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

In re:	§	
	§	
ONDOVA LIMITED COMPANY	§	
	§	
	§	CASE NO. 09-34784-SGJ-11
	§	Chapter 11
Debtor.	§	

**AMENDED APPLICATION OF PRONSKE & PATEL, P.C.,
FOR PAYMENT OF FEES AS AN ADMINISTRATIVE
EXPENSE FOR A SUBSTANTIAL CONTRIBUTION TO THE ESTATE**

SUMMARY OF FEE APPLICATION

First Application of:	Pronske & Patel, P.C.
For the time period of:	February 1, 2010 through August 31, 2012
Capacity:	COUNSEL FOR JEFF BARON
Unpaid Fees and Expenses Sought for the Initial Application Period:	\$177,352.70 ¹
Additional Fees and Expenses Sought for the Amended Application Period:	\$52,121.17

¹ As allowed by the Findings of Fact, Conclusions of Law, and Order on Assessment and Disbursement of Former attorney Claims entered on May 18, 2011 by the United States District Court for the Northern District of Texas.

Total Fees and Expenses for the Application Period:	\$229,473.87
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TO THE HONORABLE STACEY G. JERNIGAN,
UNITED STATES CHIEF BANKRUPTCY JUDGE:

Pronske & Patel, P.C. (“Pronske & Patel” or “Applicant”) hereby files this *Amended Application for Payment of Fees and Expenses as an Administrative Expense for a Substantial Contribution to the Estate* (the “Application”) pursuant to 11 U.S.C. § 503(b)(4).

I. JURISDICTION

1. This Court has jurisdiction over the subject matter of this Application pursuant to 28 U.S.C. §§ 1334 and 157. This is a core proceeding under 11 U.S.C. § 157(b)(2)(A).

II. RELIEF REQUESTED

2. As more fully set forth herein, Pronske & Patel asks this Court to enter an order: granting approval and payment of fees and expenses incurred by Pronske & Patel during the Application Period in this case as a substantial contribution to the Ondova bankruptcy estate pursuant to 11 U.S.C. §503(b)(4).

III. FACTUAL BACKGROUND RELATING TO SUBSTANTIAL CONTRIBUTION TO THE ESTATE

3. For a six month period beginning in February 2010, Pronske & Patel’s representation of Baron² became focused almost exclusively on the settlement (the “Settlement Negotiations”) of various litigation in the Federal District Court for the Northern District of Texas, Dallas Division, and various Texas State Courts involving Netsphere, Inc., Baron and

² Baron is a Creditor of the Ondova bankruptcy case. He filed numerous pleadings in the Ondova bankruptcy case stating that he was filing such pleadings as “as creditor” of Ondova. This position taken by Baron granted him standing to be heard in the Ondova bankruptcy case. By virtue of the standing garnered by the claim of being a Creditor in the case, he cannot now say that he is not a creditor. Further, Baron is the ultimate equity owner of Ondova, as he is the sole beneficiary of the Daystar Trust, which is the 100% equity owner of Ondova. 11 U.S.C. §503(b)(3)(D) and (b)(4).

Ondova (the “Netsphere Litigation”). The Settlement Negotiations were, during that 6 month period, extremely time-consuming, contentious, complex, difficult – and successful. The Settlement Negotiations involved almost daily participation and work on Pronske & Patel’s part. Pronske & Patel became a lead negotiator in the Settlement Negotiations along with John McPete (representing Netsphere), Ray Urbanik (representing the bankruptcy estate), Eric Taube and Craig Capua (representing either the Village Trust or various entities owned and controlled by the Village Trust), and numerous other parties. These Settlement Negotiations generated a settlement document that was over 100 pages long – every sentence of which was the subject of substantial negotiation and discussion, often resulting in impasse. The time-consuming nature of these negotiations is shown, by example, in the month of June 2010, where nearly every day, including both days of every weekend, was spent in negotiations. Most of the lawyers involved in these negotiations were experienced lawyers who have handled numerous significant cases in their careers. Nevertheless, most if not all of these attorneys agreed that this negotiation was the most complex and difficult negotiation that any of them had ever handled. The difficulty of the case was exacerbated by the difficulty of the personalities of the clients, each of which was often relentless with various positions and slow to warm to the idea of compromise without significant amounts of time being spent on any given issue at hand. Almost every issue of the Settlement Negotiation was an extended battle, often turning into impasse numerous times before a compromise could emerge.

4. Despite the difficulties in the Settlement Negotiations, a final deal was struck, and the terms of the deal were approved by this Court.

5. In terms of success, the Settlement Negotiations yielded payments to the bankruptcy estate of Ondova that will provide funds that will likely pay unsecured creditors a healthy, if not complete dividend. The cash sum of \$1,250,000 provided in the Settlement

Agreement resulting from the negotiations has already been funded to the bankruptcy trustee by Netsphere, due to the success of the Settlement Negotiations. Absent continuing litigation with Netsphere, for which Netsphere's counter-parties were running out of funds to continue, no money would likely have been realized by the Ondova bankruptcy estate from Netsphere.

IV. PROCEDURAL BACKGROUND SINCE THE CONCLUSION OF THE SETTLEMENT NEGOTIATIONS

6. On November 24, 2010, the United States District Court for the Northern District of Texas entered its Order Appointing Receiver to appoint Peter S. Vogel as an equity receiver for Baron (the "Receiver").

7. In February 2011, the District Court ordered the Receiver to collect evidence of the numerous attorney fee claims against Baron. After submitting the declaration of Gerrit M. Pronske that included the fee statements attached to the initial Application, the District Court allowed Pronske & Patel's fees and expenses for the Initial Application Period in the amount of \$177,352.70 after limiting Pronske & Patel's hourly rates to a \$400 per hour fee cap by order entered on May 18, 2011 (the "District Court Fee Order").

8. For over a year since entry of the District Court Fee Order, Baron's dilatory tactics, including numerous appeals and requests for stay to the Fifth Circuit Court of Appeals and countless objections filed at the Bankruptcy Court and District Court level at every turn by a series of attorneys retained by Baron, have precluded Pronske & Patel from receiving payment on account of its reduced claim allowed by the District Court Fee Order.

V. THE STANDARD FOR SUBSTANTIAL CONTRIBUTION CLAIMS

9. Pronske & Patel hereby seeks this Court's approval for compensation of professional services and reimbursement of expenses for the period beginning February 1, 2010 and ending on July 24, 2010 (the "Initial Application Period"). During the Initial Application Period, Pronske & Patel performed legal services in connection with this case, incurring unpaid

fees in the sum of \$241,172.70, as reduced by the \$400/hour cap by Judge Ferguson to \$177,352.70 for attorney and paraprofessional time as allowed by the District Court Fee Order.

10. Since July 24, 2010 through August 31, 2012 (the “Amended Application Period” and, together with the Initial Application Period, the “Application Period”), Pronske & Patel has incurred additional fees and expenses in pursuit of payment of the fees and expenses incurred during the Initial Application Period in the amount of \$52,121.17. Altogether, Pronske & Patel seeks approval of \$229,473.87 for the Application Period.

11. In terms of substantial contribution, the work performed by Pronske & Patel clearly resulted an actual and demonstrable (or, as some courts say, a “direct and material”) benefit to the debtor’s estate and its creditors. *See, e.g., Lister v. United States*, 846 F.2d 55 (10th Cir. 1988).

12. Pronske & Patel submits that without the work that it did in connection with the settlement, the settlement would likely not have come to fruition, and the Ondova estate would not have benefited from the cash that has been paid (and will be paid in the future) under the Settlement Agreement that will result in creditors of Ondova likely receiving up to 100% of the amount of their claims in this case.

13. The benefit that the Ondova estate realized as a result of the settlement amount to far more than an incidental one arising from activities the applicant has pursued in protecting its own interests. The work performed by Pronske & Patel has operated to foster and enhance, rather than retard or interrupt the progress of reorganization in this case.

14. The services performed by Pronske & Patel were in addition to, and were not duplicative of services performed by attorneys for the Bankruptcy Trustee. In many respects, the interests of Ondova and Baron against Netsphere were aligned, making the work performed by

Pronske & Patel directly beneficial to the Ondova estate in terms of realizing sums from Netsphere by the Ondova estate that will be utilized to pay creditor claims a substantial dividend.

15. The reimbursement for attorneys' fees and expenses sought herein will not result in the impairment of other creditors; to the contrary, the work performed by Pronske & Patel will help to make a dividend to creditors much higher than it would otherwise have been.

16. The substantial costs associated with bringing this Application include numerous hours that Pronske & Patel attorneys have spent in this Court and the District Court dealing with the issue of compensation in connection with the settlement negotiations, together with the time spent in preparing this application. These costs are compensable under 11 U.S.C. §503(b)(4). *In re Wind N' Wave*, 509 F.3d 938 (9th Cir. 2007) (“ . . .[C]reditors who receive compensation under 503(b)(4) should also be compensated for costs incurred in litigating a fee award, so long as the services meet the § 503(b)(4) requirements and the case “exemplifies a ‘set of circumstances’ where litigation was ‘necessary’”. . . .”).

177,352.70VI. OBJECTIVE FACTORS AFFECTING LEGAL FEES

17. The fee setting process providing for the recovery of attorneys' fees begins with an examination of the nature and extent of the services rendered or what is referred to as the “time spent” standard. In other words, a measure of the quantum of the services must precede the determination of the value of these services.³ **Exhibit A** provides detail all of the time for which compensation is sought by Pronske & Patel in the Initial Application Period, broken-down by month and day, and describes the hours by each attorney and paraprofessional who provided services in this case and the requested rate of compensation. **Exhibit B** provides a detail of all the time for which compensation is sought by Pronske & Patel in the Amended Application

³ See *In re First Colonial Corp. of America*, 544 F. 2d 1291 (5th Cir.) cert. denied, 97 S. Ct. 1696 (1977).

Period, broken down by month and day, and describes the hours by each attorney and paraprofessional who provided services in the matter and the requested rate of compensation.

18. Pronske & Patel recognizes that this Court will allow lawyers to be compensated only for legal work performed and that the dollar value of a particular task is not enhanced simply because a lawyer performs it. Considerable care, therefore, has been taken to avoid the performance of purely ministerial tasks by using paraprofessionals where possible.

VII. SUBJECTIVE FACTORS AFFECTING COMPENSATION

19. In fixing the amount of reasonable compensation to be awarded a law firm for worked performed in a case, the Court may consider factors other than the numbers of hours spent and the hourly rate normally charged.⁴ The standards established by Fifth Circuit have been further modified by the opinion of the Supreme Court in *Pennsylvania v. Delaware Valley Citizens Counsel for Clean Air*.⁵ While *Delaware Valley* concerned the award of attorneys' fees under section 304(d) of the Clean Air Act, the language of the opinion makes it generally applicable to the award of attorneys' fees pursuant to federal statutes which require that the fee awarded be "reasonable."

20. In *Delaware Valley*, the Supreme Court, in considering the *Johnson* case, noted the practical difficulties encountered by courts in applying the sometimes-subjective *Johnson* factors. The Court in *Delaware Valley* also considered the "lodestar" approach of the Third Circuit Court of Appeals.⁶ The Court also revisited its prior opinions⁷ whereby it determined

⁴ See *In re First Colonial Corp. of America*, *supra*; and *Johnson v. Georgia Highway Express, Inc.*, 488 F. 2d 714 (5th Cir. 1974).

⁵ *Pennsylvania v. Delaware Valley Citizens Counsel for Clean Air*, 478 U.S. 546.

⁶ See *e.g.*, *Lindy Brothers Builders, Inc. v. American Radiator and Standard Sanitary Corporation*, 487 F. 2d 161 (3d Cir. 1973) (Lindy I).

⁷ See *Hensley v. Eckerhart*, 461 U.S. 424 (1983); *Blum v. Stenson*, 465 U.S. 886 (1984).

that the proper first step in determining a reasonable attorneys' fee is to multiply the number of hours reasonably expended on the litigation times a reasonable hourly rate, and that adjustment of this figure based on some of the *Johnson* factors might be appropriate,⁸ but that such modifications would be proper only in certain rare and exceptional cases and when supported by specific evidence and detailed findings of the lower court.⁹ In *Delaware Valley*, the Court took an even more restrictive approach to the relevance of the *Johnson* factors and concluded that the "lodestar" figure includes most, if not all, of the relevant factors comprising a "reasonable attorneys' fee."¹⁰

21. Thus, under the *Delaware Valley* approach, this Court is guided to determine the number of hours reasonably spent in representing the Trustee, multiplied by a reasonable hourly rate for the services performed. The following discussion incorporates the *Johnson* factors only insofar as they might add the Court in its determination of the "lodestar" figure.

22. The following subjective *Johnson* factors are offered for consideration:

- Time and the labor required. Pronske & Patel attorneys and paraprofessionals have expended a significant number of hours providing necessary and reasonable services incident to its representation of Baron for the Application Period, as detailed in the attached **Exhibit A**. The total value of this time is **\$229,473.87** after taking into account amounts allowed by the District Court Fee Order.
- The novelty and difficulty of the questions. This case presented several novel and/or difficult issues in varying degrees. It was necessary for Pronske & Patel to analyze these complex problems in the light of

⁸ See *Hensley*, 461 U.S. at 434, n. 9.

⁹ See *Blum*, 465 U.S. at 898-901.

¹⁰ See *In Delaware Valley*, 106 S. Ct. at 309.

applicable laws and seek resolution based on such laws with the objective of achieving a result which would benefit the Estate.

- The skill requisite to perform the legal services properly. Mr. Gerrit Pronske is a skilled and highly experienced attorney who has specialized in commercial bankruptcy law for 28 years. Mr. Pronske is a shareholder in the firm of Pronske & Patel. He was a law clerk to the now retired Honorable Robert C. McGuire, Chief Bankruptcy Judge of the Northern District of Texas. He is a regular presenter at legal seminars on commercial and consumer bankruptcy, commercial transactions and other related topics. Mr. Pronske is the author of PRONSKE'S TEXAS BANKRUPTCY ANNOTATED, which is published by Texas Lawyer, and currently in its 12th Edition. Additionally, Mr. Pronske is the editor of 2010 PRONSKE'S TEXAS BANKRUPTCY MINI-CODE, also published by Texas Lawyer. Ms. Rakhee V. Patel, a partner with Pronske & Patel, was a bankruptcy law clerk for Judge Harlin D. Hale and a bankruptcy law clerk for Retired Judge Robert C. McGuire. Ms. Patel is a regular speaker at legal seminars on commercial bankruptcy and author of various bankruptcy related articles. Ms. Christina W. Stephenson, an associate at Pronske & Patel, has practiced commercial bankruptcy law for over five years and is a former extern for the Honorable Harlin D. Hale. Ms. Melanie P. Goolsby, an associate at Pronske & Patel, has practiced commercial bankruptcy law for over four years and was a member and editor of the Louisiana Law Review at the Louisiana State University Law Center. Ms. Sandra Meiners and Mr. Louis Whatley, legal assistants,

provided assistance in this case. Both are proficient legal assistants with a total of over 40 years experience in bankruptcy law.

- The preclusion of other employment by attorneys due to acceptance of this case. This factor was present because Mr. Pronske spent a significant amount of time on this case, thereby precluding other representation.
- The customary fee. **Exhibits A & B** to this Application sets forth the hourly rate at which compensation is requested. These rates are no greater, and in many cases considerably less, than those being charged by attorneys for other major parties-in-interest in this or other bankruptcy cases in this district. Pronske & Patel and other similar firms customarily charge these rates for equivalent services. These rates compare favorably to the cost of legal services to ordinary corporate legal consumers.
- Whether the fee is fixed or contingent. The fee in this case is not contingent upon the outcome of any particular issue or adversary proceeding.
- Time limitations imposed by the client or other circumstances. Time constraints have been substantial in this case as shown by the time records attached hereto as **Exhibits A & B**.
- The experience, reputation and ability of the attorneys. Applicant submits that Ms. Patel and Mr. Pronske have established themselves as able and conscientious practitioners in the Northern and other districts of Texas. Ms. Stephenson and Ms. Goolsby are experienced bankruptcy associates. Ms. Meiners and Mr. Whatley are proficient legal assistants with substantial experience in bankruptcy law.

- The “undesirability” of the case. This factor is not relevant in this case.
- The nature and length of the professional relationship with the client.
Applicant had no professional relationship with Baron prior to their retention by Baron as counsel.
- Awards in similar cases. Pronske & Patel represents and would demonstrate that the compensation for the services rendered and expenses incurred in connection with this case is not excessive and is commensurate with, or below the compensation sought or ordered in similar cases under the Bankruptcy Code. Pronske & Patel’s fee request is based upon normal hourly charges that Pronske & Patel charges private clients of the firm. Taking into consideration the time and labor spent, the nature and extent of the representation, Pronske & Patel believes the allowance prayed for herein is reasonable.
- Additional consideration. The Court in *First Colonial Corp. of America, supra*, stated that two additional considerations should be considered by the Court:
 - The policy of the Bankruptcy Code that estates be administered as efficiently as possible. It is the policy of Pronske & Patel to assign work to attorneys who have the degree of expertise and specialization to perform efficiently and properly the services required and to utilize law clerks and legal assistants whenever appropriate. This practice has been followed to date in this case and will be followed in the future.

- The Bankruptcy Code does not permit the award of duplicate fees or compensation for non-legal services.

There has been no unnecessary or unavoidable duplication of legal services and there have been no non-legal services performed by this firm for which legal fees have been charged.

VIII. REASONABLENESS OF PRONSKE & PATEL'S FEES

23. Pronske & Patel's representation of Baron was time intensive during the Initial Application Period and has continued to be so at times during the Amended Application Period. Pronske & Patel accepted this engagement without certainty that all of its fees and expenses would be paid and is charging a fixed hourly rate for services performed.

24. Pronske & Patel represents that the fees and expenses requested herein are fair and reasonable in connection with the services provided. The rates charged by Pronske & Patel are competitive and customary for the degree of skill and expertise necessary for cases of this type and are consistent with, or below, rates charged by other counsel with similar experience in the Northern District of Texas.

25. The work Pronske & Patel performed during its representation herein has been beneficial to the estate as set forth above, and has made a substantial contribution to the estate and its creditors. Taking into consideration the time and labor spent, the nature and extent of the representation, and the results obtained in this proceeding, Pronske & Patel believes the allowance prayed for herein is reasonable and just.

IX. SUMMARY

26. Applicant seeks an award of compensation as set forth in **Exhibits A & B**, for attorneys' time and paraprofessionals' time for services furnished to Baron during the

Application Period in the total unpaid amount of **\$229,473.87**, which total includes fees and expenses associated with the filing and prosecution of this Motion.

27. **Exhibits A&B** to this Application detail how time was spent as well as how the requested compensation has been calculated. The amounts sought are fair and reasonable compensation in light of all the circumstances.

X. REQUEST FOR RELIEF

For these reasons, Pronske & Patel respectfully asks this Court to enter an order: (i) granting approval of all fees and expenses incurred by Pronske & Patel in this case during the Application Period in the total amount of **\$229,473.87** as a substantial contribution to the Debtor's bankruptcy estate, compensable as an administrative expense pursuant to 11 U.S.C. §503(b)(4) (ii) allowing compensation and reimbursement of all sums requested as an administrative expense from the Debtor's bankruptcy estate, pursuant to the fee statements attached as **Exhibits A&B** for the Application Period; and (iii) authorizing the allowed fees and expenses to be immediately paid as allowed by the bankruptcy estate as an administrative expense.

Dated: September 14, 2012.

Respectfully submitted,

/s/ Gerrit M. Pronske

Gerrit M. Pronske

State Bar No. 16351640

Rakhee V. Patel

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that, on September 14, 2012, a true and correct copy of the above and foregoing pleading was served upon the twenty largest unsecured creditors, all parties who have filed a notice of appearance, the United States Trustee and Baron, as more fully illustrated on the attached Master Service List, via First Class United States mail and/or electronic filing, if available, and also via ECF email upon all parties accepting such service.

/s/ Melanie P. Goolsby
Melanie P. Goolsby