

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

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

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

TO THE HONORABLE JUDGE ROYAL FURGESON:

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

A. WHAT THIS EVIDENCE PROVES

EXHIBIT A - THE RECEIVER'S EMAIL



This email:

- (1) Establishes that the receiver is not an impartial and indifferent person.

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

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

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

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

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

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

B. WHY THE EVIDENCE WAS NOT RAISED EARLIER

This material was in the exclusive possession of the receiver.

C. RELIEF REQUESTED

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

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

Respectfully submitted,

/s/ Gary N. Schepps

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**COURT ORDERED TRIAL
COUNSEL FOR JEFF BARON**

CERTIFICATE OF SERVICE

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

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