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ATTORNEY IN CHARGE FOR
JEFFEY BARON

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

In re	§	
	§	**CASE NO. 09-34784-SGJ**
ONDOVA LIMTITED COMANY,	§	**Chapter 11**
	§	
Debtor	§	

JEFFREY BARON'S RESPONSE AND OBJECTION TO
MOTION FOR SANCTIONS FOR VIOLATION OF THE AUTOMATIC STAY
[ECF DOC 1186]

TO THE HONORABLE TRACY C. G. JERNIGAN UNITED STATES BANKRUPTCY JUDGE:

Jeffrey Baron hereby files this Response Objection to Motion for Sanctions for Violation of the Automatic Stay, and for cause, would respectfully show.

I.

SPECIFIC ADMISSION OR DENIAL OF ALLEGATIONS MADE IN THE MOTION

1. Baron hereby admits or denies the allegations in the Trustee's Motion for Sanctions for Violation of the Automatic Stay (the "Motion").

Paragraph 1	Admitted.
Paragraph 2	Admitted.
Paragraph 3	Admitted.

Paragraph 4	Admitted.
Paragraph 5	Admitted.
Paragraph 6	Denied as written. As to the Baron Involuntary Bankruptcy, the Order for Relief was reversed by the District Court on January 2, 2014, by Amended Memorandum Opinion and Judgment. *Baron v. Schurig,* 2014 WL 25519 (N.D. Tex. 2014), ECF Docs 52 & 53 in Cause 3:13-cv-03461-L. Following the District Court's mandate, this Court dismissed the Baron Bankruptcy on March 14, 2014. ECF Doc 467 in Bankruptcy Case 12-37921. The District Court's decision was appealed to the Fifth Circuit, and on December 22, 2012, the Fifth Circuit affirmed in part, reversed in part, and remanded (*In re Baron,* 2014 WL 7251031 (5th Cir. 2014)). However, no mandate was issued as Appellee Baron filed a motion for a panel rehearing on a timely basis. The Petitioning Creditors and Baron then settled, and the parties filed a motion to dismiss the appeal asking that the opinion and judgment entered on December 22, 2014, be withdrawn. The Fifth Circuit dismissed the appeal as moot, but declined to withdraw the opinion and judgment. The mandate ultimately issued by the Fifth Circuit did not provide for remand, and did not direct the District Court to remand the case back to this Court. In sum, the Baron Involuntary Bankruptcy case is over, and the District Court's decision mandating the dismissal of the Baron Involuntary Bankruptcy is now final.
Paragraph 7	Denied as written. On April 13, 2014, Baron filed an adversary proceeding, Adversary No. 14-03047-sgj, pursuant to 11 U.S.C. § 303(i). Said case was abated by agreement, pending the outcome of the Involuntary Bankruptcy Appeal. In January 2015, as part of the Petitioning Creditors and Baron's settlement, the parties agreed to dismiss said adversary with prejudice. Said adversary proceeding has now been dismissed with prejudice. ECF Doc 63 in Adversary Proceeding 14-03047-sgj.
Paragraphs 8 and 9	Denied as written. Two adversary proceedings have been filed by Baron in the Ondova Case. The first is Adversary No. 14-03081-sgj, filed by Baron against Sherman, Trustee on June 8, 2014. In Adversary 14-03081-sgj, Baron is seeking recovery of the settlement proceeds held by the Trustee regarding the River Cruise Investments, Ltd. transaction and the $330,000 security deposit placed with Sherman, Trustee pursuant to this Court's Order Directing Establishment of Security Deposit. ECF Doc 446 in Bankruptcy Case 09-34784-sgj. The second is Adversary No. 14-03121-sgj, filed by Baron against Sherman, Trustee, Munsch Hardt and Liberty Mutual Insurance Company on October 6, 2014, asserting claims for breach of contract, fraud, malicious prosecution and gross negligence on the part

	of Sherman, Trustee and his attorneys, Munsch Hardt. Both adversary proceedings have been abated by this Court pursuant to the agreement of the parties. The reason why the two adversary proceedings are separate is that in Adversary 14-03081-sgj, no jury trial demand was made. In Adversary 14-03121-sgj, a jury demand has been made. The findings made by the Fifth Circuit referred to in paragraphs 8-9 were induced by the fraudulent representations made by Receiver and the Trustee, as set forth below. The Trustee and his counsel again allege that Baron commenced an appeal of the Fifth Circuit's *Netsphere* decision to the United States Supreme Court in June 2014, another complete falsehood. Baron did not appeal the *Netphere* decision in June 2014, or at any other time. Schepps and Payne did so in April 2014, purportedly on behalf of Novo Point and Quantec, notwithstanding that their authority to represent these entities has been challenged by Baron and others repeatedly in the District Court. *See* ECF Docs 1414, 1416, 1423 & 1439 in Civil Acton No. 3:09-cv-0988-L, styled *Netsphere, et al, v Jeffrey Baron, et al,* in the United States District Court for the Northern District of Texas - Dallas Division (the "*Netsphere* DC Case"). After Vogel and Sherman filed a Cross-Petition for Writ of Certiorari on July 21, 2014, Baron made a request to file a Cross Petition of his own, which was denied as not being timely. These are the true facts, not the blatant misrepresentations made by Trustee's counsel.
Paragraph 10	Denied as written. These lawsuits were not filed for delay or to cause expense to the Trustee and his professionals. The Ondova case is a complete and unmitigated disaster, caused by actions of the Trustee and the Trustee's counsel, as will be detailed below. Baron is interested in getting the Ondova case resolved, making distributions to the Creditors, and getting the main case off of this Court's docket. The Trustee's counsel is doing everything to block Baron's efforts to do so, and why not? When this Court studies the complete waste of money flushed down the "proverbial toilet" by the Trustee and his counsel, and examines the facts leading up to the institution of the failed Baron receivership, this Court will recognize how extreme this situation is. This Court should remove the Trustee and his counsel from this case as they have a clear and irreconcilable conflict with the Ondova Estate and its creditors. These professionals are owed over a million dollars in fees and expenses through September 2012, with respect to fee applications filed through that date. They probably have several millions of dollars of incurred fees and expenses that have not been disclosed to this Court in any fee applications for the period of October 1, 2012, through the present. They are obviously fearful of filing these applications with the Court, and why shouldn't they be. This Court is at some point going to have to consider the ugly concept of disgorgement of fees already paid in order to create parity among

	administrative creditors, and their fees and expenses already recovered will have to be reviewed and, in all likelihood, disgorged under the strictures of *Matter of Pro-Snax Distributors, Inc.*, 157 F.3d 414, 426 (5th Cir. 1998). They are being sued for improvident actions taken by them. It is time for this Court to take action, *sua sponte*, to remove them from this case and install a panel trustee to complete the case.
Paragraph 11	Denied as written. There has been no remand of the involuntary back to this Court.
Paragraph 12	Denied as written. Baron, along with Novo Point, LLC and Quantec, LLC (the "LLCs"), have filed a state court lawsuit against Vogel, Receiver, Gardere Wynne, Sherman, Trustee and Munsch Hardt on November 24, 2014, Cause No. DC-14-13755, encompassing claims and causes of action based on the wrongful institution of the receivership against Jeffrey Baron and the LLCs, and multiple breaches of fiduciary duty and gross negligence on the part of the Receiver and his counsel during the course of the now defunct receivership. Plaintiffs in said lawsuit filed the action to preserve the four-year statute of limitation, and have offered to abate the lawsuit repeatedly, to no avail.
Paragraph 13	Denied as written.
Paragraph 14	Denied as written. Intentionally misrepresenting what this Court recommended and misrepresenting other events in order to seek to have the district court appoint a receiver can hardly be characterized as "acts done in the trustee's official capacity".
Paragraph 15	Denied as written.
Paragraph 16	Denied. The State Court Action does not seek recovery of damages from the estate or Sherman in his official capacity as a trustee.
Paragraph 17	Denied as written. Intentionally misrepresenting what this Court recommended and misrepresenting other events in order to seek to have the district court appoint a receiver can hardly be characterized as "acts done in the trustee's official capacity".
Paragraph 18	Denied as written.
Paragraph 19	This relief should be denied for the reasons stated below.
Paragraph 20	Denied as written.

II.

STATEMENT OF FACTS

A. The Global Settlement Agreement

2. Around February 2010, Baron, the Netsphere Parties, and the Ondova Trustee commenced negotiations with respect to a global settlement intended to resolve the Netsphere DC Case, the Ondova Chapter 11 Case, and other related cases then being litigated. In June 2010, the parties reached a global settlement, which was documented in a Mutual Settlement and Release Agreement (the "GSA").[1]

3. The GSA was intended to provide Baron a fresh start, to pay Ondova's administrative and unsecured debts, to resolve the Ondova Chapter 11 Case through a conversion or dismissal, to return control of Ondova to Baron,[2] and, most importantly for Baron, to resolve the *Netsphere, et al v. Baron* case, pending in the United States United States District Court for the Northern District of Texas - Dallas Division, Civil Action Netsphere DC Case and other lawsuits through dismissals and/or joint stipulations of dismissal with prejudice. The GSA allowed Baron's affiliated companies to retain over 230,000 income producing internet domain names and provided additional revenue through other provisions of the GSA.

4. The GSA also provided for payments to the Ondova Trustee in the amount of at least $1.75 million, which, along with other funds on hand, was to provide sufficient funds to pay 100% all allowed administrative priority and unsecured claims against the Ondova Bankruptcy

[1] Baron gave up tremendous concessions in the GSA, including giving up over $4 million in money that the Netsphere parties agreed to pay in their Memorandum of Understanding and tens of millions of dollars of intellectual property.

[2] *See* Jan 4, 2011 transcript in DC at p. 222:11-12 (Sherman: "negotiations were to pay the debts and return the keys back to Baron").

Estate.[3] .The GSA annexed four agreed orders of dismissal and/or joint stipulations of dismissal with prejudice, which were executed by the parties and delivered to the Munsch Hardt. Munsch Hardt was directed to file the dismissals and/or joint stipulations of dismissal with prejudice promptly after the receipt of same. In fact, Munsch Hardt filed all of them except for the Joint Stipulation of Dismissal With Prejudice as to *Netsphere* DC Case, which was the primary consideration flowing to Baron under the GSA.

5. On July 2, 2010, the Ondova Trustee filed a motion for approval of the GSA in the Ondova Chapter 11 Case. Several hearings occurred during the month of July, and on July 29, 2010, this Court approved the GSA.

6. As part of the GSA, entities related to Baron provided approximately $2,000,000 towards the payment of the Ondova Allowed Administrative, Priority and Unsecured Claims in full, through the Ondova Estate. At that point—September 2010—Sherman, Trustee held over $2 million in cash and more than $700,000 in receivables at market value (BK ECF Doc 506, at p 6.) to pay $800,000 in unsecured claims, mostly attorney claimants. Instead of taking care of the business of the Ondova Bankruptcy Estate, which included the dismissal of the *Netsphere* DC Case, with prejudice, paying the Ondova administrative, priority and unsecured creditors (through a plan of reorganization or otherwise), closing the Ondova Chapter 11 case and returning Ondova to Baron's control, Sherman, Trustee and Munsch Hardt sought to have Baron placed into a receivership, without seeking the advice and consent of this Court or providing notice to Baron or his counsel. Sherman and Urbanik then proceeded to waste $379,761.18 of

[3] In September 2010, after receiving payment under the GSA the Ondova Trustee held over $2 million in cash to pay 100% of all administrative claims and 100% if the approximate $800,000 in scheduled unsecured claims (*See* transcript of hearing in this Court 10-8-2010, Docket. 535 at 66:21-22). Ondova should have emerged from bankruptcy with approximately $1 million in cash to finance its ongoing operations.

Receivership assets and $1,017,729.00 of Ondova Bankruptcy Estate assets in an unsuccessful defense of the Receivership they instituted. This constitutes just the fees and expenses incurred by Munsch Hardt through September 30, 2012. No further fee applications have been filed in over 26 months by either Munsch Hardt or the Trustee, and one can only assume that these lawyers are scared to death at the prospect of reporting to this Court the fees and expenses that have yet to be applied for.

7. Instead of paying the lawyer-creditors, Sherman began aggressively soliciting new claims from other lawyers that had formerly represented parties in the *Netsphere* DC Case, including Baron. Instead of setting a bar date within which creditors could file administrative claims,[4] and waiting for the bar date to expire, Sherman actively solicited lawyers, who had not made claims against Ondova and who had no contractual right to recover from the Ondova estate, to make additional claims in the Ondova bankruptcy for "substantial contribution" to the Ondova estate. Sherman even recruited these lawyers to assist his solicitation of more lawyers. Sherman eventually succeeded in getting two to make claims in the Ondova Bankruptcy case (see application of Pronske, Taylor, etc. in Ondova Bankruptcy case.), but certainly not the dozens of lawyers he represented to this Court, the district court and the Fifth Circuit that Baron was "hiring and firing" without paying them, causing, allegedly, numerous lawyers to file substantial contribution claims. These representations were, at best, false and misleading. In the end, after all of the vehement exhortations of Urbanik, only one attorney/law firm made a claim which was allowed by the Court, Gerrit Pronske and his firm, and the Trustee did not even object to this claim, which was defensible, and should not have been allowed.

[4] A bar date of November 25, 2009, for Unsecured and Priority Claims was set by the Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines (BK ECF Doc 3).

8. At the point in time Sherman decided to place Baron into a receivership, there were sufficient funds in the Ondova bankruptcy estate to pay in full all Administrative Claims, Priority Claims and Unsecured Claims and still have approximately $1 million surplus. If Sherman and Urbanik had simply taken care of their own business, set an administrative claim bar date and proceeded to resolve the Ondova estate's claims through a plan of reorganization, all creditors would have been paid in full and Ondova would have been returned to Baron pursuant to the spirit of the Trustee's obligations under the GSA.

B. The Show Cause Hearing Conducted by the Court

9. Beginning in September 2010, various parties, including Gerrit Pronske ("Pronske"), Baron's former attorney who had negotiated the GSA on Baron's behalf, Sherman, Trustee and his attorney, Urbanik, commenced an effort to persuade this Court that:

a. Baron had breached or was intending to breach the GSA,

b. Baron was transferring assets outside the jurisdiction of the court, and

c. Baron was a vexatious litigant because he was allegedly hiring, firing, and failing to pay numerous attorneys, who were lining up outside of this Court's courtroom to make substantial contribution claims.

Such representations were false, and intentionally misleading.

10. On September 15, 2010, this Court held a status conference at which Pronske alleged that Baron was engaging in fraudulent and criminal activities designed to "hide assets offshore." Sherman's attorney, Urbanik, joined Pronske in making these false and misleading statements. Later, when Sherman, Trustee and Vogel, Receiver attempted to support such

allegations before the Fifth Circuit Court of Appeals, the Circuit Court found no record support for such representations; in other words, the representations were false.[5]

11. At the hearing on September 15, 2010, this Court expressed concern that there was a deadline of September 15, 2010, for Baron to identify a new Trustee and Protector for the Village Trust, and that Baron, to date, had not succeeded in accomplishing same, and did not have a compelling explanation for why this had not been accomplished. However, Baron promptly satisfied this requirement within 48 hours.

12. On September 16, 2010, Court entered an Order Directing Establishment of Security Deposit, where Baron was directed to transfer to Sherman, Trustee the sum of $330,000 as a security deposit to be held by Sherman, Trustee to insure against potential breaches of the GSA by Baron. Baron made such deposit immediately. The objective evidence reveals that Baron was compliant, not recalcitrant. As of this date, four years later, neither Sherman nor Urbanik have brought before the Court any motion or pleading claiming that breaches of the GSA were caused by Baron. In fact, when placed under oath, Sherman admitted that Baron did not breach any obligations.[6]

C. The issuance of a show cause order against Baron and Report and Recommendation to the District Court

13. On September 17, 2010, this Court issued an order commanding Baron to appear and show cause why he was not in contempt of the bankruptcy court's order approving the GSA,

[5] In *Netsphere*, the Circuit Court completely debunked these oft-repeated accusations stating that "[n]either the trustee nor the receiver . . . pointed to record evidence that Baron failed to transfer the domain names in accordance with the agreement," that "there [was] no record evidence brought to [the court's] attention that any discrete assets subject to the settlement agreement were being moved beyond the reach of the court," and that the court could not "find evidence that Baron was threatening to nullify the global settlement agreement by transferring domain names outside the court's jurisdiction." 703 F.3d at 307–8.

[6] BK ECF Doc 932, Transcript of Hearing November 14, 2012 at 58.

which directed the parties to fulfill all of their respective obligations under the GSA. Baron was also ordered to show cause why this Court should not make a report and recommendation to the district court in the *Netsphere* DC Case to appoint an equity receiver over Baron, pursuant to 28 U.S.C. §§ 754 and 1692, to seize Baron's assets and perform Baron's obligations under the GSA should Baron fail to comply with his obligations under the GSA.

14. On September 22, 2010, this Court commenced a three-day evidentiary hearing at which evidence was adduced from Baron and other parties, including Sherman, Trustee, regarding the extent to which the GSA had been consummated. This Court obviously did not find that Baron was guilty of breaching the GSA or moving assets offshore, because no order was entered finding or concluding that Jeffrey Baron was in contempt.

D. Munsch Hardt and Sherman Unilaterally Decide to Seek Appointment of a Receiver, Violating this Court's Ruling, and Without First Seeking the Advice and Consent of this Court.

15. The idea of placing Jeffrey Baron into a receivership was conceived by Raymond Urbanik ("Urbanik"), lead lawyer for Sherman, Trustee, when, on November 19, 2010, Baron objected to the Third Fee Application filed by Munch Hardt in the Chapter 11 proceeding of Ondova.[7] That same day, Munsch Hardt lawyers began drafting the motion to put Baron into receivership, and on November 23, 2010, Urbanik and Sherman conferred with Vogel[8] for 2½ hours, planning the institution of the receivership. (DC ECF 467-7 at p. 2,3).

16. On September 17, 2010, this Court ordered Baron to show cause why this Court should not make a report and recommendation to the district court in the Netsphere DC Case to

[7] At the point in time Sherman decided to place Baron into a receivership, there were enough funds in the Ondova bankruptcy estate to pay in full all Administrative Claims, Priority Claims and Unsecured Claims. If Sherman and Urbanik had simply set an administrative bar date and proceeded to resolving the Ondova estate's claims through a plan of reorganization, all creditors would have been paid in full.

[8] At the time, Vogel was a mediator appointed by the district court.

appoint an equity receiver over Baron, pursuant to 28 U.S.C. §§ 754 and 1692, to seize Baron's assets and perform Baron's obligations under the GSA should Baron fail to comply with his obligations under the GSA.

17. The Court conducted three days of show cause hearings in September and October 2010, the result of which was that the Court **did not** find that Baron was in contempt or had violated any court order, and **did not**, in its Report and Recommendation issued on October 13, 2010, recommend the appointment of a receiver. The issue of whether to recommend the appointment of a receiver was squarely before this Court, and this Court decided not to make such recommendation.

18. On October 19, 2010, the District Court entered an order adopting the bankruptcy court's Report and Recommendation. On the same date, the District Court, following the recommendation of this Court, appointed Vogel as mediator to mediate attorney fee disputes between Baron and certain former counsel. Baron complied with the District Court's order to mediate the former attorneys' alleged claims.[9]

19. Over the next 45 days, Urbanik did not seek a rehearing on the Court's ruling or ask that the Court alter its recommendation. Instead of seeking the further involvement of this Court and giving Baron an opportunity to be heard, Munsch Hardt, with Urbanik at the lead, and Sherman in tow, and, on information and belief, in conspiracy with Vogel, unilaterally made the decision to place Baron into a receivership. Then Urbanik, on behalf of Sherman, and Vogel lied

[9] Sherman, Trustee and Vogel immediately commenced making false claims that Baron was not cooperating with the mediator and was obstructing the mediation efforts. In support of his ex parte motion for the appointment of a receiver, Sherman, Trustee and his attorney, Urbanik, argued that because Baron was violating the District Court's mediation order, the District Court needed to "appoint Vogel as the receiver in essence to make sure that a mediation of those attorneys' fees claims occurred." (DC ECF 410, Transcript of DC hearing on December 17, 2010 at 69) These allegations were totally false. Later, when confronted under oath, Sherman admitted that the mediation failed because the former lawyers refused to mediate, not Baron. Both Sherman and Vogel knew this, but deliberately misled the District Court into believing that it was Baron who had caused the mediation to fail.

to the district court, the Fifth Circuit Court appeals and the Supreme Court of the United States about what this Court had recommended. *See* ECF Doc 1195, in Bankruptcy Case No. 09-34784-SGJ. Does Mr. Urbanik really think that taking actions in violation of this Court's rulings and lying to courts about what this Honorable Court recommended constitute "intra vires" acts for which he and Sherman should be given immunity?

E. Actions Constituting a Violation of an Individual's Constitutional Rights to Due Process are Ultra Vires.

20. On November 24, 2010, instead of coming to this Court to allow this Court to consider whether a receivership was prudent or necessary, Urbanik, Sherman and possibly Vogel had an ex parte meeting with Judge Furgeson, sometime before 1:15 p.m. at which Judge Ferguson apparently signed the Receivership Order (DC ECF Doc 467-7, at pp 2-3). However, the district court's docket sheets do not reflect that a hearing ever occurred. It was an off-the-record, secret meeting, unreported to the public.

21. Later that day-after the order was entered, Urbanik filed an Unsworn Emergency Motion for Appointment of Receiver (the "Receivership Motion") (DC ECF Doc 124). The metadata information on the pdf version of the Receivership Motion filed with PACER shows that the motion was **created at 2:07 p.m**.[10] According to the PACER time stamp, the motion was **filed at 3:40 p.m. CST**.

22. At 3:54 p.m. Urbanik sent an email to ICANN, the international internet registry, in which he reported that, at **1:15 p.m. CST**, the Receivership Order had been signed by the District Court and Vogel had been appointed receiver.[11]

[10] This can be independently verified by downloading a copy of the Receivership Motion from PACER, going to "Properties" in the "File" tab of Adobe Acrobat.

[11] DC ECF Doc 721, 4-7.

23. In other words, Urbanik, Sherman and possibly Vogel obtained entry of the Receivership Order two and one-half hours before Urbanik even filed the Emergency Receivership Motion, at an ex parte, unreported meeting, without notice to Baron and his attorneys. After his ex parte meeting with Judge Ferguson at around 1:15 pm, Urbanik went back to his office and created the Receivership Motion in pdf form at 2:07 p.m. He then electronically filed it with the district court at 3:40 p.m., nearly 2 ½ hours after the Receivership Order had been signed by the District Court and Vogel had been appointed receiver.

24. The Receivership Motion was unverified, was unsupported by any declarations or affidavits, and was filed as an emergency motion, notwithstanding that there were no emergency circumstances that existed or that were even reported in the motion. No transcript of any hearing or meeting in chambers with Judge Ferguson exists. No notice was given to this Court or to Baron. No hearing appears on the docket. These events are both extraordinary and troubling.

25. Does Urbanik really want to suggest to this Honorable Court that activities such as those set forth above constitute "*intra vires*" conduct for which he and Sherman should be entitled to immunity?

26. Sherman and Urbanik made numerous material misrepresentations to mislead Judge Furgeson into imposing the receivership. They represented in the Emergency Motion that 1) Baron had fired Martin Thomas, did not pay him and had filed a grievance against him; 2) Ondova did not have enough funds to terminate the bankruptcy because of Baron's "crazed" and "vexatious" behavior; 3) Baron breached the GSA;[12] 4) Sherman was saddled with approximately $1 million in substantial contribution claims allegedly being made by "two dozen

[12] A few weeks prior, Mr. Urbanik admitted to this court: "The current status is that parties are all complying with settlement agreement provisions in terms of payments and other activities, so there has been no problem." (BK ECF Doc 527, Transcript of Hearing October 28, 2010, P. 6 lines18-20)

lawyers,"[13] all of which were allegedly caused by Baron, and that if Baron were not stopped by the imposition of receivership, the amount would uncontrollably skyrocket; and 5) Baron was uncooperative in court ordered mediations (DC ECF Doc___, Hearing in DC, January 4, 2011 at p 212). All of the allegations were false.

F. The Fees of the Trustee, the Receiver and their Counsel in the Receivership

27. The damages wrought by the actions of Urbanik and Sherman were real and palpable. On April 17, 2013, the Receiver filed an application requesting approval of the fees and expenses of Receiver, the fees and expenses of former general counsel for the Receiver, Gardere Wynne Sewell, LLP, the fees and expenses of the Receiver's current general counsel, Dykema Gossett PLLC, and the fees and expenses of numerous other professionals. ECF Doc 1233 and exhibits in Civil Action 3:09-cv-0988-L.

28. In all, fees and expenses were requested as follows:

Claimant	Total Amount Requested	Amount Previously Paid	Amount Owed
Peter S. Vogel, Receiver	$1,250,680.00	$708,926.00	$527,576.00
Gardere Wynne Sewell, LLP	2,010,832.22	1,479,571.05	531,290.27
Dykema Gossett, PLLC	1,550,776.00	1,136,170.64	354,777.69
13 law firms outside of Texas	19,559.41	19,559.41	0.00
Thomas Jackson	69,007.50	69,007.50	0.00
Joshua Cox	61,968.75	53,235.60	8,733.15
James Eckels	64,787.50	61,637.50	3,150.00
Jeffrey Harbin	13,913.62	13,913.62	0.00
Gary Lyon	16,462.50	16,462.50	0.00
Grant Thornton, LLP	121,390.53	109,301.53	12,089.00
Martin Thomas	95,285.52	95,285.52	0.00
Damon Nelson	306,262.92	287,962.92	18,300.00

[13] Later, Sherman/Urbanik told Judge Furgeson that there were "six claims for substantial contribution". Transcript of DC hearing held May 8, 2014, ECF Doc 1298 at 103:17-18, Civil Action 3:09-cv-0988-L.

Claimant	Total Amount Requested	Amount Previously Paid	Amount Owed
Matt Morris	54,572.50	0.00	54,572.50
Total	$5,635,498.97	$4,051,033.15	$1,510,488.61

(*Id.*, at 2-3).

29. On April 17, 2013, Sherman, Trustee filed his fee application in the Receivership action requesting a total amount of $1,219,775.68, consisting of $1,203,329.50 in professional fees and $16,446.18 in reimbursable expenses, of which $379,761.18 had already been paid by the Receiver. ECF Doc 1229, at 6, in Civil Action 3:09-cv-00988-L. At this point, in the post-Receivership period (less than twenty-four months) from December 2010, to September 30, 2012, Sherman, Trustee's attorneys, Munsch Hardt, had racked up roughly $2,878,056.42 in fees and expenses, of which a total of $1,393,759.53 was been paid, $379,751.18 from the Receivership, and $1,014,008.35 from the Ondova Estate, money that could have been used to pay the unsecured creditors of Ondova 100 cents dollars on their claims..

	Period Covered	Total Amount Requested	Total Amount Awarded	Date of Award	Total Amount Paid
4th MH Interim Fee App in Ondova Case	12/1/2010 to 1/31/2011	$263,020.00[14]	$263,020.00	04/28/2011	$263,020.00
5th MH Interim Fee App in Ondova Case	2/1/2011 to 5/31/2011	$325,978.35	$325,978.35	09/01/2011	$325,978.35
6th MH Interim Fee App in Ondova Case	6/1/2011 to 9/30/2011	$379,278.45	$379,278.45	12/20/2011	$155,000.00
7th MH Interim Fee App in Ondova Case	10/1/2011 to 1/31/2012	$238,831.26	$238,831.26	05/11/2012	$170,000.00
8th MH Interim Fee App in Ondova Case r	2/1/2012 to 5/31/2012	$190,363.18	$190,363.18	09/18/2012	$100,000.00
9th MH Interim Fee App in Ondova Case	6/1/2012 to 9/30/2012	$399,615.50	$399,615.50	12/20/2012	$00.00
Trustee's First Fee App in Receivership	11/24/2010 to 3/31/2011	$379,761.18	$379,761.18		$379,761.18
Trustee's Second Fee App in Receivership	4/1/2011 to 9/30/2012	$701,208.50	$00.00	N/A	$00.00

[14] Since this Fourth Fee App spanned a period from 10/1/2010 to 1/31/2011, the amount shown is the amount attributable to the "Baron Receivership" in the Fourth MH Interim Fee Application. ECF Doc 569, at 15, Bankruptcy Case 09-34784-SGJ.

TOTALS:		$2,878,056.42	$2,176,847.92		$1,393,759.53

30. The total amount Munsch Hardt spent on the Receivership Matter was $2,098,698.68 as per the fee applications filed by Munsch Hardt, as follows:

	Period Covered	Total Amount Requested for Receivership Matter
4th MH Interim Fee App in Ondova Case	10/1/2010 to 1/31/2011	$263,020.00
5th MH Interim Fee App in Ondova Case	2/1/2011 to 5/31/2011	$190,833.50
6th MH Interim Fee App in Ondova Case	6/1/2011 to 9/30/2011	$83,553.00
7th MH Interim Fee App in Ondova Case	10/1/2011 to 1/31/2012	$147,423.00
8th MH Interim Fee App in Ondova Case r	2/1/2012 to 5/31/2012	$92,992.00
9th MH Interim Fee App in Ondova Case	6/1/2012 to 9/30/2012	$239,907.50
Trustee's First Fee App in Receivership	11/24/2010 to 3/31/2011	$379,761.18
Trustee's Second Fee App in Receivership	4/1/2011 to 9/30/2012	$701,208.50
TOTALS:		$2,098,698.68

31. Munsch Hardt incurred $2,098,698.68 on the Baron Receivership matter in a little over 22 months, which could have been totally avoided by simply having gone to this Court in November 2010 and requested a status conference with notice to Baron.

NOT TO "BEAT A DEAD HORSE", BUT BARON WAS COMPLIANT NOT RECALCITRANT. FROM THE DATE OF APPROVAL OF THE GSA IN LATE JULY 2010, BARON HAD DONE EVERYTHING REQUESTED OF HIM BY THIS COURT, PERHAPS NOT AS QUICKLY AS THIS COURT WOULD HAVE LIKED, BUT HE ACCOMPLISHED EVERY TASK REQUIRED OF HIM.[15]

[15] This Court held a three-day show cause proceeding against Baron, and if this Court had believed that Baron was torpedoing the GSA, it would have certainly held him in contempt or ordered the Trustee to institute a receivership against Baron, but the Court did not do so. The record reflects that the Court asked Baron for two things during the course of these hearings: (a) recommend a new protector and trustee appointed for the Village Trust; and (b) put up a security deposit of $330,000. Baron responded to both requests expeditiously. He was compliant not recalcitrant, and this Court can review the transcripts and documents in the file from that point forward to November 24, 2010. Baron is confident that the Court will find nothing to the contrary.

32. Whatever else the Trustee could have expected of Baron in November 2010, was never communicated to Baron, to his counsel or to this Court. This entire **RECEIVERSHIP DEBACLE** was an unmitigated disaster caused by the Trustee and his counsel, Munsch Hardt, and was totally avoidable by the Trustee. It resulted in not one attorney fee creditor, for whose benefit the Receivership was instituted, receiving one nickel in the Receivership, and not one Unsecured Creditor receiving a nickel in the Ondova Bankruptcy Case. It has ruined Baron financially. His assets have evaporated during the failed administration of Vogel, Receiver, and Munsch Hardt was the architect of the Receivership, and supported, if not demanded, the perpetuation of the Receivership, even when Judge Ferguson tried to put an end to it, *sua sponte,* on at least two occasions.

III.

ARGUMENT AND AUTHROITIES

A. The State Court Suit Does Not Make Claims Against the Estate

33. The reason for suits in two different courts is simple: this Court does not have jurisdiction over certain claims against Munsch Hardt and Sherman.

34. While the Court clearly has jurisdiction of the claims in the two adversary suits (claims made against the Estate for return of Jeff Baron's security deposit and funds due him from the Rivercruise settlement, and the claims against Sherman and Liberty Mutual Insurance Company for transgressions made in connection with the Global Settlement Agreement), it does not have jurisdiction over the claims in the State Court Suit. In the State Court Suit, the LLCs and Baron seeks damages against Sherman, individually and Munsch Hardt for their fraud and other wrongful acts committed while acting outside of their official capacities.

35. The claims in the Adversary Suits clearly affect the bankruptcy estate, but those made in the State Court Suit do not. Accordingly, as explained herein, while this Court has jurisdiction over the claims made in the Adversary Suits, it does not possess jurisdiction over those in the State Court Suit.

B. The State Court Suit is Not Related to Any Bankruptcy Estate

36. All federal courts are courts of limited jurisdiction. Such limited jurisdiction derives from statutory grants of the Congress. A bankruptcy court's jurisdiction is even more circumscribed and is wholly "grounded in and limited by statute. *Celotex Corp. v. Edwards*, 514 U.S. 300, 307 (1995). A bankruptcy court's jurisdiction extends to "all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b).

37. The test for determining the existence of "related to jurisdiction" is whether "the outcome of that proceeding could conceivably have an effect on the estate being administered in bankruptcy." *In re Wood*, 825 F.2d 90, 93 (5th Cir.1987) (adopting the test originated by the Third Circuit in *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3rd Cir. 1984)); *See also, In re Walker*, 51 F.3d 562, 569 (5th Cir.1995), where the Fifth Circuit held that "[a]n action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and ... in any way impacts upon the handling and administration of the bankruptcy estate." In *In re Bass*, 171 F.3d 1016 1022 (5th Cir. 1999), the Fifth Circuit refined the test further, and held that:

> "This test is obviously conjunctive: For jurisdiction to attach, the anticipated outcome of the action must both (1) alter the rights, obligations, and choices of action of the debtor, and (2) have an effect on the administration of the estate."

1. The State Court Case Is Not "Related To" the Dismissed Baron Bankruptcy.

38. As to the Baron Bankruptcy, the Bankruptcy Court's Order for Relief was reversed by the District Court on January 2, 2014, by Amended Memorandum Opinion and Judgment. *Baron v. Schurig*, 2014 WL 25519 (N.D. Tex. 2014), ECF Docs 52 & 53 in Civil Action 3:13-cv-03461-L. Following District Court's mandate, this Court dismissed the Baron Bankruptcy on March 14, 2014. ECF Doc 467 in Bankruptcy Case 12-37921-sgj. The District Court's decision was appealed to the Fifth Circuit, and the court affirmed in part, reversed in part, and remanded. *In re Baron*, 2014 WL 7251031 (5th Cir. 2014). Before the mandate issued, however, the parties filed Motions for Rehearing and then settled. The appeal has been dismissed as moot, and the mandate did not call for a remand. In sum, the case is over, and the District Court's decision ordering the case dismissed is now final.

39. It goes without saying that there cannot be any "related to jurisdiction" where the bankruptcy case to which the matter is allegedly related was dismissed nearly twelve months ago.

2. The State Court Suit will Not Have Any Effect on the Ondova Bankruptcy

40. As to the Ondova Bankruptcy, a quick review of the Original Petition in the State Court Suit reveals that the suit cannot be said to have any affect whatsoever upon the Bankruptcy Estate of Ondova Limited Company. *See* Exhibit "A" to the Motion for Sanctions, ECF Doc 1185-1 in Bankruptcy Case 09-34784-sgj. The lawsuit will not increase or diminish the assets of the Ondova Bankruptcy Estate. The Ondova Bankruptcy Estate is not a defendant.

41. The only connection is that two of the defendants in State Court Suit, Daniel Sherman and Munsch Hardt, are the trustee for Ondova and counsel for trustee, respectively. However, Sherman and Munsch Hardt are being sued for ultra vires acts engaged in by them. Accordingly, no judgment rendered against either Sherman or Munsch Hardt will ever increase

the liabilities of the Ondova Bankruptcy Estate or otherwise affect the Ondova Bankruptcy Estate. Further, not one of the acts of commission or omissions of Defendant Sherman and Munsch Hardt complained of by Plaintiffs were undertaken pursuant to an order entered by the Bankruptcy Court or upon the recommendation of the Bankruptcy Court.

42. In sum, the State Court Suit (1) does not alter the rights, obligations, and choices of action of the debtor, Ondova, and (2) will not have an effect on the administration of the Ondova Bankruptcy Estate.

C. The Barton Doctrine Does Not Apply to Ultra Vires Acts

43. Urbanik and Sherman's invocation of the Barton Doctrine is misplaced. It is well established that a party wishing to institute an action in a non-appointing forum against a trustee, for acts done in the trustee's official capacity and within the trustee's authority as an officer of the court, must first obtain leave of the appointing court. However, leave is expressly not required when such acts are *ultra vires*. Under the "*ultra vires*" exception, a receiver or a trustee loses the protection of the Barton doctrine for actions that are beyond the scope of his or her duties authorized by the appointing court. *See In re McKenzie*, 716 F.3d 404, 415 (6th Cir. 2013); *Satterfield v. Malloy*, 700 F.3d 1231, 1234 (10th Cir. 2012).

44. The "*ultra vires*" exception may be said to be a corollary of the Barton doctrine itself. The core purpose of the doctrine is to prevent interference with the appointing court's control over property belonging to the estate being administered by the appointing court. As an example, because a judgment against the receiver in his official capacity would be satisfied out of the receivership property, the effect of a suit brought without leave to recover such a judgment would be "to take the property of the trust from [the receiver's] hands and apply it to the

payment of the plaintiff's claim, without regard to the rights of other creditors or the orders of the aooiubtubg court which administering the trust property. *Barton*, 104 U.S. at 128-29

45. By comparison, if the receiver is not acting within the scope of his authority, and if receivership property would not be subject to the resulting claims arising from the receiver's conduct, (the receiver being personally liable), there would be no direct, adverse impact on the receivership estate justifying the application of the doctrine to restrict the jurisdiction of the non-appointing court.

46. Sherman is correct that courts have most commonly found ultra vires exception when a trustee has wrongfully seized assets from a third party. *See Teton Millwork Sales v. Schlossberg*, 311 Fed Appx.145 (10th Cir. Feb. 10, 2009) (finding case fell "squarely within [the] ultra vires exception to the Barton doctrine" because plaintiff, an outside party, alleged that receiver exceeded his authority by wrongfully seizing its assets). *Leonard v. Vrooman*, 383 F.2d 556, 560 (9th Cir. 1967) ("It follows . . . that a trustee wrongfully possessing property which is not an asset of the estate may be sued for damages arising out of his illegal occupation in a state court without leave of his appointing court."); *In re Weisser Eyecare, Inc*., 245 B.R. 844,851 (N.D. Ill. 2000) ("Courts which have held trustees personally liable for actions taken outside the scope of their authority, have mainly done so in matters involving a trustee's mistaken seizure of property not property of the estate, or other similar actions."); *In re Markos Gurnee P'ship*, 182 B.R. 211, 217 *77 (N.D. Ill. 1995),

47. However, Sherman's institution of a receivership to seize all of Baron's assets and the assets of the LLCs was clearly an *ultra vires* act. The Fifth Circuit, in reversing and vacating the Receivership Order, held that the held that the appointment of a receiver was improper and an

abuse of discretion. *Netsphere v. Baron,* 703 F.3d at 302, 310–11, 315. The Fifth Circuit panel explained that,

> "A court lacks jurisdiction to impose a receivership over property that is not the subject of an underlying claim or controversy."

Id. at 310. The *Netsphere* panel then held:

> "The receivership ordered in this case encompassed all of Baron's personal property, none of which was sought in the Netsphere lawsuit or the Ondova bankruptcy other than as a possible fund for paying the unsecured claims of Baron's current and former attorneys that had not been reduced to judgment. The receivership also included business entities owned or controlled by Baron, including Novo Point, LLC and Quantec, LLC. Although Novo Point and Quantec were listed as parties on the global settlement agreement, they were never named parties in the Netsphere lawsuit or the Ondova bankruptcy. We conclude the district court could not impose a receivership over Baron's personal property and the assets held by Novo Point and Quantec."

Id. (emphasis added).

48. Putting aside, for a moment, the fact that the actions taken by Sherman were not only unauthorized by this Court, but were actually contrary to the recommendation of this Court, the actions of Sherman and Munsch Hardt in instituting a receivership over property owned by Baron and the LLCs as to which the District Court lacked subject matter jurisdiction and this Court obviously lacked subject matter jurisdiction, cannot possibly constitute *intra vires* actions for which Sherman and Munsch Hardt are entitled to the protection of the Barton doctrine.

49. Additionally, to determine whether Sherman had authority to prosecute the receivership against Baron, the Court should look to Section 704 of the Bankruptcy Code, which establishes the duties and responsibilities of a bankruptcy trustee Among those duties include, (1) liquidating property of the estate for which the trustee serves; (2) investigating the financial affairs of the debtor; (3) examining proofs of claims and object to the allowance of any claim that is proper; and (4) furnishing information concerning the estate and the estate's administration as

requested by a party in interest. If a bankruptcy trustee takes an action that falls outside of section 704, it is axiomatic that such actions are *ultra vires*.

50. In *In re Happy Hocker Pawn Shop, Inc*., 212 Fed.Appx. 811 (11th Cir. 2006), the Eleventh Circuit refused to dismiss a state court complaint against a bankruptcy trustee for tortuous interference and conversion, holding that the trustee had engaged in an *ultra vires* act because the trustee's actions did not invoke a substantive right created by bankruptcy law. In making its determination that the act was *ultra vires*, the court reasoned that: 1) The damages that the plaintiff sought would not come out of the debtor's bankruptcy estate; 2) the claims against the trustee asserted wrongdoing in the trustee's individual capacity.; 3) the bankruptcy estate would not be liable for [the trustee]'s acts; and 4) the trustee had no authority to engage in the complained of act. The court also found that there was no "related to" jurisdiction that existed. The damages that the plaintiff sought would not come out of the debtor's bankruptcy estate.

51. In *Leonard v Vrooman*, a party aggrieved by a bankruptcy trustee's seizure of his property sought relief in a state court. The trustee filed a motion in the bankruptcy court seeking to enjoin the plaintiff from prosecuting his state law action. The bankruptcy court granted the injunction, enjoining the plaintiff from proceeding forward, and the district court affirmed. On appeal, the Ninth Circuit disagreed and reversed, holding that the bankruptcy court lacked jurisdiction to determine the dispute. While, the Ninth circuit found that the trustee had ample reason to believe that the plaintiff was engaged in fraud which detrimentally affected the creditors, the court nonetheless held that the trustee had acted *ultra vires*:

> "[W]hen a trustee acts in excess of his authority and is sued in a state court for such acts, he will not be protected by the injunctive power of the Bankruptcy Court, except in cases where the state court suit affects the bankrupt estate or its administration, 2 Collier, Bankruptcy § 23.20 (14th ed. 1966), or where the

> equities of the case may demand injunctive relief. 1 Collier, Bankruptcy § 2.30 (14th ed. 1966); *Bumb v. Bonafide Mills, Inc.*, 327 F.2d 544 (9th Cir. 1964).

Id at 560.

52. *In Teton Millwork Sales v. Schlossberg*, 311 Fed Appx.145 (10th Cir., 2009), the 10th Circuit held that the Barton doctrine does not apply when an aggrieved party (TMS) alleges that a receiver acts *ultra vires* and committed fraud. The 10th Circuit reversed an order dismissing the aggrieved parties' lawsuit against a court appointed receiver without the appointing court's permission, holding that the aggrieved party's allegations that the receiver was not acting in accordance with and under the protection of a court order when it seized property was sufficient to survive a motion to dismiss under a Barton Doctrine argument. *Id* at 151.

53. Although the receiver in *Teton* had authority from the appointing court to seize assets, when its seizure affected assets in which TMS jointly held an interest, it acted *ultra vires* and would not be afforded immunity or protection under the Barton Doctrine. *See also In re Triple S Restaurants, Inc.*, 519 F.3d 575, 578 (6th Cir. 2008) (stating that *Barton* would not apply if the trustee acted "outside the scope of his authority").

54. Regarding TMS' fraud claim, the court determined that "These allegations, accepted as true, are sufficient to survive a motion to dismiss because perpetuating a fraud is not "intrinsically associated with a judicial proceeding." citing *Valdez v City and County of Denver*, 878 F.2d 1285, 1288 (10th Cir. 1989). *Teton*, 311 Fed Appx. at 151; *See also New Atlanta Dev. Corp. v. Guetschow*, 869 F.2d 1289, 1304-05 (9th Cir 1989) (finding a court-appointed receiver to have no absolute immunity where the plaintiff alleged theft). The court opined that the plaintiff may not ultimately prove that the receiver was acting *ultra vires*, but this proof is not required to survive a motion to dismiss. *Id* at 152.

1.

Respectfully submitted this 3rd day of March 2015.

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing has been served by electronic transmission to all registered ECF users appearing in the case on this 3rd day of March 2015.

/s/ Leonard H. Simon