffrey Baron (the “*Receiver*”) files this *Objection to Eighth Interim Application of Munsch Hardt Kopf & Harr, P.C., Attorneys for Daniel J. Sherman, Chapter 11 Trustee, for the Allowance of Fees and Expenses for the Period February 1, 2012 Through May 31, 2012* (the “*Objection*”) and would show as follows:

I. Background

1. On July 27, 2009, (the “*Petition Date*”), the Debtor filed its voluntary petition for relief under chapter 11 of the Bankruptcy Code.
2. On September 17, 2009, this Court entered an order appointing Daniel J. Sherman as chapter 11 Trustee (the “*Trustee*”). [Docket No. 98.]

3. The Trustee selected Munsch Hardt Kopf & Harr, P.C. ("Munsch Hardt") as his counsel, and on November 17, 2009, the Court entered its *Order Authorizing Trustee's Employment of Munsch Hardt Kopf & Harr, P.C.* [Docket No. 152.]

4. On November 24, 2010, the United States District Court for the Northern District of Texas (the "District Court") entered its *Order Appointing Receiver* [Civil Action No. 3-09 CV 0988-F Docket No. 130] appointing Peter S. Vogel as Receiver for Jeffrey Baron.

5. Mr. Baron has hired Martin Thomas as his attorney in this matter, and Mr. Thomas currently serves in that capacity.

6. On March 23, 2012, Munsch Hardt filed its *Eighth Interim Application of Munsch Hardt Kopf & Harr, P.C., Attorneys for Daniel J. Sherman, Chapter 11 Trustee, for the Allowance of Fees and Expenses for the Period February 1, 2012 Through May 31, 2012* (the "Application"). Upon information and belief, Munsch Hardt has filed interim fee applications, including the Application, requesting for services rendered through May 31, 2012, \$2,514,550.40 in fees and \$76,729.69 in expenses, as shown on the chart attached hereto as Exhibit "A" and incorporated herein for all purposes.

7. On July 6, 2012, Gardere Wynne Sewell LLP withdrew from representing the Receiver, and undersigned counsel was employed as counsel for the Receiver by District Court Order filed July 12, 2012 [Civil Action No. 3-09 CV 0988-F Docket No. 1026].

8. On July 20, 2012, Mr. Thomas contacted the Receiver through undersigned counsel and requested that the Receiver file objections to the Application. In a subsequent telephonic conference with Mr. Thomas, some specific objections to the Application were requested by Mr. Thomas on behalf of Mr. Baron, although Mr. Baron apparently continues to take the position that the Receiver should make all objections on behalf of Mr. Baron in regard to the Application.

II. Objections

9. Under the Court's protocol, Mr. Baron may object to fee applications filed by the Trustee's counsel by relaying his objections to the Receiver. The Receiver is then to relay that information to the Court.

10. Despite the protocol for objections by Mr. Baron, no specific objections, or evidence supporting the objections, were relayed to the Receiver other than those indicated below.

11. Mr. Baron has not prepared "line item" objections to the Application. However, Mr. Baron's counsel does reiterate Mr. Baron's general objections to the Application as follows:

- In concert with his comments to the District Court by letter dated January 3, 2011, (copy attached hereto as Exhibit "B"), Mr. Baron believes that the bankruptcy estate is ripe to be resolved with all creditors paid, and that continued delay in resolving the bankruptcy estate is prejudicial to Mr. Baron and needlessly multiplies the fees to the estate and costs of administration.
- Mr. Baron reserves all rights to evaluate and object to this Application and all prior fee applications of Munsch Hardt prior to their final allowance. Counsel for Mr. Baron suggests that the Application (as well as the fees in general in the bankruptcy case) be evaluated from the vantage point of value to the creditors and parties in interest.

12. In addition to the objections relayed through Mr. Baron's counsel, the Receiver also has specific comments to the Application.

13. In the Application, at numbered Paragraph 9, there is the following statement:

- “At the request of Mr. Peter Vogel, Receiver for Jeffrey Baron (“Receiver”), Munsch Hardt was asked to defend and respond to the challenges to the Receivership by Mr. Baron, including all appeals of the Receivership, all of the motions to vacate the Receivership and all the motions to stay the Receivership pending appeal. The majority of fees sought during the Application Period relate to those services for the Receiver as well as dealing with the appeals filed by Mr. Baron to recent orders of the Bankruptcy Court.”

14. The Receiver disputes that Munsch Hardt was ever engaged by the Receiver to provide services to the Receiver. The Receiver appears independently as an appellee in numerous appellate matters before the 5th Circuit Court of Appeals and has engaged independent counsel other than Munsch Hardt to represent him in those matters.

15. In the Application, at numbered Paragraph 33, there is the following statement:

- “Specifically, Munsch Hardt successfully negotiated a settlement with the Receiver that established a protocol for any remaining appeals or other litigation that are connected to these cases that will inevitably lead to a more prompt wind down of the bankruptcy estate.”

16. The Receiver is unaware of any settlement agreement between the Receiver and the Trustee, although the Trustee and the Receiver do continue to discuss methods for winding down these matters.

17. Although no evidence or specific objections have been received from Mr. Baron to date, the Receiver will present such objections or evidence when received from Mr. Baron. The Receiver will supplement this Objection, as appropriate; when and if any specific evidence or objections are received from Mr. Baron.

WHEREFORE, the Receiver objects to the Application as set forth herein.

DATE: July 23, 2012

Respectfully submitted,

DYKEMA GOSSETT PLLC

By: /s/ Jeffrey R. Fine
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Texas Bar No. 07008410

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**ATTORNEYS FOR RECEIVER PETER S.
VOGEL**

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above Notice of Appearance and Request for Service of Notices and Papers has been served electronically upon the parties receiving CM/ECF notice of this case on this 23rd day of July, 2012.

/s/ Jeffrey R. Fine

EXHIBIT A

<u>Fee App & Date</u>	<u>Fees</u>	<u>Expenses</u>	<u>Fees Awarded</u>	<u>Expenses Awarded</u>	<u>Trustee to Pay MH</u>
First Fee App - 4/27/10	\$301,067.50	\$7,095.48	\$301,067.50	\$7,095.48	\$60,213.50
Second Fee App - 6/21/10	369,904.50	\$6,530.66	\$369,904.50	\$6,530.66	\$73,980.90
Third Fee App – 10/20/10	\$328,605.50	\$6,341.07	\$328,605.50	\$5,656.82	\$65,036.84
Fourth Fee App – 3/25/11	\$425,595.50	\$11,688.73	\$425,595.50	\$11,688.73	\$310,112.47
Fifth Fee App – 7/11/11	\$307,551.00	\$18,427.36	\$307,551.00	\$18,427.35	\$325,978.35
Sixth Fee App – 11/21/11	\$369,499.40	\$9,778.95	\$369,499.50	\$9,778.95	\$175,000.00
Seventh Fee App – 3/23/12	\$229,529.50	\$9,301.76	\$229,529.50	\$9,301.76	\$170,000.00
Eighth Fee App – 6/29/12	182,797.50	\$7,565.68			
TOTAL	\$2,514,550.40	\$76,729.69	\$2,331,753.00	\$68,479.75	\$1,180,322.06

EXHIBIT B

Martin K. Thomas

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*We are a debt relief agency.
We help people file for bankruptcy
relief under the Bankruptcy Code*

MARTIN K. THOMAS

January 3, 2011

Honorable Royal Ferguson
U.S. District Judge
Northern District of Texas
1100 Commerce St.
Dallas, TX 75201

RE: Netsphere Inc et al v. Baron et al
Case No. 3:09-cv-00988-F (the "District Court Matter")

Dear Judge Ferguson,

As you may recall, I am counsel of record for Jeff Baron in the Ondova Bankruptcy pending in the Northern District of Texas. At the hearing before you in the Netsphere v. Baron matter on November 17, 2010, you asked that I visit with Mr. Baron and report back to you on his need for counsel in the Ondova Bankruptcy.

I have done that and this letter is my report to you. I am filing this as a letter to the Court to emphasize that I have not entered an appearance in the District Court Matter and that I am not intending to do so by filing this report.

The Ondova bankruptcy should have comparatively few matters remaining. I talked with Mr. Corky Sherman concerning winding up the bankruptcy and it seems clear, without limitation, that the remaining issues include:

1. Evaluating and objecting to claims;
2. After the claims evaluation, and based on the solvency of the estate, evaluating whether to convert the case to a chapter 7 liquidation or dismiss it after all creditors are paid in full;
3. Monitoring complete performance of all parties under the settlement agreement reached in the Ondova matter;

Honorable Royal Ferguson
January 3, 2011
page no. 2

4. Evaluating and responding to the various attorney fee disputes that have been filed in the Ondova matter;
5. Evaluating and, if appropriate, objecting to the fee applications filed or to be filed for various administrative expenses; and,
6. Defending the Show Cause Orders that have been issued to Mr. Baron.

Many of these issues fall within the direct purview of the chapter 11 trustee, Corky Sherman. However, it is common that creditors, principals of a debtor and parties in interest will participate in these matters and evaluate whether they have interests that are separate from the trustee's, whose obligation is to the entire creditor body and not just one entity. Certainly, Mr. Baron has actively participated in the Ondova bankruptcy and he would like to be allowed to at least evaluate his rights with the assistance of counsel.

One specific issue causes more concern than most. Considering the current relationship between the Receiver and Mr. Baron, it seems difficult to expect the Receiver to adequately defend Mr. Baron in regard to the Show Cause Orders. Perhaps the answer is that they be dismissed but if they are to be prosecuted, Mr. Baron would like to have counsel, preferably counsel of his choice.

I have visited with Mr. Baron and I believe that he and I could reach an agreement for me to represent him concerning most of the bankruptcy issues. However, I would want a specific agreement approved by court order delineating the scope of my responsibility and how and when I would be compensated.

One particular set of issues is beyond my prior representation and is not something I would care to handle. The attorney fee disputes and applications for administrative expenses were always excepted from my responsibility and I would not be willing to handle them in the future.

Very truly yours,

/s/ Martin K. Thomas

Martin K. Thomas