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Stephen R. Cochell
The Cochell Law Firm, P.C.
7026 Old Katy Road, Ste. 259
Houston, Texas 77096
Telephone: (713)980-8796
Facsimile: (214) 980-1179
srcochell@gmail.com
Counsel for Jeffrey Baron

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

IN RE:	§	
	§	
ONDOVA LIMITED COMPANY,	§	**CASE NO. 09-34784-SGJ**
	§	**(CHAPTER 11)**
DEBTOR.	§	

JEFFREY BARON'S OBJECTIONS TO BANKRUPTCY COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

Jeffrey Baron, by and through counsel, objects to the Court's Report and Recommendations to the U.S. District Court (hereafter "FOF") and requests a hearing as follows:

1. The Court's finding on jurisdiction is erroneous because the Court lacks jurisdiction over non-debtor assets. Baron is a creditor of Ondova and neither Baron, Novo Point, LLC, ("Novo Point"), Quantec, LLC ("Quantec") are bankrupt, nor have any claims been made against Novo Point or Quantec by any creditors in the instant case. Proceedings were never instituted, in either the district court receivership action (Case No. 3:12-0098) or in this court to seek the substantive consolidation between Baron, Novo Point or Quantec. The Fifth Circuit does not allow merger or consolidation with another person or entity

unless that person or entity is a "debtor" under the Code. *Ark-La-Tex Timber Co.*, 482 F.3d 319, 327 fn. 7 (5th Cir. 2007).

2. FOF 1, Second Sentence. To the extent the court suggests that Baron controlled Novo Point and Quantec, there is no evidence to support that conclusion. Novo Point and Quantec were controlled and operated by an irrevocable trust. Mr. Baron as trustor retained only a beneficial interest as trustor, and the Trust's beneficiary is a charity devoted to research on juvenile diabetes mellitus. The Global Settlement Agreement resolved any and all alter possible ego claims involving Mr. Baron and the trust. [11/14/12 Tr., Sherman at 48-49].

3. FOF 6 is clearly erroneous. The district court was not presented with evidence, nor did it make findings that Baron controlled Novo Point or Quantec. In fact, all such allegations were fully and finally resolved by the Global Settlement Agreement.

4. FOF 7 is conclusory, overstated and reveals an underlying prejudice erroneously assuming that any actions taken by either the bankruptcy court and district court are correct, and Mr. Baron is improperly taking appeal. Mr. Baron had a right to oppose actions in both the bankruptcy and district court cases. The appellate court, during oral argument in the receivership case, reportedly did not criticize or suggest that Baron's appeals were vexatious. Indeed, one of the judges informed counsel for the Receiver that the case would not be subject to "summary affirmance." As this Court knows, after oral argument, the Fifth Circuit issued an indefinite stay on closing the sale on the domain names.

5. FOF 8 is clearly erroneous. The Receiver testified that Judge Furgeson ordered him to come up with a plan to end the receivership and close the bankruptcy case. The Chapter 11 Trustee testified that the United States Trustee came up with the idea of a liquidating trust resulting in the proposed plan. The evidence is comprised of unpaid administrative claims; however, many of these claims are subject to further proof and a ruling by the Fifth Circuit Court of Appeals. The University of Texas claim was settled for an amount far less than its claim. However, it appears that all lawyer claims will be fully paid--100% regardless of the evidence available to the Trustee or the Receiver. This type of claims "settlement" supports a public perception that lawyers "protect their own" and make sure that they get paid while non-lawyer creditors must settle for pennies on the dollar. Moreover, the "Plan" violates public policy because the Receiver and the Trustee have reached an agreement to channel assets through the Bankruptcy to "launder" claims and assets.

6. FOF 9 is clearly erroneous. The Global Settlement Agreement resolved all claims of "alter-ego" status vis a vis Mr. Baron, Novo Point, Quantec or the Village Trust. The record is devoid of any evidence supporting a post-receivership claim that Mr. Baron controlled, managed or operated any entity after the receivership was established on November 24, 2010.

   a. If the Global Settlement Agreement is to be enforced, it must be enforced as to all parties, and not used as a pretext to punish Mr. Baron for defending himself.

   b. To the extent that substantial contribution is upheld by the appellate court, the standard has not been met in this case including, for example, Pronske&Patel's claim,

which is unsupported by evidence that Pronske made a "substantial contribution" to the estate that was distinct and different from the services rendered by the Trustee. [11/14/12 Tr., Sherman at 63].

c. As entered by this Court, an award of $294,033.87 pays Pronske money for services and costs of collection that do not constitute a "substantial contribution" that allows payment of attorney's fees under a "substantial contribution" theory.

d. FOF 9 is also clearly erroneous in that the Court finds that the Chapter 11 Trustee should be reimbursed by the Receivership for "fees incurred at the Fifth Circuit." This finding is unsupported by evidence that this was a *bona fide* settlement of a dispute reached at arms length. The testimony of Daniel Sherman and Peter Vogel established only that Vogel felt it was a moral obligation to pay the Receiver and admitted that there was no legal theory or support for payment of a claim that was not based on breach of contract or quantum meruit. [11/14/12 Tr., Sherman at 34, 38].The Fifth Circuit denied Sherman and/or Vogel the right to re-designate the Receiver as Appellee in at least one appellate proceeding. Sherman admitted that the Fifth Circuit's denial of the motion to re-designate the Receiver as appellee for the appeals was the "law of the case." Sherman at 36. Thus, Sherman was obligated to respond on behalf of the bankruptcy estate. The fees associated with such a response was an expense of the bankruptcy estate, as implicitly, if not expressly determined by the Fifth Circuit Court of Appeals. The remaining portion of this finding is conclusory and describes the Court's view of various aspects of the proposed Plan, to which substantive objections are described in other paragraphs and incorporated herein. As a matter of controlling precedent, where an

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appeal is allowed from an interlocutory order, the lower court may proceed only with matters not involved in the appeal because the lower court is divested of jurisdiction as to matters relating to the interlocutory appeal. *Taylor v. Sterrett*, 640 F.2d 663, 668 (5th Cir. 1981). For that reason, in the lower court "fees cannot be recovered for work relating to these orders" while those matters are on appeal. *Id*.

7. FOF 10 is clearly erroneous. Section 1123(a)(5)(C) states that a bankruptcy plan shall: 5) provide adequate means for the plan's implementation, such as—(C) merger or consolidation of the debtor with one or more persons…." First, the Code does not contemplate merger or consolidation of an estate with a non-debtor. Under current law, the Fifth Circuit has made clear that does not allow merger or consolidation with another person or entity unless that person or entity is a "debtor" under the Code. *Ark-La-Tex Timber Co.*, 482 F.3d 319, 327 fn,. 7 (5th Cir. 2007). Second, any evidence that might have supported substantive consolidation existed before the Global Settlement Agreement, which fully and finally resolved all alter ego claims by all parties to the Agreement, including the Trustee, Daniel Sherman.

    a. FOF 10 is also clearly erroneous because the "Plan Settlement" is nothing more than a plan to pay the Trustee's legal fees. Unfortunately, a "Plan Settlement" is not an appropriate "bail-out" plan to extend to trustees whose fees should not be paid from non-debtors.

    b. As a matter of bankruptcy policy, such "plans" threaten confidence in the bankruptcy process. The instant case proves the point. Baron, an Ondova creditor, pays $1.8 million as part of the Global Settlement Agreement to pay

any claims of former lawyers, amounting to about $767,000. In direct violation of the order of the Bankruptcy Court, the Trustee, with impunity, failed to file a chapter 11 plan and failed to satisfy the claims of the former Baron lawyers and instead incurred substantially more fees than reasonable, and obtained a receivership order against Baron based on allegations that Baron caused the mediation to fail, which the Trustee now has shown by his sworn testimony to be a false allegation, and yet the Trustee seeks approximately$2 million in additional fees for defending an unlawful and unconstitutional receivership that should have never been created in the first place.[11/14/12 Tr., Sherman at 50, 58.] The receiver's bad faith is established in the record of the district court wherein the attorneys for the receiver only started to research the law relating to receiverships *after* the receivership order was appealed from.

c. The Court's finding that there are many claimants "who could cogently argue claims against both the Ondova and the Baron entities[.]" is unsupported by any specific details and is therefore clearly erroneous.

d. The Court's reference to the "alter-ego facts and arguments" is unsupported by facts, evidence or findings of law in support and is therefore clearly erroneous.

e. The Court's finding that the Plan Settlement is "fair and equitable", is in the best interests of the two estates, the creditors and Baron is not supported by facts and evidence and is therefore clearly erroneous. There was no

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compromise of a claim that could be supported as a matter of law or equity—only an agreement to pay 100% of legal fees. The Receiver has a fiduciary duty to safeguard and protect the assets from all claimants who make unsupported claims—even if they involve legal fees. Payment of fees to lawyers who have no cognizable claim to the estate's assets is a waste of the receivership assets and breach's the Receiver's duties. The Receiver similarly admitted that there was no contract or promise to pay the Trustee's legal fees and did not testify to facts that supported quantum meruit. [11/13/12 Tr., Vogel at 160-162]. The Trustee admitted that he did not have a contract and did not testify to facts that supported quantum meruit. *Id.* The Trustee sought a receivership that resulted in a seizure of property without a sworn showing of probable cause. **The Fifth Circuit required the Trustee to defend the receivership order**---not the Receiver. The fees are properly the responsibility of the estate, and not the receivership. Both the Receiver and the Trustee proposed the Joint Plan to "end-run" the Fifth Circuit's holding.

f. In virtually every bankruptcy or receivership, there are claims made against the estate that are unsupported, questionable, or where the cost of litigation may justify a compromise or settlement. The Court cited the University of Texas settlement, where the Trustee settled a $4 million claim for a fraction of that amount. Yet, in the instant case, the Receiver "settled" a meritless claim, and "settled" by paying the entire amount. The entire dispute process was a sham, unsupported by any "demand letters", no lawsuit was ever drafted or filed, and appears to have been comprised solely of an appearance by the

Receiver and the Trustee before Judge Furgeson who generally thought the idea of paying Mr. Sherman was "fair" and authorized payment to Sherman on an *interim* basis based on the expectation that the bankruptcy court was policing the billing and fee issues.

g. The Court erred by finding that the Receiver acted in good faith by "settling" a case with the Trustee over fees incurred by the Trustee on behalf of the bankruptcy estate.

h. Moreover, it is neither fair nor is it equitable to approve a Plan that uses funds from a receivership that was not properly imposed on Baron. In his testimony, Sherman admitted that Baron did not breach the Global Settlement Agreement "other than an intent not to perform." [11/14/12 Tr., Sherman at 56] and further admitted that Baron did not breach any obligation to the Trustee under the global settlement agreement.

8. The Court erroneously found that it had authority to sell the Domain Names as part of the joint plan to approve the Chapter 11 Plan, relying on Section 363(f) and 105 of the Bankruptcy Code, and pursuant to the equitable jurisdiction referred to the Court by Judge Furgeson. FOF 11 is clearly erroneous. A bankruptcy court cannot exercise Article III jurisdiction.

   a. The Court found that "in late September and early October 2012, both the District Court and the bankruptcy court approved certain sale procedures to be undertaken by the Receiver and Chapter 11 Trustee to attempt to market and sell the Domain Names." The Court found that the district court vetted and approved the procedures

on September 27, 2012. The Receiver and Trustee took the position that Judge Furgeson "vetted" and "approved" the procedures when, in fact, he did not. Judge Furgeson merely stated that the procedures sounded "reasonable".

b. The Court's findings on the marketing process, however, are imprecise. The Court approved "permission to engage in certain advertising and other marketing efforts to attempt to find interested bidders of the Domain Names." In fact, the Court granted the Receiver unlimited discretion as to how, where, or what would be advertised. There were advertisements in the Wall Street Journal, but the record does not reflect attempts to reach specific domain name portfolio owners who would be interested in the names. The Receiver did not propose a marketing plan other than a plan allowing him discretion to advertise.

c. The Court found that the winning bidder was Trans, Ltd. and Special Jewel, Ltd. The "representative" of these two companies testified based on hearsay that the two companies were competitors and were not affiliated with one another. Counsel orally moved for discovery as to these bidders, which the Court denied. The Court's rulings are clearly erroneous. Subsequent discovery highlights the fact that the Court did not receive full, complete or accurate testimony from the Trans and Special Jewel's representative. Both companies have been discovered to be owned by the same owner, Despen Trust of Nevis. It appears that this Court was misled as to the corporate affiliation of these two companies due to the Court's clearly erroneous failure to allow discovery to be conducted prior to confirmation as to the identity and ownership of the two corporations and their relationship to insiders.

d. Further evidence of the connection between these two companies exists due to Stevan Lieberman's testimony that he represents both companies and also represents Domain Group Holdings, LLC, the monetizer for the Receiver and an insider, which has full knowledge, possession and control of all electronic information and data for the Domain Names. The testimony and evidence shows that electronic information is vital to determining the value of domain names, particularly when buying or selling domain names. [11/14/12 Tr., Baron at 163].

e. In a post-hearing development that also reaffirms the scope and extent of the Receiver's discovery violations, and the prejudice to Baron, the Receiver just disclosed, for the first time, emails to the Court from an individual named Eric Rice showing that failure to provide electronic information to interested, qualified bidders discouraged the participation by truly qualified bidders. [Dkt. 976-1, Exhibit 12, Trustee's Exhibit List,]. Access to this electronic information provides a bidder with the kind of information that allows industry-accepted due diligence and a significant advantage over bidders who might have reviewed paper documents at DykemaGosset's offices. It is important to note that the emails of Mr. Rice were not disclosed to counsel for Baron pursuant to the Court's Expedited Discovery Order [Dkt. 858], which ordered the Receiver to produce "correspondence between the producing party and any third party (including emails) concerning the potential or proposed purchase, sale transfer or hypothecation of the Domain Names." The Court clearly erred in denying Mr. Baron the discovery previously ordered by the Court.

f. Mr. Rice stated, in pertinent part, that:

> Having done this for many years and been involved in something like $50 million in deals, we just could not even begin to bid on the data given. I would liken it to buying a portfolio of real estate but not knowing anything about the condition of the properties or if they were apartment buildings, condo's, land or houses, or a variety of other factors…
>
> The info sent is very appreciated but it's probably like 20% of the "industry standard" info that would allow someone to do due diligence on the list to spend 4MM to 6 MM dollars.It would quite simply be crazy for us to roll the dice and buy on the info provided…
>
> I am totally guessing but my assumption would be that anyone bidding on the info you provided somehow has some prior data aout the makeup of the domains and stats from some other source. I really can't imagine a scenario where I could personal ly broker a large portfolio basically blind and just gross revenue numbers. (I broker many large portfolios each year and know most of the buyers.) (emphasis supplied).

g. This email was sent on October 23, 2012, prior to depositions of the Receiver and the Receiver's expert, and Baron's expert witness. Counsel was deprived of the opportunity to depose Mr. Rice, or to use his information to impeach the Receiver and his expert, or to provide further evidence of the "industry standard" described by Mr. Rice.

h. Mr. Rice corroborates the testimony of Baron, Dr. Lindenthal and the arguments of counsel stating that the marketing of the Domain Names in this unique industry was fatally flawed.

9. The Court's findings in FOF 12 are clearly erroneous and appear intended to serve as a generalized description and attempt to categorize the Domain Names. To ensure the record is clear, Baron objects to this finding because the testimony showed that an analysis and review of a paper version of the domain name list (Exhibit 42), would require about one minute per name multiplied by 153,000. In other words, the finding

should be clarified as a general observation, as opposed to a detailed study of Exhibit 42. Baron objects to reference to "Pornography Names" as inaccurate, inflammatory and a reflection of bias. None of the names, in and of themselves are "pornographic" within the meaning of the First Amendment. Domain names are not "pornographic" unless one populates the actual domain site with pornographic images or otherwise publishes. The unrebutted testimony of Jeffrey Baron reflects that: (a) the names were computer generated; (b) the names were managed and controlled by Peter Vogel since November, 2010. The mere fact that a name may be sexually suggestive does not violate the law. One may find the name repugnant and disagree violently with the suggestion implied in the name, but that does not mean that someone who might have had some historical connection to the name should be vilified. It is clearly erroneous for the Bankruptcy Court to refuse to protect lawful property rights because of a personal bias against the subject matter or content of the property.

10. The finding in FOF 13 are clearly erroneous. The Court finds that Mr. Baron "believes they [the Domain Names] are worth $60 million, which is far less than the $5.2 millon Winning Bid for the Domain Names." Contrary to the clearly erroneous finding of the Bankruptcy Court, $60 million is more than ten times greater than the $5.2 million Winning Bid for the Domain Names.
    a. The Court's finding on the value of the so-called "Typo-Squatting Names as being culled out by the purchaser is speculative and unsupported by evidence.
    b. The Generic Names have great value, as evidenced by the testimony of Dr. Lindenthal and by evidence of prior sales of Domain Names generating millions of dollars in revenues. The Receiver violated the Expedited Discovery Order by

failing to produce the majority of Damon Nelson's affidavits setting out the names and sales price of domain names previously sold from the two portfolios. This evidence would have refuted the unsupported opinions of the Receiver and Matthew Morris, as evidenced by the chart provided to the Court in Dkt. 956, Jeffrey Baron's Motion for Stay Pending Appeal, Exhibit A, Income Ratio Chart of Sold Domain Names.

c. The Court's finding that "it does not pass the 'smell test' (or good faith notions) to ask this court or any other court to value or protect Mr. Baron's right to Child Pornography Names such as 'nake13yearolds.com[.]'" reflects the Court's bias and inelastic attitude against Mr. Baron in this case. At the hearing, the Court asked counsel for their position on segregating and not selling the names. Mr. Baron's lawyer did not object to the Court segregating any questionable names from the sale and disposing them. Moreover, the revenues generated by these names were reported by Mr. Vogel as minimal. Thus, the Court's finding is clearly erroneous and unsupported.

d. The undisputed testimony is that neither the Receiver nor the Trustee conducted a valuation of the Domain Names prior to seeking a sale of the Domain Names value did not conduct a valuation of the Domain Names.

11. The Court's findings in Paragraph 14 are clearly erroneous. The sale of all the Domain Names were never necessary to resolve all creditor claims and conclude the receivership and Chapter 11 case, as evidenced by testimony that over a million dollars, and perhaps two million in funds will be returned to Mr. Baron from the proceeds of the sales. As to

attempts to obtain loans against the Domain Names, Baron testified that Mr. Vogel filed a motion to prevent him from funding a loan. [11/14/12 Tr., Baron at 67]. Baron testified that he previously obtained a loan on the portfolio. *Id.* at 67-68]. Trans obtained a loan for $5 million. [11/19/12 Tr., Lieberman at 13]. Thus, the Receiver clearly did not sufficiently know the industry to fund a loan.**.** The Receiver's testimony regarding the remaining value of the Novo Point and Quantec portfolios stands in stark contrast to the Estibot and Sedo valuations, which the Receiver relied upon in submitting sworn affidavits submitted to Judge Furgeson seeking the sale of other domain names from the portfolios. Many of these affidavits were not produced in violation of the Court's Expedited Discovery Order [Dkt. 858]. Moreover, to the extent that the Receiver portrays himself as an expert in valuation, the uncontradicted evidence is that the Receiver has no personal experience in selling domain names to third parties. Assisting clients in selling domain names, while interesting, does not qualify Mr. Vogel to portray himself as an expert in valuation. Vogel is judicially estopped from asserting that Estibot valuations are not accurate, as Vogel has repeatedly taken the opposite position and has been granted the court's approval to sell millions of dollars in assets based on Vogel's representation to the Court that the Estibot valuations could be relied upon. JB Exhibit 1, JB Exhibit 2, JB Exhibit 4.

12. The findings of FOF 15 are clearly erroneous and considers evidence that should have been excluded by virtue of violation of the Court's Expedited Discovery Order.

    a. The Court ordered that the Receiver produce "Correspondence between the producing party and any third party (including emails) concerning the potential or proposed purchase, sale transfer or hypothecation of the Domain Names." [Dkt.

858 at 3, Section II(2)(b)]. Counsel for Baron filed three Motions [Dkt. 895, 916 & 929] seeking relief from the Court regarding these documents which were denied [Dkt. 944].

b. The Court allowed testimony of Mr. Vogel and Mr. Morris over the objection of counsel regarding the alleged negotiations between Damon Nelson and alleged interested parties. Vogel at __; Morris at __. Vogel testified that Damon Nelson had the documents and would have produced them on request [11/13/12 Tr., Vogel at 214-215], he learned of "about five or six where there was actually a valuation that was offered" [Id.], and that he had not seen any documents supporting the chart of the 24 brokers/investors [Id.].

c. None of the documents from these discussions between Nelson and parties listed on Exhibit 41 (not admitted into evidence) were ever produced to counsel for Baron. The Court erred in allowing the testimony of Mr. Vogel and/or Mr. Morris on the alleged value of the portfolios because the Receiver intentionally failed to produce the documents, as previously ordered by the Court.

d. The testimony that, in September, 2012, Mr. Vogel got an "unsolicited offer"[11/13/12 Tr., Vogel at 235] from Special Jewel, Ltd. is contradicted by a Baron exhibit which shows that Special Jewel's agent, "Merlin" was negotiating with Damon Nelson and made an offer in June, 2012. In other words, Special Jewel had already conducted its due diligence and had already determined that it wanted to buy the portfolio well two months before Mr. Vogel supposedly started negotiating with Special Jewel. The testimony that an unsolicited offer was made by Special Jewel in September, 2012 is false.

e. As previously set out, the Receiver and Trustee represented to the Bankruptcy Court on September 28, 2012, that Judge Furgeson authorized a bid process for the Domain Names. That representation was untrue. Judge Furgeson merely stated, on the record, that the approach was reasonable and informed the parties that he would defer to the Bankruptcy Court to devise specific procedures.

13. The findings in FOF 16 are clearly erroneous. As previously set out, the Court erroneously denied Baron's motion to depose and conduct discovery of the bidders. Subsequent discovery shows that Trans and Special Jewel are not separately owned companies but are owned by Despen Trust of Nevis.

14. The findings in FOF 20 are clearly erroneous. The findings are one-sided and fail to take into account Mr. Baron's prior experience in the domain name industry. There was no evidence to contradict Mr. Baron's testimony that electronic information and statistics on the performance of the domain names was essential to conducting due diligence in making a decision to purchase domain names, and that providing such information in paper form available only in a law office in Houston would discourage international bidders from participating in an auction. [11/14/12 Tr., Baron at 160-165]. Mr. Baron further testified that the estate would obtain much higher prices by selling the domain names in smaller portfolios organized around an industry or business concept.[11/14/12 Tr., Baron at 32-33, 41].Dr. Lindenthal also testified that it was not commercially reasonable to sell all the Domain Names at once, as the estate could, in three to six months, satisfy its revenue needs with a sale of smaller portion of the Novo Point portfolio. This testimony was uncontradicted by Vogel or Morris, who simply *preferred* to sell all the domain names at one time.

15. The findings in FOF 21 are erroneous. Matthew Morris testimony on valuation was not proper expert testimony.

    a. Morris had no prior experience at valuing portfolios of domain names for sale [Dkt. 952 Morris at 7]. Morris never bought or sold a domain name personally, or for a client. *Id.*at 6. Morris' experience in valuation sale assets was valuing stocks and bonds. *Id.* at 7. Morris admitted that he had very limited experience in valuing domain names, and only in the context of attempting to attribute some value to domain names in the context of an overall business valuation, and not for sale in the domain name market. *Id.* at 8-10.

    b. The Court clearly erred in allowing Morris to testify as Morris relied on anonymously published articles on internet valuation in forming his opinions on determining whether to value the Domain Names on an individualized domain name basis, or as a portfolio. *Id.* at 45-47.

    c. Morris had no knowledge of a treatise or authoritative support within the domain name industry for valuing the Domain Names as a portfolio instead of valuing the Domain Names individually. *Id.* at 48.

    d. The Court clearly erred in allowing Morris to testify as Morris was not provided any evidence of prior sales of domain names from the Novo Point and Quantec and based his opinion on the erroneous assumption that the maximum income to domain sales price ratio was 8. *Id.* at 43. Of the few unredacted affidavits of Damon Nelson produced by the Receiver the day before the Confirmation Hearing, a comparison of the income to sale price indisputably showed that an

income approach grossly understated the value of the Domain Names. [Dkt. 956 Exhibit A].

e. Mr. Morris' untested, unsupported and uninformed testimony regarding valuation of domain names is inadmissible under Fed. R. Evid. 702.

16. The findings in FOF 22 are clearly erroneous. Morris never participated in a domain name auction and did not provide any support for his opinion that an auction of domain names was the best method for selling the Domain Names. He admitted that he had never heard of an auction of domain names of more than five or ten thousand names, but admitted that each domain name was "inherently unique." [11/16/12 Tr., Morris at 16. Morris' analogy of selling 153,000 unique names to an art auction reveals his lack of expertise in valuing domain names. One might sell a group of paintings in an auction at Sothebys, but not 153,000 unique works of art. As with domain names, most potential bidders would need more than two weeks to make a decision regarding "inherently unique" works of art. Morris' opinions on "price discovery" under the facts and circumstances of this auction were wholly unsupported by any technical or scientific expertise, and therefore inadmissible under Fed. R. Evid. 702.
17. The findings in FOF 23 are erroneous. Morris' opinion that the Domain Names lost value because they were held by an individual who had been involved in litigation is speculative, and not based on any expertise held by Morris nor upon any known methodology. The testimony regarding potential purchasers being deterred from bidding was based on hearsay. Morris did not specifically testify to any names of individuals

who were interested in purchasing the Domain Names but declined to do so due to potential litigation. Thus, Morris' testimony lacked foundation.

18. The findings in FOF 24 are clearly erroneous.

19. The findings in FOF 25 are irrelevant because the value of domain names must be conducted on an individualized basis. In other words, an individual name may be at risk of being subject to a UDRP claim, but still have value that must be determined before selling the name. Mr. Morris' opinions were not supported by any objective data or evidence and was therefore inadmissible under Fed. R. Evid. 702.

20. The findings in FOF 26 are clearly erroneous because Morris lacks any experience in buying or selling domain names, nor did he have any scholarly data or treatises to support his opinions in this case.[Dkt. 952 Morris at 7, 48]. Dr. Lindenthal, on the other hand, provided testimony that the market has already adjusted the prices and value of domain name prices to these future events. Dr. Lindenthal also testified that the value of domain names has not dropped in the last seven months, and that there is no market indication that the value of .com names will be dropping in the short term. Dr. Lindenthal is immersed in the literature on domain valuation and market conditions for the sale of domain names. This portion of Dr. Lindenthal's testimony and expertise was not the subject of challenge by the Trustee or Receiver.

21. The findings in FOF 28 is clearly erroneous as Morris did not testify to any specific details regarding this information, and was not qualified as an expert on vexatious litigation.

22. The findings in FOF 29 are clearly erroneous. Baron testified that he had no evidence in his *possession*. The record is clear that all his information was seized by the Receiver, so

Mr. Baron's lack of documentary evidence should not be a surprise, or be construed against Mr. Baron. Morris' testimony is based solely on data that he was provided from the Receiver. Morris stated that it would have been preferable to have as much historical data as possible before reaching a conclusion on the value of the names (the more data, the better). [Dkt. 952 Morris at 8, 43]. The Receiver opposed, and the Court limited any discovery of the Domain Names prior to November 24, 2010 [Dkt. 858, Expedited Discovery Order, Section II(1)(c)]. Morris did not ask, nor does it appear that he was provided any data prior to that date. Thus, any inference that Morris conducted any "research" or analysis prior to November 24, 2010 is clearly erroneous.

23. The finding in FOF 30 is clearly erroneous. There was no evidence to refute or cast any doubt as to Mr. Baron's "business model or stature in the internet industry." The Court's finding of "fact" appears to be a result of bias against Mr. Baron.

24. The finding in FOF 31 is clearly erroneous. Dr. Lindenthal's testified that he owned a company in Germany that was engaged in the purchase and sale of domain names for over ten years, that he obtained a Ph.D. in Finance focusing on valuation of real estate in depressed market conditions, and that he was a visiting scholar at M.I.T. to advance knowledge in valuation and market analysis of domain names, and that he was a Product Manager at Sedo.com valuing and engaged in the purchase and sale of large and small portfolios of domain names.

    a. Dr. Lindenthal possessed substantially greater academic qualifications that Morris, and possessed over a decade more experience in valuing, buying and selling domain names and engaging in the valuation, purchase and sale of domain names for Sedo.com.

b. In contrast, Morris was an experienced "testifier" retained in cases, but never valued a domain name for commercial sale or purchase. [Dkt. 952 Morris at 7]. As previously set out, Morris relied on anonymous internet articles to help guide his expert testimony on valuation and lacked any support whatsoever, providing an opinion on the validity of providing reliable values on selling domain names in a portfolio. [Dkt. 952 Morris at 44-48].

c. Morris did not dispute that the domain name industry, or evidence that Damon Nelson, on behalf of the Receiver, predominantly used the market approach followed by Dr. Lindenthal, or that the industry relied on Estibot and Sedo.com's automated valuation systems. *Id.* at 52.

d. Without any scholarly or empirical support, Morris opined that the market approach was unreliable, so he did not even attempt to value the Domain Names using the market approach. This testimony was inadmissible under Fed.R. Evid. 702.

e. Dr. Lindenthal's did testify that it would take a very long time to manually appraise the entire portfolio of 153,000. However, Dr. Lindenthal also testified that it would not take that long to appraise select groups of generic names from the Novo Point portfolio as it looked that there was some great names.

f. Dr. Lindenthal's opinion on TLD's and iPhone Apps was different from Morris, but his opinions were grounded on experience in valuing, buying and selling domain names, as opposed to Morris' expertise in stocks and bonds.

25. Part of the Court's finding in FOF 32 is clearly erroneous in that the Court focuses on one unsuccessful attempt by Sedo.com to sell one domain name. However, reaching a

"favorable", or negotiated price in a high value domain name is not logically related to whether use of an experienced broker with hundreds, if not thousands of contacts in the domain name industry is preferable to using a Dallas-based law firm with no experience in selling large portfolios of domain names. Indeed, a sale of 153,000 domain names is unprecedented and will result in severe loss of value because it is commercially unreasonable and being directed by lawyers—not professionals in the domain name market.

26. The Court's finding in FOF 33 is clearly erroneous for the reasons previously stated herein, as the evidence did not show broad market exposure to the domain name market, the auction and sale price are not fair, reasonable or the product of reasonable business judgment, or an "arms length, good faith and fair process."

    a. Although the Court granted limited time, and limited discovery on issues relating to the marketing, sale, and valuation of the Domain Names, the Court did not enforce the Expedited Discovery Order despite the following motions filed by Mr. Baron: Jeffrey Baron's Objections to Chapter 11 Plan and Emergency Motion to Strike or Continue Auction and Sale of Non-Bankruptcy Assets and Request For Hearing [Dkt. 895], Jeffrey Baron's Motion to Show Cause Why The Receiver and Dykema Gosset Should Not Be Held in Contempt and Sanctioned [Dkt. 917], and Jeffrey Baron's Emergency Motion For Continuance Or, In The Alternative To Exclude Testimony And Evidence**.** [Dkt. 929].

    b. Counsel became aware of evidence that shows the Receiver excluded a qualified bidder from the auction and raised the issue during arguments to the Court and asked the Court for additional time to gather admissible evidence to present to the

Court, which was denied. Counsel was able to obtain a declaration from Eli Pearlman to support this claim and filed a Motion to Clarify, offering to provide the Court with the Declaration prior to entering its findings. However, the Court denied this Motion. [Dkt. 944].

c. The Court denied Jeffrey Baron's request for additional time for expedited discovery at the September 27, 2012 Scheduling Conference, and his subsequent requests, including his Objections to Chapter 11 Plan and Emergency Motion to Strike or Continue Auction and sale of Bankruptcy Auction [Dkt. 895]. The reality is that the Receiver: (1) engaged in rolling production of documents which resulted in Baron's counsel receiving piecemeal discovery that was received after depositions were taken, or on the eve of the Confirmation Hearing; and (2) violated the Expedited Discovery Order by failing to produce documents in two critical areas including correspondence between the Receiver and interested parties regarding the purchase or sale of the Domain names, and unredacted copies of all of Damon Nelson's affidavits documenting the valuation and the sales price of domain names sold by the Receiver from the Novo Point and Quantec portfolios.

d. As a result, counsel was unable to effectively prepare his expert witness with this information, unable to effectively examine Damon Nelson, Peter Vogel or the Receiver's expert at deposition and Mssrs. Vogel and Morris at hearing. Specifically, counsel for Baron should have had the correspondence between Damon Nelson and the alleged twenty-four brokers or investors to use in discovery at deposition and for cross examination at hearing. Dr. Lindenthal

testified that Kathy Neilson, the Sedo.com representative listed on Exhibit 41, was never provided the list of domain names by Damon Nelson. However, because the underlying correspondence underlying the list were not provided, additional discovery could not be conducted. Similarly, a comparison of the unredacted affidavits of Damon Nelson provide a stark contrast between Morris' uninformed opinions on the reliability of his revenue method valuations and the sales prices in Nelson's affidavits. Indeed, this evidence punctures any notion that Morris revenue approach has any relationship to the real world market and sales of domain names.

e. The Receiver's discovery abuse also resulted in key evidence that would have revealed evidence of collusion earlier rather than later. For example, on Friday, November 30, 2012, the Receiver produced, *for the first time*, evidence that an attorney, Eric Rice, who apparently assists in buying and selling large portfolios of domain names, was interested in obtaining information from the Receiver and participating in the auction for a client. [Dkt. 976, Exhibit 12]. This correspondence should have been produced pursuant to Section II(2) (b) of the Expedited Discovery Order [Dkt. 858] but was not. The email exchange reveals that this attorney raised the same objection as Baron to the nature of the auction, severe limitations on information provided to potential bidders (number of years and lack of statistics) and their inability to make an informed decision to purchase the Domain Names. As Mr. Rice put it:

> The info sent is very appreciated but its probably like 20% of the "industry standard" info that would allow someone to do due diligence on the list to spend 4MM to 6MM dollars. **It would quite simply be crazy for us to roll the dice and buy on the info**

> **provided**. Although that info has us moving in the direction of being very very interested.
>
> I am totally guessing but my assumption would be **that anyone bidding on the info you provided somehow has some prior data about the makeup of the domains and stats from some other source.**(emphasis supplied).

f. The contemporaneous statement of Mr. Rice, a disinterested witness-potential purchaser should be accorded great weight by the Court. Moreover, the fact that the receiver failed to produce this, and other documents, reveal misconduct by a party that caused material prejudice to Baron's right to a fair hearing.

27. The finding in FOF 34 is clearly erroneous. The Court finds that the bidders are good faith purchasers for value. In fact, they are not. The testimony of Stevan Lieberman was either misinformed or false. Mr. Lieberman testified that there is no common ownership between Trans LLC and Special Jewel [Dkt. 953, Lieberman at 10, 67]. However, as set out in the Motion for Stay Pending Appeal [Dkt. 956], it is now clear that these two St. Kitts-Nevis companies are related to each other, are not competitors and are owned by another shell company Despen Trust of Nevis, which is also located in St. Kitts Nevis, which is known for tax havens and shell companies.

    a. In the face of this evidence, the Trustee apparently confirms that these two companies are owned by Despen Trust, but asserts that the Court should not be concerned because everyone, including counsel, knows that "Despen Trust is an entity used to conceal ownership…." [Dkt. 973, ¶ 29]

b. If a witness/representative is asked to identify the owners of a company, it is not unreasonable to expect the witness to be fully informed and tell the truth. Following the Trustee's *bizarre* logic, the truth is that Despen Trust is nothing but a device to hide the identities of the true owners. In sum, the ownership of Despen Trust and the "Winning Bidder" has been concealed from the Court.

c. The Court approved a sale to Trans, LLC, Special Jewel without knowing that Despen Trust (or whoever owns these companies) is the true owner. Until full disclosure of ownership can be determined, a real determination is not possible. Approving the sale with or without the Section 363 status should not be allowed until the Court actually knows who is buying the Domain Names.

28. The Court's finding in FOF 35 is clearly erroneous as to the facts and is erroneous as to the Court's authority to approve sale of assets in the possession of the Receivership. The issue may well be mooted if the Receivership is vacated by the Fifth Circuit Court of Appeals. However, as previously set out, Section 1129(a)(5)(c) does not allow merger or consolidation with another person or entity unless that person or entity is a "debtor" under the Code. *Ark-La-Tex Timber Co.*, 482 F.3d 319, 327 fn,. 7 (5th Cir. 2007). Moreover, the Court's finding that the Plan Settlement was fair, equitable, and in the best interests of the bankruptcy estate, the Receivership and Mr. Baron, is not supported by the evidence, as previously stated. Sale and transfer of all the assets of Novo Point and Quantec to a liquidating trust far exceeds the debts of the bankruptcy estate

and is not in the best interest of the receivership estate. [11/14/12 Tr., Sherman at 92].

29. Counsel for Baron respectfully submits that the Plan Settlement is not fair, equitable or in the best interests of receivership or Mr. Baron. The assets of two companies owned by Village Trust are being used to pay the legal fees of the Trustee and provide the Receiver and his lawyers with Section 363 protection. [Third Amended Joint Plan § 6.2]Baron has alleged misconduct by the Receiver and Trustee in obtaining a receivership on statutory and constitutional grounds, and many of these issues will be resolved by the Fifth Circuit. The Receiver and his lawyers have great incentive to enter into a “settlement” with the Trustee to settle a non-existent claim and obtain a high level of protection for their participation in selling assets that are worth $60 million plus, but are being sold to off-shore companies whose true ownership is not and was not known at the time of the Confirmation hearing.

30. Counsel for Baron respectfully submits that a Trustee or Receiver who fail to obtain a valuation. [11/14/12 Tr., Sherman at 59 &11/13/12 Tr., Vogel at 175-6], or follow their own valuation process before selling an asset (to wit, 153,000 assets) that they know is worth millions, have breached their fiduciary duty to the estate. Similarly, when confronted with their failure to obtain valuations, the Trustee and Receiver are judicially estopped from denying that that the proper business process is to adopt the valuations of Estibot, Sedo.com in determining whether a revenue appraisal is sufficient to support a planned auction sale.

a. Jeffrey Baron was denied due process of law as he was not represented by bankruptcy counsel prior to and leading up to September 28, 2012, when new counsel entered an appearance. The "withdrawal" of Martin Thomas was in name only. Baron testified that Mr. Thomas did not provide advice to him regarding the liquidating trust.

b. The emails from Mr. Thomas to other bankruptcy counsel reflected that he was a "minister without portfolio", and the September 27, 2012 proceedings before Judge Furgeson reflected that the district court was surprised and irate that Mr. Thomas had not been directly representing Mr. Thomas on objections or other issues in the bankruptcy court.

c. The emails reflect that Mr. Thomas had been directed by the Trustee, the Receiver or other parties named by him in his email that he could not file pleadings for Mr. Baron in the Bankruptcy Court.

d. The undersigned counsel entered an appearance on September 28, 2012, and requested additional time to prepare an argument to the Court on the auction and sales procedures, as he had only been authorized by Judge Furgeson to act in the case the day before. The request was denied.

e. As a result, the Court entered an order that limited discovery in ways that obstructed Baron's ability to conduct discovery and prepare for the Confirmation hearing including, but not limited to denying Baron's counsel and his attorneys access to electronic information and limiting discovery only to the auction and sales procedures, valuation and refusing to allow Baron discovery of ____ that related to the receivership proceedings.

f. Both the Trustee and the Receiver proposed a Joint Chapter 11 Plan in what appears to have been a closely coordinated litigation effort undertaken by them before the bankruptcy court, district court and on appeal. Once the Receiver becomes a party and engages in joint efforts with the Trustee, the Receiver's conduct in the receivership case becomes highly relevant to determining whether the proceedings in both courts is fair, reasonable and equitable. Narrow limitations on discovery to only the bankruptcy process violated Baron's right to discovery and due process.

31. The Court's Conclusions of Law are partially erroneous. While the Notice of the Joint Plan complied with the Code and creditors were notified, and ballot certifications were proper, The Court erroneously found that all pending objections to the Plan "should be overruled."

a. Jeffrey Baron was denied due process of law as he was not represented by bankruptcy counsel prior to and leading up to September 28, 2012, when new counsel entered an appearance. The "withdrawal" of Martin Thomas was in name only, as he had not filed pleadings or objections after being told by Judge Furgeson to represent Baron. Mr. Baron testified that Mr. Thomas did not provide advice to him regarding the liquidating trust.

b. The emails from Mr. Thomas to other bankruptcy counsel reflected that he was a "minister without portfolio", and the September 27, 2012 proceedings before Judge Furgeson reflected that the district court was surprised and irate that Mr. Thomas had not been directly representing Mr. Thomas on objections or other issues in the bankruptcy court.

b. The emails reflect that Mr. Thomas had been directed by the Trustee, the Receiver or other parties named by him in his email that he could not file pleadings for Mr. Baron in the Bankruptcy Court.

c. The undersigned counsel entered an appearance on September 28, 2012, and requested additional time to prepare an argument to the Court on the auction and sales procedures, as he had only been authorized by Judge Furgeson to act in the case the day before. The request was denied.

d. As a result, the Court entered an order that limited discovery in ways that hobbled Baron's ability to conduct discovery and prepare for the Confirmation hearing including, but not limited to denying Baron's counsel and his attorneys access to electronic information and limiting discovery only to the auction and sales procedures, valuation and refusing to allow Baron discovery of Trustee and Receiver correspondence that related to the receivership proceedings despite the fact that both the Trustee and the Receiver proposed a Joint Chapter 11 Plan and what appears to have been a closely coordinated litigation effort before the bankruptcy court, district court and on appeal. Indeed, the Receiver sold the Domain Names.

e. The requirements of due process are not satisfied simply because "procedures are followed" that create the appearance, but not the reality of due process of law. The appearance of due process has been "created" in the following ways: (1) Allowing Baron to be represented by counsel, but directing his attorney not to file pleadings; (2) Allowing discovery but failing to enforce court-ordered discovery despite several motions filed by Baron's counsel documenting violations of the Court's Expedited Discovery Order; and (3) Allowing discovery but imposing unreasonable limitations on Baron's discovery denying Baron's counsel and experts the same

access to electronic information routinely granted to counsel under an Attorneys-Eyes-Only protective in virtually every major trade secret case litigated in the United States.

g. One of the pending motions includes Baron's Motion on Impropriety [Dkt. 938], which should have been granted by the Court. Regardless of intent, the Court abandoned her role as a neutral and impartial decision-maker to intervene in the middle of witness testimony to persuade and/or counsel a witness regarding their refusal to testify regarding the identity of the "owners" of the two companies and their connections to Domain Holdings, thereby violating Mr. Baron's Constitutional due process right of a fair and *impartial* tribunal. *Gibson v. Berryhill*, 411 U.S. 564, 569, 93 S.Ct. 1689, 1693, 36 L.Ed.2d 488 (1973). (holding that The basic requirement of constitutional due process is a fair and impartial tribunal, whether at the hands of a court, an administrative agency or a government hearing officer.). The witness came back and changed his testimony from a refusal to testify to providing information that was not subject to effective cross examination by counsel. Evidence discovered after the testimony revealed that the two companies are related, owned by Despen Trust, also located on St. Kitts-Nevis. These companies "bid against" each other to create the *appearance* of competitive public bidding. The reality is that the Court should not approve any purchase from a "public auction" where, as here, the overall testimony of the witness was evasive at best and, at worst, false and intended to mislead the Court. As this Court knows, counsel moved for discovery of the bidders, which was denied. This denial sets a *precedent* that off-shore bidders seeking to conceal their identities can have a representative provide hearsay to obtain approval of a plan that sells the Plan to reluctantly identified officers of a company, which later transfers the Domain Names to the real purchaser. While there may be cases where assets may be purchased by an off-shore bidder, this is not that case.

h. The Court overlooked Baron's argument that the purchaser is not a good faith purchaser because the Stalking Horse Bidder supposedly required the Receiver to insert a provision in the Asset Purchase Agreement ("APA") to prevent Baron and his attorneys and experts from receiving electronic information regarding the domain names. The Receiver breached his fiduciary duty to Baron in entering into this contract, which also violated public policy and tainted the auction process, as all successive bidders signed the same APA. It is one thing to negotiate an agreement that Baron may disagree with; it is something quite different to use the contract in denying Baron's attorney the right to Attorneys Eyes Only information based on an argument that the Stalking Horse Bidder will withdraw from the auction if Baron's counsel receives electronic information. [District Dkt. 1070]. Moreover, the Stalking Horse Bidder likely received electronic information denied Baron's counsel, as he made offers to buy the portfolio in June 2012 [JB Exhibits 22-23]--almost two months before he supposedly made an "unsolicited offer" through Domain Holdings, an insider, to Peter Vogel in late August-September, 2012. [JB Exhibits 4-11].

39. Baron objects to this Conclusion of Law as the Plan does not "meet the requirements of Section 1122, 1123 and 1129 of the Code." As a threshold matter, neither Baron, Quantec or Novo Point are "debtors" under the Code. 11 USC § 101 (13) ("The term 'debtor' means person or municipality concerning which a case under this title has been commenced.") Section 1129 of the Code allows "merger or consolidation" of assets, but only the assets of "debtors." The Fifth Circuit requires that any attempt to merge, consolidate or "pool" assets cannot be accomplished if the assets being consolidated are that of a non-debtor. *Ark-La-Tex Timber Co.*, 482 F.3d 319, 327 fn,.7 (5th Cir. 2007). The Plan is improper as it purports to (a) "settle" a "claim" for legal fees that is not legally enforceable and is contrary to the "American" rule that a party pays their

own fees; (b) the "settlement" of an unenforceable claim by paying 100% of the Trustee's claim is an unnecessary drain on the receivership estate and therefore not in its best interests; (c) release the Receiver, the Trustee, their agents, employees and their lawyers for any and all negligence and/or misconduct committed during the Receivership, which is unfair and inequitable to Baron; and (d) Sell assets to two offshore companies representing to the Court that they are separate, unrelated companies who purportedly "compete" with one another when, in fact, they are owned by Despen Trust of Nevis and the true owners, or the true purchasers of the Domain Names is still unknown. The primary source of fees is the Trustee's fees incurred in defending appeal of a receivership order that he requested. On at least one occasion, either the Receiver or the Trustee asked the Court of Appeals to redesignate the Receiver as appellee, which was denied. Obviously, on one of the appeals, the Fifth Circuit did not believe it to be unfair or inequitable for the Trustee to defend the appeal, or pay his own fees. Seizure and sale of a non-debtor's assets to "bail out" the Trustee and pay his attorney's fees on appeal undermines bankruptcy policy by encouraging seizure of non-debtor assets to pay fees that are improvidently incurred by a Trustee.

40. The Court's conclusions of law are incorrect for the reasons stated above. The Court's finding that "all transfers of property under the Joint Plan are made in accordance with any applicable provisions of nonbankrutpcy law that govern the transfer of property[.]"[sic] is incorrect. No transfers of property have been made and cannot be made until the Fifth Circuit Court of Appeals has rendered a decision in the receivership case.

41. The Court's conclusion of law is incorrect as the modifications purport to modify a Plan that is improper and cannot effectively address Mr. Baron's objections.

42. The Court's conclusion of law is incorrect. It is unclear whether Baron will be free of litigation where, as here, the Plan is nothing but a pretext to seize non-debtor assets and provide protection under § 363 to the Receiver, Trustee and others. Baron is at risk that such releases will not be enforced and will be forced to defend such claims with "residual cash" from an improper sale of assets that should have been valued for at least $60,000,000. Indeed, Baron will still have to respond to attempts by dissatisfied litigants who seek to sue Baron and challenge the § 363 protection the Court proposes to grant Baron. The fees from simply asserting a § 363 defense will likely be substantial. The Receiver's and Trustee's primary goal is to avoid potential litigation or claim by Mr. Baron for misconduct alleged in the district court, the Fifth Circuit and the district court proceedings. The Court finds that Mr. Baron will "receive residual cash of a few million dollars," Baron notes that, by operation of the Global Settlement Agreement in late 2010, Mr. Sherman was given $1.8 million to satisfy all claims of the receivership. Even though the debts of the estate did not exceed $767,000, Mr. Sherman nevertheless found reasons to continue the bankruptcy and bill the estate millions. There is no evidence that Sherman will not continue to waste the assets entrusted to him. The Court should not, as a matter of law or equity, provide protection to the Receiver, or approve this kind of plan under the facts and circumstances of this case.

43. The Court's conclusions of law on the releases are incorrect. "*Pacific Lumber* does not restrict the availability of settlements of claim under § 1123(b)(3)(A) thus provid[ing] an avenue for a Chapter 11 plan to provide for releases of liability for non-debtors. But, such releases must satisfy the requirements of a valid settlement of claims under the Code. It would require, *inter alia,* consent and consideration by each participant in the agreement to be valid." *In re Bigler LP*, 442 BR 537, 545-6 (Bankr. Court, SD Texas 2010)(holding exculpation clause not a valid

settlement of claims where Plan language "applies to parties...who have voted against the Plan, and may even extend to individuals who are not even parties to this case.") Like *In re Bigler LP*, The Plan's release of the Receiver, Trustee and other non-debtor parties applies to all parties, including those not in support of the plan and not parties to this case. Under Fifth Circuit authorities a plan cannot release third parties. To the extent exculpation goes beyond the debtor or its property, it must be limited. Under the facts of this case, the Plan cannot discharge the liability of third parties such as Jeff Baron or the Receiver, Peter Vogel or their officers, directors, managers or attorneys from the assertion of any potential claims against them in state or federal court arising out of , for example, conduct in connection with the Receivership and cannot enjoin or prohibit any post-confirmation pursuit of litigation relating to the same, See Bank of New York Trust co. v. Official Unsecured Creditors' Comm. (In re Pac. Lumber Co.), 584 F.3d 229, 253 (5th Cir. 2009)("In a variety of contexts, this court has held that Section 524€ only releases the debtor, not co-liable third parties."); see also Feld v. Zale Corp. (In re Zale Corp.), 62 F.3d 746, 760 (5th Cir. 1995); In re Wool Growers Cent. Storage Co., 371 B.R. 768, 776 (Bankr. N.D. Tex 2007)("The Fifth Circuit has held that a nondebtor release violates section 524(e) when the affected creditor timely objects to the provision."); In re B.W. Alpha, Inc., 89 B.R. 592, 595 (Bankr. N.D. Tex. 1988).

Respectfully Submitted,

/s/ Stephen R. Cochell
Stephen R. Cochell
The Cochell Law Firm, P.C.
Texas Bar No. 24044255
7026 Old Katy Rd., Ste 259
Houston, Texas 77096
(713)980-8796 (phone)

(713)980-1179 (facsimile)
srcochell@cochellfirm.com

CERTIFICATE OF SERVICE

This is to certify that, on December 5, 2012 a copy of the above was served on all counsel of record through the Court's ECF filing system.

/s/ Stephen R. Cochell
Stephen R. Cochell