

# **EXHIBIT H**



400 Renaissance Center • Detroit, MI 48243 • EIN# 38-1446628

DUE UPON RECEIPT

PETER S. VOGEL, RECEIVER  
THANKSGIVE TOWER, SUITE 3000  
1601 ELM STREET  
DALLAS, TX 75201

MARCH 28, 2013  
CLIENT-MATTER NO. 108946-0001  
INVOICE NO. 1506461

*FOR PROFESSIONAL SERVICES RENDERED*

**RE: BARON RECEIVERSHIP MATTERS**

FEEs.....	\$ 145,305.00
DISBURSEMENTS .....	1,257.09
<b>TOTAL AMOUNT DUE .....</b>	<b><u>\$ 146,562.09</u></b>



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**RE: BARON RECEIVERSHIP MATTERS**

DATE	ID	DESCRIPTION	HOURS
12/31/12	CDKR	WORK ON [REDACTED] W/ DJS. (3.5) WORK ON FEE APPLICATIONS FOR RECEIVER AND HIS COUNSEL(NC), INCLUDING FILING OF SAME. (NC) RECEIVED AND REVIEWED ORDER CONCERNING STATUS OF MANDATE FROM FIFTH CIRCUIT, AND DISTRIBUTED SAME. (.5) DRAFTING OF RESPONSE TO OBJECTIONS FILED BY BARON IN THE DISTRICT COURT. RECEIVED AND REVIEWED BARON'S MOTION TO DISQUALIFY JUDGE FURGESON, AND DRAFTED RESPONSE TO SAME. (1.0). STRATEGY CALL WITH MR. SCHENCK AND MR. VOGEL. FOLLOW-UP CONFERENCE WITH MR. SCHENCK (NC).	5.00
12/31/12	DJSCH	DRAFTING AND FILING FEE STATEMENT THROUGH P. VOGEL. (1.0) DRAFTING PETITION FOR [REDACTED] (6.5)	7.50
01/01/13	CDKR	DRAFTING OF MOTION FOR [REDACTED] VERSION. CONFERENCE CALL WITH COUNSEL FOR TRUSTEE. FOLLOW-UP CONFERENCE CALL WITH MR. SCHENCK.	2.70
01/02/13	CDKR	DRAFTING EDITING AND REVIEW OF MOTION FOR [REDACTED] (8.0) FILING AND SERVICE OF MOTION FOR [REDACTED] (.5) DRAFTING OF MOTION TO [REDACTED] (1.) FILING AND SERVICE OF SAME. STRATEGY CONFERENCE WITH MR. SCHENCK.( NC)	9.50
01/02/13	DJSCH	NEGOTIATION W/ TRUSTEE RE: [REDACTED] (.5), DRAFT SAME AND CONFER, (1.0) DRAFT RESPONSE TO [REDACTED] CIRCULATE AND FILE SAME (1.0). DRAFT AND HEAVILY REVISE AND CIRCULATE [REDACTED] (5.5) SHORTEN TO FIT TO PAGE LENGTH, (2,5), MOTION TO EXCEED LENGTH REVIEW AND EDIT CDK DRAFT (.5), CONFERENCES ON SAME (NC), FILE AND DRAFT AND FILE ADVISORY TO DISTRICT COURT (.5). CONFERENCES RE: [REDACTED] (NC).	11.50
01/02/13	JRF	REVIEW AND COMMENT UPON PETITION FOR [REDACTED] AND OTHER RELATED BARON AND TRUSTEE MOTIONS (.7).	0.70
01/03/13	ALP	DRAFTED RECEIVER'S INVENTORY OF ASSETS AS OF 1/3/13 AS WELL AS REDACTED VERSION (1.7); OFFICE CONFERENCES WITH JEFF FINE REGARDING SAME (.3).	2.00
01/03/13	CDKR	REVIEW AND ANALYSIS OF MOTIONS FOR REHEARING FILED BY BARON AND NOVO POINT IN THE FIFTH CIRCUIT. (1.5) STRATEGY CONFERENCE WITH MR. SCHENCK AND MR. FINE. (NC) DRAFTING, EDITING AND CIRCULATION OF [REDACTED] AND MOTION TO [REDACTED] FILING AND SERVICE OF SAME. (5.0)	6.50



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DATE	ID	DESCRIPTION	HOURS
01/03/13	DJSCH	CALLS TO AND FROM FIFTH CIRCUIT CLERK RE: PETITION AND TREATMENT AS PANEL REQUEST,(.5) CONFER AND DRAFT EMAIL W/ COHELL RE: WITHDRAWAL OF DEMANDS TO DOMAIN HOLDINGS GROUP AND FABULOUS, (1.0) OUTLINE AND BEGIN DRAFTING [REDACTED] FILING, (3.0) FEE ORDER FROM COURT, REVIEW AND FORWARD SAME AND BRIEF CALLS AND TEAM MEETING RE: SAME (1.0), , RE-RUN AND PROOF PRIOR FEE AND EXPENSES, (.5) LETTER TO COURT. (1.0)	7.00
01/03/13	JRF	REVIEW ORDERS AND VARIOUS LATEST MATTERS ENTERED BY JUDGE FURGESON AND OTHERS WITH DAVID SCHENCK AND CHRIS KRATOVIL AND MS. PARNELL (1.0). LATER CALL WITH PETER VOGEL REGARDING [REDACTED] (.6). PREPARE RECONCILIATION OF DYKEMA FEES (.4). PREPARE DRAFT OF RECEIVER'S INVENTORY (1.4). CONFER REGARDING RESPONDING TO OTHER REQUESTS FROM THE COURT (.7).	4.10
01/04/13	CDKR	DRAFTING, EDITING AND CIRCULATION OF MOTION FOR [REDACTED] AND MOTION TO [REDACTED] DRAFTING OF PROPOSED ORDER GRANTING [REDACTED] (4.0) FILING AND SERVICE OF SAME. (.3) REVIEW OF NUMEROUS ORDER ISSUED BY THE DISTRICT COURT. (.7) STRATEGY CONFERENCE WITH MR. SCHENCK (NC).	5.00
01/04/13	DJSCH	FURTHER CONFERENCES ON DOMAIN HOLDINGS W/ COHELL (.5) AND FORWARDED SAME, REVISE AND FILE REQUEST FOR ORDER AND TO SHOW AND MEETINGS WITH MR. KRATOVIL, MR. FINE AND CALL MR. VOGEL RE SAME, CAUSE, ETC., (2.5) FILINGS BY BARON FORMER COUNSEL/BANKRUPTCY CLAIMANTS RECEIVED & REVIEWED (1.5), ORDERS FROM COURT REVIEWED & FORWARDED (.5), CALLS WITH PETER VOGEL RE; [REDACTED] (.5)	5.50
01/04/13	JRF	VERY EXTENDED TELEPHONE CONFERENCE WITH RAY URBANIK REGARDING [REDACTED] (.8). PREPARE AND FILE RECEIVER'S INVENTORY PRIOR TO NOON DEADLINE (1.3). CONFER WITH DAVID SCHENCK AND PETER VOGEL REGARDING STRATEGY FOR DEALING WITH [REDACTED] (1.0). REVIEW VARIOUS ORDERS ISSUED BY JUDGE FURGESON AS ACTION ITEMS (.4).	3.50
01/07/13	CDKR	STRATEGY CONFERENCE CALL WITH MR. SCHENCK. (NC) REVIEW AND ANALYSIS OF NUMEROUS ORDERS ISSUED BY DISTRICT COURT. (.8) REVIEW OF FILINGS IN BANKRUPTCY COURT. (.3) RESPONSE TO QUESTIONS FROM MR. VOGEL. (.2) REVIEW OF NUMEROUS E-MAILS TO & FROM VOGEL AND OTHERS RE: RECENT ORDERS. (.3)	1.50



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DATE	ID	DESCRIPTION	HOURS
01/07/13	DJSCH	EMAILS AND CALL W/ PETER VOGEL RE: [REDACTED] [REDACTED] FOLLOW UP CALL W/ PETER AND TEAM RE: SAME AND STATUS ISSUES, (1.5) ORDERS FROM COURT RE: CONTEMPT, FEES AND OTHER ISSUES REVIEWED AND FORWARDED, (.5) MEETING WITH JEFF FINE AND CALLS & EMAILS WITH PETER RE: [REDACTED] [REDACTED] AND SUBSEQUENTLY REVIEW SAME, (1.5) MEETING W/ J. FINE RE: [REDACTED] [REDACTED] CALL TO PETER RE: [REDACTED] (.5) AND DRAFTING EMAIL TO BARON'S PUTATIVE COUNSEL RE: SAME (.5).	5.00
01/07/13	JRF	EMAILS, CALLS WITH PETER VOGEL REGARDING [REDACTED] [REDACTED] (.5). LATER MULTIPLE CALLS WITH PETER VOGEL FOLLOWING UP ON STATUS OF VARIETY OF RECEIVERSHIP ISSUES (.9). ANALYZE AND EMAIL RE ORDERS FROM COURT REGARDING FEES, CONTEMPT AND OTHER ISSUES (.5). MEETINGS WITH DAVID SCHENCK (1.1), CALLS WITH PETER VOGEL REGARDING [REDACTED] (.4), CONFERENCES RE [REDACTED] (.6). VERY EXTENDED TELEPHONE CALLS FROM POTENTIAL BARON NEW COUNSEL SEEKING \$100,000 RETAINER (1.4). EMAILS AND RESPONSES RE SAME. CALLS WITH PETER VOGEL RE SAME (.6).	7.00
01/08/13	CDKR	STRATEGY CONFERENCE CALL WITH MR. SCHENCK AND MR. FINE. (NC) REVIEW AND ANALYSIS OF NUMEROUS ORDERS ISSUED BY DISTRICT COURT (.4). REVIEW OF FILINGS IN BANKRUPTCY COURT. (.3) REVIEW OF NUMEROUS E-MAILS. (.4)	1.00
01/08/13	DJSCH	REVIEW LETTER FROM CLIENT, (.8) MEET WITH J. FINE (1.8), RESEARCH RE: [REDACTED] AND MOTION IN BANKRUPTCY COURT, (1.7) CALLS AND MESSAGES TO [REDACTED] (.3) FURTHER ORDER FROM JUDGE FURGESON RECEIVED, AND FORWARDED (.2), AND FURTHER CALLS AND MESSAGE TO [REDACTED] (.2) DETAILED EMAIL ANSWER TO ISSUES FROM LETTER AND POTENTIAL [REDACTED] (1.0) DRAFTING MOTION AND FORWARD SAME (1.5) CALL W/ PETER VOGEL AND JRF (.5), FOLLOW UP EMAIL AND FORWARD LATEST DRAFT OF MOTION. (.2)	8.2
01/08/13	JRF	REVIEW LETTER FROM [REDACTED] (.4). MEETINGS WITH DAVID SCHENCK RE [REDACTED] (.8) (NC). RESEARCH AND ANALYZE [REDACTED] (2.5), AND [REDACTED] (.3) REVISE [REDACTED] (.5). VERY EXTENDED TELEPHONE CONFERENCE WITH [REDACTED] RE [REDACTED] (.8). REVIEW AND DRAFT EMAILS RE SAME (.3). VERY EXTENDED TELEPHONE CONFERENCES WITH [REDACTED] RE HIS BEING ASKED TO BE NEW BARON COUNSEL (.8). DRAFT MOTION PAPERS FOR PETER VOGEL (.6).	7.00
01/08/13	MCWAN	RESEARCH REGARDING [REDACTED] [REDACTED]	1.40
01/09/13	CDKR	REVIEW OF ORDERS ISSUED BY DISTRICT AND BANKRUPTCY COURTS. (.4) REVIEW OF NUMEROUS E-MAILS. (.2) CALL WITH MR. SCHENCK. (NC)	0.60



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01/09/13	DJSCH	MEETING W/ J. FINE RE: [REDACTED] (.5) DRAFTING FROM [REDACTED] (2.5) INITIAL OUTLINE OF [REDACTED] [REDACTED] AND FORWARD SAME PER CALL WITH MR. FINE (1.5); CALLS FROM FIFTH CIRCUIT RE: PANEL OR EN BANC OR BOTH, (.2) PAPERS COPIES OF BRIEF PREPARED AND FORWARDED PER CLERK (.2); ORDERS FROM DISTRICT COURT RE: RENEWALS AND BANKRUPTCY REVIEWED AND FORWARDED (.2).	5.10
01/09/13	JRF	MEETINGS WITH DAVID SCHENCK. RE [REDACTED] (5) DRAFT [REDACTED] [REDACTED] AND [REDACTED] MOTION (4.0) REVIEW BANKRUPTCY COURT REPORT TO DISTRICT COURT AND CONFER WITH DAVID SCHENCK RE SAME (.7). ORDERS FROM COURT RE DOMAIN NAME RENEWALS. TELEPHONE CONFERENCES WITH DAMON NELSON RE [REDACTED] (1.0). ANALYZE SAME (.5).	6.70
01/10/13	DJSCH	RESEARCH ON [REDACTED] RE: COURT/ OTHERS/ BARON, (2.0) RESPONSE EMAIL FROM PRONSKE (.5), LENGTHY MEETING WITH PETER VOGEL, J. FINE AND DAMON NELSON RE: [REDACTED] [REDACTED] (1.5), WITH VOGEL & FINE RE: ONGOING [REDACTED] AND [REDACTED] [REDACTED] (.5), REPORT FROM BANKRUPTCY COURT AND JUDGE FURGESON ORDER ADOPTING SAME. (1.0)	5.50
01/10/13	JRF	TELEPHONE CALL REGARDING [REDACTED] (.6).	0.60
01/10/13	JRF	[REDACTED] FOR MEETING WITH PETER VOGEL (2.0). ATTEND MEETINGS WITH DAMON NELSON, PETER VOGEL AND DAVID SCHENCK RE [REDACTED] (1.5). THEN MEETINGS WITH PETER VOGEL AND MR. SCHENCK RE [REDACTED] AND [REDACTED] (.5). ANALYZE AND DISCUSS ONGOING [REDACTED] [REDACTED] (.5). REVIEW REPORT FROM JUDGE FURGESON AND HOW HE ADOPTED SAME (.5). RESEARCH AND FURTHER DRAFTING OF [REDACTED] AND [REDACTED] [REDACTED] (3.1).	8.10
01/11/13	CDKR	STRATEGY CONFERENCE CALL WITH DAVID SCHENCK AND JEFF FINE. (NC) REVIEW OF E-MAILS FROM THE RECEIVER. (.1) REVIEW OF ORDERS ENTERED BY DISTRICT COURT. (.2) WORK ON [REDACTED] [REDACTED] (.8)	1.10
01/11/13	DJSCH	MULTIPLE [REDACTED] AND [REDACTED] [REDACTED] (2.0) EMAILS TO & FROM PETER RE: [REDACTED] AND RESPONSE, RESPONSE AND REPLY FROM [REDACTED] (.2) (NC) J. FINE DRAFT RESPONSE, COMMENT ON SAME AND MEET WITH MR. FINE, P. VOGEL AND MR. KRATOVIL (.5) (NC), REVIEW FURTHER [REDACTED] [REDACTED] (.5) FURTHER OUTLINING/DRAFTING MOTION TO [REDACTED] [REDACTED] (.5)	3.70



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DATE	ID	DESCRIPTION	HOURS
01/11/13	JRF	RESEARCH POTENTIAL [REDACTED] AND DRAFT NOTICE RE [REDACTED] (2.5). REVIEW MEETINGS WITH DAVID SCHENCK AND MR. KRATOVIL RE ISSUES RAISED BY DISTRICT COURT ADOPTION OF BANKRUPTCY REPORT (.5). RESEARCH AND ANALYZE VARIOUS [REDACTED] AND EMAIL RESULTS TO TEAM (3.0).	6.00
01/11/13	RMT	REVIEW ADVISORY ORDER ON RECEIVERSHIP EXPENSES; EXAMINE CORRESPONDENCE FROM RECEIVER RE [REDACTED] BEGIN DRAFTING RESPONSE TO ADVISORY ORDER.	3.10
01/12/13	ALP	RESEARCHED FOR 9/27/12 HEARING TRANSCRIPT AT REQUEST OF DAVID SCHENCK AND PETER VOGEL (.5); DRAFTED AND RESPONDED TO SEVERAL E-MAILS WITH DAVID SCHENCK AND JEFF FINE REGARDING SAME (.2).	0.70
01/12/13	DJSCH	MOTION TO [REDACTED] EMAILS RE: SAME AND ORDERS, AND [REDACTED]	2.50
01/12/13	RMT	CONTINUE DRAFTING RESPONSE TO [REDACTED]	2.20
01/13/13	DJSCH	REVIEW DRAFT FROM ROSA, COMMENT ON SAME, EDITING.	3.00
01/13/13	JRF	DRAFT AND FORWARD TO RECEIVER ALTERNATIVE [REDACTED] (2.0). RESEARCH AND ATTENTION TO OTHER OUTSTANDING PLEADINGS REQUESTED BY PETER VOGEL (1.0).	3.00
01/13/13	RMT	COMPLETE DRAFTING [REDACTED] RELATING TO RESPONSE TO ADVISORY; REVISE BRIEF.	3.10
01/14/13	CDKR	DRAFTING, EDITING AND REVISION OF RESPONSE BRIEF IN OPPOSITION TO THE DISTRICT COURT'S ADVISORY REGARDING CUTTING THE RECEIVER'S FEES BY 50%. (2.0) REVIEW OF MULTIPLE E-MAILS FROM THE RECEIVER (.2). CASE STRATEGY CONFERENCE WITH JEFF FINE. (NC)	2.20
01/14/13	DJSCH	[REDACTED] REVISED PER JEF AND CLIENT, (1.7), CALL W/ MATT MORRIS RE; [REDACTED], (.3) RESEARCH FOR [REDACTED] (1.0) AND CALLS AND EMAILS RE: DRAFT OF SAME. (.5)	3.50
01/14/13	JRF	EXTENDED RESEARCH AND ANALYSIS OF RECEIVER POSITION RE [REDACTED] IN LIGHT OF JUDGE FURGESON JANUARY 10 ORDER AND SUBSEQUENT ORDERS (3.8). EXTENDED CONFERENCES WITH THE RECEIVER REGARDING SAME (1.1). REVIEW ALL PLEADINGS FILED IN BARON CASE AND ANALYZE SAME FOR RECEIVER AND STATUS HEARING ON 1/16 (1.9). CASE STRATEGY CONFERENCES WITH CHRIS KRATOVIL (NC).	6.80
01/15/13	CDKR	PRIMARY DRAFTING, EDITING AND REVISION OF [REDACTED] DISTRICT COURT'S ADVISORY REGARDING REDUCTION OF RECEIVER'S FEES. (4.5) REVIEW MR. FINE'S PROPOSED [REDACTED] (.5) REVIEW OF ORDERS ISSUED BY DISTRICT COURT. (NC) IN-PERSON CONFERENCE WITH MR. VOGEL, MR. FINE AND MR. SCHENCK TO PREPARE FOR HEARING BEFORE BANKRUPTCY COURT. (NC)	5.00



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01/15/13	DJSCH	REVISE MOTION TO [REDACTED] (2.5) CALLS RE: SAME AND RECORD SEARCH FOR [REDACTED] (1.5) LENGTHY MEETING WITH PETER AND TEAM AT GARDERE OFFICES RE: TOMORROW'S HEARING, [REDACTED] FILING BY TRUSTEE RE: WIND-DOWN, (2.5) FILE RECEIVER RESPONSE TO COURT'S PROPOSED WIND-DOWN PER P. VOGEL. (.5)	7.00
01/15/13	JRF	EXTENDED STRATEGY CONFERENCES WITH DAVID SCHENCK AND CHRIS KRATOVIL (NC). ANALYZE LATEST ORDERS FROM DISTRICT COURT, RESPONSES TO SAME BY VARIOUS PARTIES, EMERGENCY MOTION FOR BARON RETAINER, REQUESTS FROM RECEIVER REGARDING RESPONSES TO COURTS (1.5). MEETING WITH RECEIVER AT RECEIVER'S OFFICE PREPARING FOR 11/16/13 HEARING IN BANKRUPTCY COURT (2.5). PREPARE AND FILE PLEADING IN DISTRICT AND BANKRUPTCY COURT RE WIND DOWN PLAN (1.0) . EDIT RESPONSE TO [REDACTED] (.5).	5.50
01/15/13	RMT	REVIEW EARLIER RECOVERER ORDERS TO CONFIRM [REDACTED] TO SUPPORT RESPONSE TO ADVISORY ON FEES.	0.70
01/16/13	CDKR	PRIMARY DRAFTING, EDITING AND REVISION OF [REDACTED] IN REQUEST TO DISTRICT COURT'S JANUARY ADVISORY REGARDING REDUCTION OF RECEIVER'S FEES. (3.5) CONFERENCE WITH MR. FINE AND MR. SCHENCK TO PREPARE FOR HEARING BEFORE BANKRUPTCY COURT, AS WELL AS TO DISCUSS CASE STATUS AND STRATEGY (NC).	3.5
01/16/13	DJSCH	MEETING W/ J. FINE RE: TRIAL AND BANKRUPTCY, ORDERS, (.5) AND CALLS AND EMAIL W/ MATT MORRIS RE: [REDACTED] (.5)	1.00
01/16/13	JRF	PREPARE FOR HEARING ON JEFF BARON'S INVOLUNTARY (1.0). ATTEND ALL AFTERNOON HEARING (3.0). CONFERENCES WITH PETER VOGEL & DJS BOTH BEFORE AND AFTER HEARING (1.0). DRAFT ORDER ARISING OUT OF HEARING AND CIRCULATE SAME TO ALL PARTIES (2.6).	7.60
01/17/13	CDKR	REVIEW AND ANALYSIS OF FLURRY OF ORDERS ENTERED BY BANKRUPTCY COURT IN THE INVOLUNTARY BANKRUPTCY PROCEEDINGS. (.7) REVIEW OF RELATED E-MAILS. (.3) CONFERENCE WITH MR. SCHENCK AND MR. FINE REGARDING SAME (NC)	1.00
01/17/13	DJSCH	ORDERS RE: TRIAL AND HEARING, WITHDRAWAL OF REFERENCE, (.5) MEETING W/ JEFF FINE RE: [REDACTED] (.3), EMAIL TO P. VOGEL RE: BILLS AND STAFF. (.5).	1.30
01/17/13	JRF	COLLATE MULTIPLE CONFLICTING COMMENTS TO 1/16 COURT ORDER (1.0). EXTENDED CONFERENCE WITH RICHARD HUNT RE ORDER (.4). REDRAFT [REDACTED] (.8). FINALIZE SAME AND MULTIPLE EMAILS TO VARIOUS PARTIES AND COURT FORWARDING FINAL VERSION OF ORDER (.9) . REVIEW ORDERS FROM DISTRICT COURT AND CONFERENCE REGARDING IMPLICATIONS OF SAME W/DJS (.3). RETURN INQUIRY CALL TO [REDACTED] (.3).	3.70





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01/18/13	CDKR	REVIEW AND ANALYSIS OF VARIOUS ORDERS ENTERED BY BANKRUPTCY COURT IN THE INVOLUNTARY BANKRUPTCY PROCEEDINGS. (.5) CONFERENCE WITH MR. SCHENCK AND MR. FINE REGARDING CASE STATUS AND STRATEGY (NC). REVIEW OF RELATED E-MAILS (.2).	0.70
01/18/13	DJSCH	EMAILS AND MEETING W/ J. FINE RE: [REDACTED] (.5) AND MEET WITH TEAM RE: SAME. (.5)	1.00
01/18/13	JRF	REVIEW AND FORWARD [REDACTED] (.2). EXTENDED TELEPHONE CONFERENCES WITH [REDACTED] REGARDING THE STATUS OF THE BARON BANKRUPTCY AND JOINT PLAN (.3). EXTENDED CONFERENCE WITH DAMON NELSON RE SAME AND WHAT TO EXPECT IN COMING WEEKS (.4). EMAILS TO BOTH WITH ORDERS (.2). RESPOND TO EMAIL TRAFFIC (.1). STRATEGY DISCUSSIONS WITH DAVID SCHENCK (NC).	1.20
01/21/13	DJSCH	DOMAIN NAME/UDRP CORRESPONDENCE.	0.50
01/21/13	JRF	WORK ON [REDACTED] (.5).	0.50
01/22/13	DJSCH	CONFERRING W/ J. FINE RE: SECTION [REDACTED] PER LAST WEEK'S MEETING WITH P. VOGEL (.3), BARON'S NEW BANKRUPTCY COUNSEL RE: RETAINER. (.2)	0.50
01/22/13	JRF	ATTENTION TO \$25,000 RETAINER TO MARK STROMBERG (.3). BEGIN ADDRESSING WHAT APPEARS [REDACTED] (1.2). RESEARCH [REDACTED] AND MEET BRIEFLY WITH MR. SCHENCK RE SAME (.5).	2.00
01/23/13	DJSCH	MEETINGS W/ J. FINE RE: DRAFT [REDACTED] DRAFTING OF SAME (1.2) AND CORRESPONDENCE TO P. VOGEL RE; SAME, (.5) RETAINER TO BARON'S NEW BK COUNSEL. (.3)	2.00
01/23/13	JRF	TELEPHONE CALL FROM [REDACTED] (.8). DRAFT RECEIVER'S [REDACTED] (2.3). STRATEGY REVIEW WITH DAVID SCHENCK (1.2). RETURN [REDACTED] (.1)..	4.40
01/24/13	DJSCH	INITIAL RESEARCH ON POSSIBLE [REDACTED] (2.0) AND ASSIGN FURTHER RESEARCH TO ASSOCIATE, (.5 NC) MEETING W/ J. FINE RE: STRATEGY. (1.0)	3.00
01/24/13	JRF	VERY EXTENDED TELEPHONE CALL WITH PROPOSED COUNSEL TO NEW BANKRUPTCY TRUSTEE, KEVIN MCCULLOUGH, RE COMPREHENSIVE BACKGROUND OF CASE AND ISSUES TO RESOLVE (1.1). VERY EXTENDED STRATEGY SESSION WITH DAVID SCHENCK AND CHRIS KRATOVIL RE [REDACTED] (1.0). TELEPHONE CONFERENCE WITH [REDACTED] RE HIS INQUIRY ON UPDATE STATUS (.2). RESPOND TO INQUIRIES ON CAR FOR MR. BARON (.1). RESPOND TO INQUIRY ON BARCLAYS AND RETAINER (.1).	2.50

**DyKEMA**PETER S. VOGEL, RECEIVER  
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01/24/13	MJMI	RESEARCH RE EFFECT OF [REDACTED] [REDACTED], EMAIL CORRESPONDENCE WITH D. SCHENCK RE SAME.	5.20
01/25/13	JRF	RESPOND TO STEVE COCHELL INQUIRY RE CAR FOR MR. BARON (.3). CONFER WITH DAVID SCHENCK ON VARIOUS ISSUES GOING FORWARD (.4).	0.70
01/28/13	CDKR	RECEIVED AND REVIEWED FIFTH CIRCUIT'S COURT DIRECTIVE ORDERING BARON TO FILE RESPONSE TO PETITION FOR EN BANC REVIEW IN THE FIFTH CIRCUIT (.3). ANALYSIS OF SAME. REVIEW OF STATUS OF PROCEEDINGS IN FIFTH CIRCUIT (.1) AND PROVIDED UPDATE CONCERNING SAME. (.1)	0.50
01/28/13	DJSCH	MEETINGS W/ FINE AND KRATOVIL ON FRIDAY RE: PRESSING OR OVERDUE MATTERS. (.4) ORDER FROM FIFTH CIRCUIT RE: RESPONSE TO PETITION FOR EN BANC AND CALLS RE: SAME, (.5) EMAILS FROM OPPOSITION AND [REDACTED] [REDACTED] (.5) MULTIPLE AFTER HOUR EMAILS FROM [REDACTED] (.6)	2.00
01/28/13	JRF	EXTENDED TELEPHONE CONFERENCE WITH [REDACTED] (.3) AND EMAIL TO STEVE COCHELL. (.2) EMAIL TO PETER VOGEL RE UPDATE STATUS (.2). TELE4PHONE CONFERENCE WITH DAMON NELSON RE [REDACTED] (.7).	1.40
01/29/13	CDKR	MEETING WITH MR. VOGEL AND MR. FINE AT OFFICES OF GARDERE TO DISCUSS CASE STATUS AND STRATEGY. (NC) DRAFTING OF PLEADINGS AND PAPERS REQUESTED BY MR. VOGEL, INCLUDING: [REDACTED] [REDACTED] [REDACTED] (.5.0) REVIEW OF ORDERS ISSUED BY DISTRICT COURT AND BANKRUPTCY COURT FROM JANUARY 2 TO THE PRESENT. (.4) REVIEW OF E-MAILS. (.2) REVIEW OF STATUS OF PROCEEDINGS IN FIFTH CIRCUIT AND PROVIDED UPDATE CONCERNING SAME. (.3)	5.90
01/29/13	DJSCH	REVIEW OF CASES ON JURISDICTION IN FIFTH CIRCUIT AND RELATION BETWEEN BANKRUPTCY FILING AND RECEIVERSHIP, (1.5) MEETINGS W/ KRATOVIL AND FINE RE: RECEIVERSHIP MATTERS, (.3) COURT ORDERS, YESTERDAY'S CLIENT DIRECTIVE RE: [REDACTED] [REDACTED] (UNABLE TO ATTEND DUE TO ILLNESS); CALL FOLLOWING MEETING FOR DETAILED REPORT (.5).	1.80
01/29/13	JRF	EMAILS RE CAR REQUEST (.2), ATTENTION TO [REDACTED] AND MATTERS (.5). PREPARE FOR AND ATTEND LENGTHY MEETING WITH PETER VOGEL ON VARIOUS ISSUES (2.0). REVIEW AND DISCUSS [REDACTED] WITH MR. SCHENCK AND MR. KRATOVIL (.3).	3.00
01/30/13	CDKR	DRAFTING OF NOTICE TO [REDACTED] [REDACTED] (1.5) DRAFTING OF [REDACTED] [REDACTED] (2.0) DRAFTING AND REVISION OF [REDACTED] [REDACTED] (1.5) REVIEW OF ORDERS ISSUED BY DISTRICT COURT AND BANKRUPTCY COURT FROM JANUARY 2 TO THE PRESENT. (.3) MEETING WITH MR. FINE AND MR. SCHENCK TO DISCUSS CASE STATUS AND STRATEGY. (NC) REVIEW OF E-MAILS FROM MR. VOGEL. (.3) CALL FROM MR. URBANICK REGARDING 5TH CIRCUIT ISSUES. (.3)	5.90



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DATE	ID	DESCRIPTION	HOURS
01/30/13	DJSCH	EMAILS AND BRIEF MEETINGS W/ FINE RE: BARON'S NEW COUNSEL, BARON'S CAR MATTER, (NC) REVIEW OF, REVISIONS TO , AND MEETINGS W/ KRATOVIL RE: DRAFT MOTIONS (.5), AND EMAILS FROM P. VOGEL RE: SAME. (.5)	1.00
01/30/13	JRF	WORK ON [REDACTED] (.8). ATTENTION TO VARIOUS SALE, STAY AND OTHER LITIGATION ISSUES (.4). EXTENDED TELEPHONE CALL WITH DAMON NELSON RE [REDACTED] ISSUES AND [REDACTED] (.8). FURTHER RESPONSES TO STEVE COCHELL (.2). REVIEW CASE LAW FORWARDED BY RICHARD HUNT (1.5). MEET WITH MS. PARNELL RE DOCUMENT PRODUCTION (NC).	3.70
01/31/13	ALP	OFFICE CONFERENCES WITH JEFF FINE REGARDING DOCUMENT PRODUCTION TO US TRUSTEE (.2); REVIEWED SAME (.8).	1.00
01/31/13	CDKR	REVIEW OF E-MAILS AND LETTER FROM MR. VOGEL. (.5) REVIEW OF ORDERS ISSUED BY DISTRICT COURT AND BANKRUPTCY COURT FROM JANUARY 2 TO THE PRESENT. (1.0) REVIEW OF DRAFT PLEADINGS PREPARED [REDACTED] (1.5) MEETING WITH MR. FINE AND MR. SCHENCK TO DISCUSS CASE STATUS AND STRATEGY. (NC)	3.00
01/31/13	DJSCH	LETTER FROM CLIENT RE: [REDACTED] (1.0) MULTIPLE MEETINGS AND CALLS RE: SAME (2.0) AND RESPONSE LETTER DRAFTED, REVISED & CIRCULATED. (3,5)	7.50
01/31/13	JRF	MEETINGS REGARDING [REDACTED] (2.0). ANALYZE AND RESEARCH VARIOUS APPELLATE AND BANKRUPTCY ISSUES [REDACTED] COURT OF APPEALS AUTHORITY TO [REDACTED] (2.0).	4.00

**TOTAL ATTORNEY & PARALEGAL TIME** ..... 270.3  
**TOTAL LEGAL FEES** ..... \$ 145,305.00

PETER S. VOGEL, RECEIVER  
MARCH 28, 2013

CLIENT-MATTER NO. 108946-0001  
INVOICE NO. 1506461  
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**DISBURSEMENTS**

12/17/12	DEPOSITION TRANSCRIPT - KATHY REHLING HEARING TRANSCRIPT (\$198.86)	NO-CHARGE
12/14/12	BANK OF AMERICA BANKCARD - WORKING LUNCH REVIEWING DOCUMENTS - JEFF FINE AND DAVID SCHENCK (18.95)	NO-CHARGE
01/24/13	TITLE CHECKS/SEARCHES - JEFFREY R. FINE SECRETARY OF STATE INFORMATION	3.08
11/13/12	TRAVEL-EXCEPT AIRFARE, HOTEL & MEALS - DYKEMA GOSSETT PETTY CASH, DALLAS OFFICE ALEXA PARNELL'S PARKING FEE AT COURTHOUSE	10.00
01/16/13	TRAVEL-EXCEPT AIRFARE, HOTEL & MEALS - JEFFREY R. FINE PARKING AT COURTHOUSE FOR HEARING	10.00
01/09/13	FEDEX: RENEE MCDONOUGH : US COURT OF APPEALS/FI	50.24
01/09/13	SPIRAL BINDER	35.40
01/24/13	LEGAL RESEARCH - WESTLAW	225.05
	PHOTOCOPY EXPENSES	4.00
	TELECOMMUNICATIONS	1.50
	SCANNING EXPENSES	15.40
	PRINTING EXPENSES	709.70
	CONFERENCE CALLS	28.62
	LEGAL RESEARCH - OTHER DATABASES	164.10
	<b>TOTAL DISBURSEMENTS .....</b>	<b>\$ 1,257.09</b>

**NOTE: INCURRED DISBURSEMENTS NOT APPEARING  
ON THIS INVOICE WILL BE BILLED LATER.**



PETER S. VOGEL, RECEIVER  
MARCH 28, 2013

CLIENT-MATTER NO. 108946-0001  
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### BILLING SUMMARY

ID	TIMEKEEPER	HOURS	RATE	AMOUNT
JRF	JEFFREY R. FINE	93.70	560.00	52,472.00
CDKR	CHRISTOPHER D. KRATOVIL	60.60	505.00	30,603.00
DJSCH	DAVID J. SCHENCK	96.60	570.00	55,062.00
RMT	ROSA M. TUMIALAN	9.10	495.00	4,504.50
MCWAN	MICHAEL C. WANG	1.40	NC	0.00
MJMI	MELANIE J. CHICO	5.20	345.00	1,794.00
ALP	ALEXA L. PARNELL	3.70	235.00	869.50
<b>TOTAL</b>		<b>270.3</b>		<b>145,305.00</b>



PETER S. VOGEL, RECEIVER

CLIENT-MATTER NO. 108946-0001  
BARON RECEIVERSHIP MATTERS  
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MARCH 28, 2013

FEES.....	\$ 145,305.00
DISBURSEMENTS .....	1,257.09
<b>TOTAL AMOUNT DUE.....</b>	<b>\$ <u>146,562.09</u></b>

DYKEMA GOSSETT PLLC

DYKEMA GOSSETT PLLC  
DEPT CH 16382  
PALATINE, IL 60055-6382

**CLIENT CHECK INFORMATION**

**PLEASE COMPLETE:**

**THIS INVOICE IS PAYABLE UPON RECEIPT.**

CHECK #: \_\_\_\_\_ DATE: \_\_\_\_\_ AMOUNT: \_\_\_\_\_

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400 Renaissance Center • Detroit, MI 48243 • EIN# 38-1446628

DUE UPON RECEIPT

PETER S. VOGEL, RECEIVER  
THANKSGIVE TOWER, SUITE 3000  
1601 ELM STREET  
DALLAS, TX 75201

MARCH 20, 2013  
CLIENT-MATTER NO. 108946-0001  
INVOICE NO. 1504822

*FOR PROFESSIONAL SERVICES RENDERED*

**RE: BARON RECEIVERSHIP MATTERS**

FEES.....	\$	93,308.50
DISBURSEMENTS .....		457.70
<b>TOTAL AMOUNT DUE .....</b>	<b>\$</b>	<b><u>93,766.20</u></b>

PETER S. VOGEL, RECEIVER  
MARCH 20, 2013

CLIENT-MATTER NO. 108946-0001  
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**RE: BARON RECEIVERSHIP MATTERS**

DATE	ID	DESCRIPTION	HOURS
02/01/13	ALP	REVIEWED PRIVILEGED DOCUMENTS RE: DOCUMENT PRODUCTION TO US TRUSTEE (3.3); OFFICE CONFERENCE WITH JEFF FINE REGARDING SAME (.2).	3.50
02/01/13	CDKR	CASE ANALYSIS WITH MR. SCHENCK AND MR. FINE (NC). EXCHANGE OF CORRESPONDENCE WITH MR. VOGEL, AND ANALYSIS OF SAME, INCLUDING LEGAL RESEARCH (2.0). PREPARATION OF CORRESPONDENCE RESPONDING TO QUESTIONS AND CONCERNS [REDACTED] (2.0).	4.00
02/01/13	JRF	RESEARCH RE [REDACTED] (2.0). REVIEW LETTER TO PETER VOGEL (.2); MEET WITH MS. PARNELL (NC).	0.80
02/04/13	ALP	CONTINUED REVIEWING PRIVILEGED DOCUMENTS RE: DOCUMENT PRODUCTION TO US TRUSTEE (4.1); OFFICE CONFERENCE WITH JEFF FINE REGARDING SAME (.3).	4.40
02/04/13	CDKR	CASE ANALYSIS WITH MR. SCHENCK AND MR. FINE (NC). FORMULATION OF STRATEGY TO MANAGE [REDACTED] ORDERS OF THE BANKRUPTCY COURT AND THE DISTRICT COURT (1.5).	1.50
02/04/13	DJSCH	CALL FROM COURT STAFF RE: AVAILABILITY AND TIMING OF IN CAMERA W/ COURT RE: REPRESENTATION MATTER (.2). MEETINGS W/ J. FINE AND KRATOVIL RE: SAME (.5); REREAD EARLIER ORDERS RE: BANKRUPTCY (.8); FIFTH CIRCUIT ORDER RE: STAY (.3), FEE AND BILLING ORDERS (1.0 NC).	1.80
02/04/13	JRF	RESPOND TO VARIOUS RECEIVER EMAILS AND CALLS FROM CREDITORS REGARDING CONTINUATION OF INJUNCTION AND BARON STAY (.5); MEETING RE: POSSIBLE HEARING (.5); MEET WITH MS. PARNELL RE PRIVILEGE LOG (NC).	1.00
02/05/13	ALP	CONTINUED REVIEWING PRIVILEGED DOCUMENTS CONCERNING US TRUSTEE PRODUCTION.	3.40
02/05/13	ARA	TELEPHONE CALL WITH MR. KRATOVIL AND MR. SCHENCK REGARDING UPCOMING EX PARTE HEARING ORDERED BY THE COURT AND CASE BACKGROUND (.5); BEGIN RESEARCH ON [REDACTED] (.7).	1.20
02/05/13	CDKR	NOTIFICATION OF IN CAMERA HEARING BEFORE JUDGE FURGESON ON FEBRUARY 7, AND PREPARATION OF EXHIBITS AND DOCUMENTS FOR THAT MEETING, INCLUDING [REDACTED] (3.5). OUTLINING OF ARGUMENTS AND POINTS FOR FEBRUARY 7 HEARING (2.5). MEETING WITH MR. SCHENCK AND MR. FINE REGARDING FEBRUARY 7 HEARING AND CALL WITH MS. ASHMORE RE SAME (NC).	6.00



PETER S. VOGEL, RECEIVER  
MARCH 20, 2013

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DATE	ID	DESCRIPTION	HOURS
02/05/13	DJSCH	REVIEWING CORRESPONDENCE AND DRAFT PLEADINGS [REDACTED] OVER THE PAST MONTH (1.0); CONFERENCE WITH A. ASHMORE RE: PLEADINGS TO BE DRAFTED/FILED (.5).	4.50
02/05/13	JRF	CONFERENCES REGARDING LETTERS AND OTHER MATTERS RELATING TO RECEIVERSHIP ISSUES (2.0).	2.00
02/06/13	ALP	CONTINUED REVIEWING PRIVILEGED DOCUMENTS CONCERNING US TRUSTEE PRODUCTION.	1.20
02/06/13	ARA	RESEARCH THE APPLICATION OF [REDACTED] (4.1); DRAFT E-MAIL SUMMARY OF RESEARCH AND KEY CASE LAW TO MR. KRATOVIL AND MR. SCHENCK (1.1); OFFICE CONFERENCE WITH MR. KRATOVIL, MR. SCHENCK, AND MR. FINE IN PREPARATION FOR HEARING BEFORE COURT REGARDING REPRESENTATION (.5).	5.70
02/06/13	CDKR	CASE ANALYSIS WITH MR. SCHENCK AND MR. FINE (NC). PREPARATION FOR HEARING BEFORE JUDGE FURGESON ON FEBRUARY 7 (1.0). RECEIVED AND REVIEWED CCSB RESPONSE IN OPPOSITION TO PETITION FOR REVIEW ON THE 5TH CIRCUIT, AND ANALYSIS OF SAME (.5). WORK ON RESPONSE TO CCSB PETITION FOR REVIEW IN THE FIFTH CIRCUIT (2.5).	4.00
02/06/13	DJSCH	RESEARCH ON [REDACTED] (2.5), RESEARCH LOCAL AND STATE RULES ON [REDACTED] (1.5) AND [REDACTED] (1.5), MEET W/ FINE AND KRATOVIL RE; TOMORROW'S HEARING (1.5); EMAILS AND CALLS FROM URBANIK RE: HEARING (NONE RETURNED) (.3)	7.30
02/06/13	JRF	PREPARE FOR 2/7/13 HEARING IN JUDGE FURGESON'S COURT WITH MR. SCHENCK AND MR. KRATOVIL (1.5).	1.50
02/07/13	ALP	CONTINUED REVIEWING PRIVILEGED DOCUMENTS CONCERNING US TRUSTEE PRODUCTION.	3.50
02/07/13	ARA	LEGAL RESEARCH REGARDING [REDACTED] AND E-MAIL SUMMARY OF SAME (.2); PREPARATIONS FOR HEARING BEFORE JUDGE FERGUSON (.2).	0.40
02/07/13	CDKR	PREPARATION OF EXHIBITS AND DOCUMENTS FOR HEARING BEFORE JUDGE FURGESON, INCLUDING [REDACTED] OUTLINING OF ARGUMENTS AND POINTS FOR FEBRUARY 7 HEARING (4.0). ATTENDED AND PARTICIPATED IN FEBRUARY 7 IN CAMERA HEARING BEFORE JUDGE FURGESON (NC). POST-HEARING MEETING AND ANALYSIS WITH MR. SCHENCK AND MR. FINE (.5). POST-HEARING EDITING, REVISION, AND UPDATING OF THE [REDACTED] PLEADINGS THAT COUNSEL PROPOSES THAT THE RECEIVER FILE IN THE DISTRICT COURT AND THE BANKRUPTCY COURT, AND CIRCULATION OF THE SAME FOR APPROVAL (3.5). WORK ON PROPOSED ORDERS TO ACCOMPANY PLEADINGS (.5).	8.50



PETER S. VOGEL, RECEIVER  
MARCH 20, 2013

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DATE	ID	DESCRIPTION	HOURS
02/11/13	JRF	ANALYZE MATTERS REGARDING REPRESENTATION ISSUES TO BE FINALIZED WITH DAVID SCHENCK (NC).	1.20
02/12/13	ALP	CONTINUED DRAFTING PRIVILEGE LOG CONCERNING US TRUSTEE PRODUCTION.	2.80
02/12/13	ARA	FINALIZE ADDITIONAL EDITS FROM MR. FINE (.4); CORRESPONDENCE REGARDING HEARING THIS AFTERNOON (.2); REVIEW EDITS SUGGESTED BY MR. VOGEL AND DISCUSS SAME AND THEIR EFFECTS WITH MR. SCHENCK (.8); ASSIST IN DRAFTING CORRESPONDENCE TO [REDACTED] (.7); ANALYSIS AND STRATEGY IN PREPARATION FOR HEARING WITH COURT (1.0).	3.10
02/12/13	CDKR	REVIEW AND ANALYSIS OF MAJOR HEARING BEFORE JUDGE JERNIGAN IN THE BANKRUPTCY COURT, AND STRATEGY CONFERENCE WITH MR. SCHENCK AND MR. FINE (NC).	NC
02/12/13	DJSCH	CALL RE: AVAILABILITY FOR HEARING TO DISCUSS [REDACTED] RE: [REDACTED] (.5), INTERNAL MEETING WITH TEAM RE: SAME (.5) AND TO COURT FOR SAME (2.0 NC). CCSB RESPONSE TO MOTION. MAKE CLIENT EDITS AND FILE MOTIONS INTO THE EVENING (3.5).	4.50
02/12/13	JRF	PREPARE FOR AND ATTEND IN CAMERA HEARING IN DISTRICT COURT (2.0) (NC). POST-HEARING MEETING WITH RECEIVER (.5) (NC). FINALIZE AND FILE 5 PLEADINGS IN BANKRUPTCY AND DISTRICT COURTS (4.5).	4.50
02/13/13	ALP	CONTINUED DRAFTING PRIVILEGE LOG CONCERNING US TRUSTEE PRODUCTION.	3.00
02/13/13	ARA	STRATEGY MEETING WITH MR. SCHENCK, MR. FINE, AND MR. KRATOVIL REGARDING HEARING IN BANKRUPTCY COURT, EFFECTS OF POSSIBLE RULINGS, AND STRATEGY FOR NEXT STEPS IN DISTRICT COURT AND BANKRUPTCY COURT.	0.80
02/13/13	DJSCH	ATTEND HEARING IN BANKRUPTCY COURT (2.5), MEET W/ [REDACTED] (.5), AND RETURN. CALL W/ CLIENT RE: STATUS AND [REDACTED] TEAM MEETING (NC).	3.50
02/13/13	JRF	REVIEW VARIOUS PLEADINGS TO PREPARE FOR (1.0) AND ATTEND BANKRUPTCY COURT HEARING (2.5). AFTER HEARING SETTLEMENT MEETING WITH PETITIONING CREDITOR DEAN FERGUSON (.5). STRATEGY MEETING WITH DAVID SCHENCK, MS. ASHMORE, AND CHRIS KRATOVIL (NC). REVIEW VARIOUS FILINGS MADE BY BARON, CREDITORS AND OTHERS (.8).	4.80
02/14/13	ALP	CONTINUED DRAFTING PRIVILEGE LOG CONCERNING US TRUSTEE PRODUCTION.	4.00
02/14/13	ARA	DRAFT REQUEST FOR STATUS CONFERENCE (.7); REVISE REQUEST FOR JOINT STATUS CONFERENCE TO INCORPORATE [REDACTED] AND REVIEW LOCAL DISTRICT COURT RULES [REDACTED] (.4); DRAFT PROPOSED ORDER ON REQUEST FOR STATUS CONFERENCE (.4).	1.50

PETER S. VOGEL, RECEIVER  
 MARCH 20, 2013

CLIENT-MATTER NO. 108946-0001  
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DATE	ID	DESCRIPTION	HOURS
02/14/13	DJSCH	CALL WITH CLIENT RE: [REDACTED] (.5), ALTERNATIVES, INCLUDING [REDACTED] PRELIMINARY RESEARCH ON SAME (1.0), REQUEST ALISON ASHMORE DRAFT SAME (.5), REVIEW BARON WIND DOWN PLAN (1.0).	3.00
02/14/13	JRF	TELEPHONE CONFERENCE WITH PETER VOGEL REGARDING [REDACTED] (.5). RESEARCH [REDACTED] (.4). ANALYZE RECEIVER'S POSITION AND DEVELOP STRATEGY RE [REDACTED] (.2).	1.10
02/15/13	ALP	CONTINUED DRAFTING PRIVILEGE LOG CONCERNING US TRUSTEE PRODUCTION.	1.00
02/15/13	DJSCH	REVIEW AND REVISE MOTION FOR [REDACTED] (1.0), CIRCULATE SAME AND, CONFER W/ PARTIES (1.0) AND STRATEGY MEETING W/ J. FINE (.3). DISCUSS MOTION FOR SAME STATUS CONFERENCE WITH COHELL, DEAN FERGUSON, URBANIK, AND OTHERS, FILE SAME, FURTHER STRATEGY MEETING W/ J. FINE (.5 NC).	2.30
02/15/13	JRF	TELEPHONE CONFERENCES WITH DAVID SCHENCK AND GERRIT PRONSKE (.1), LISA LAMBERT (.2), STEVE COHELL (MULTIPLE) (.2), MARK STROMBERG (.1), TO MIKE SUTHERLAND (.2), DEAN FERGUSON (.1), PETER VOGEL (.1), EMAIL TO TRACI DAVIS, AND FINALIZE REQUEST FOR STATUS CONFERENCES AND FILE SAME (.3) STRATEGY MEETING WITH DAVID SCHENCK (NC).	1.30
02/18/13	ALP	OFFICE CONFERENCE WITH JEFF FINE RE: HEARING TRANSCRIPTS FROM 1/16/13 AND 2/13/13 HEARINGS (.2); CONTINUED DRAFTING PRIVILEGE LOG CONCERNING US TRUSTEE DOCUMENT PRODUCTION (.9).	1.10
02/18/13	CDKR	CONFERENCE WITH MR. SCHENCK AND MR. FINE REGARDING CASE STATUS AND STRATEGY (NC). REVIEW OF E-MAILS AND FILINGS (.3). ANALYSIS OF STATUS OF 5TH CIRCUIT PROCEEDINGS (.2).	0.50
02/18/13	DJSCH	NEW APPEALS FROM BARON CALENDARER (.5), REVIEW JANUARY BILLING STATEMENT (1.0), CALL RE: [REDACTED] AND EMAILS RE: SAME (.5), MEETING W/ J. FINE AND KRATOVIL RE: HEARING AND [REDACTED] (NC).	2.00
02/18/13	JRF	ATTENTION TO [REDACTED] (.1) AND INQUIRIES RE BOTH (.3) MEETING WITH DAVID SCHENCK AND CHRIS KRATOVIL RE: SAME (NC) MEETING WITH MS. ASHMORE RE TRANSCRIPT (NC)..	.50
02/19/13	ALP	TELEPHONE CONFERENCES WITH COURT REPORTERS RE: HEARING TRANSCRIPTS NEEDED FROM 1/16/13 AND 2/13/13 HEARINGS (.2); OFFICE CONFERENCES WITH JEFF FINE AND DAVID SCHENCK REGARDING HEARING TRANSCRIPTS (.2); CONTINUED DRAFTING PRIVILEGE LOG CONCERNING US TRUSTEE DOCUMENT PRODUCTION (2.1).	2.50
02/19/13	ARA	DRAFT MOTION FOR [REDACTED] (.7); DRAFT NOTICE OF HEARING FOR THREE FILINGS (.2); CORRESPONDENCE WITH MR. FINE REGARDING MOTION AND NOTICE (.1).	1.00



PETER S. VOGEL, RECEIVER  
MARCH 20, 2013

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DATE	ID	DESCRIPTION	HOURS
02/19/13	DJSCH	FEBRUARY PAYMENT FROM [REDACTED] (5), ORDER FROM 5TH CIRCUIT AND CALL TO 5TH CIRCUIT RE: NEW APPEALS (.5) AND PROCESSING OF SAME, D. NELSON PROPOSED PAYMENT SCHEDULE FOR DOMAIN HOLDINGS (.5), MEETING W/ J. FINE RE: [REDACTED] (4).	1.90
02/19/13	JRF	ATTENTION TO OBTAINING SETTINGS WITH DEPUTY CLERK (.2).	0.20
02/19/13	JRF	REVISE MOTION TO [REDACTED] (4) AND MEET WITH DAVID SCHENCK RE: MOTIONS (NC).	0.40
02/20/13	ALP	TELEPHONE CONFERENCE WITH COURT REPORTER RE: HEARING TRANSCRIPT NEEDED FOR 2/13/13 HEARING (.2); CONTINUED DRAFTING PRIVILEGE LOG CONCERNING US TRUSTEE DOCUMENT PRODUCTION (3.3).	3.50
02/20/13	ARA	ATTENTION TO EXHIBITS NEEDED FOR REQUEST FOR AUTHORITY TO PAY EXPENSES (.2); EDIT NOTICE OF HEARING (.1).	0.30
02/20/13	DJSCH	COURT REPORTER MOTION REVIEWED FOR NEW VERSION WITH ADDITIONAL BILLS (.5), CALL & EMAILS W/ P. VOGEL RE: PENDING MATTERS AND HEARING (.5), CONFERENCE RE: PENDING APPEALS OF BANKRUPTCY COURT ORDER, [REDACTED] (1.0), EMAILS CALL AND DRAFT LETTER RESPONSE TO SAME AND BRIEF MEETING WITH J. FINE RE: SAME (1.5).	3.50
02/20/13	JRF	PREPARE FOR AND ATTEND ONDOVA BANKRUPTCY STATUS CONFERENCE (2.0). POST CONFERENCE DISCUSSIONS WITH CORKY SHERMAN AND RICHARD HUNT AND OTHERS (.5). MEET WITH DAVID SCHENCK RE [REDACTED] (1.5).	4.00
02/21/13	ALP	CONTINUED DRAFTING PRIVILEGE LOG CONCERNING US TRUSTEE DOCUMENT PRODUCTION.	2.90
02/21/13	DJSCH	MEETING W/ J. FINE RE: PENDING MOTIONS, HEARING IN BANKRUPTCY COURT AND STRATEGY GOING FORWARD [REDACTED]	0.50
02/21/13	JRF	DRAFT AND FILE NOTICE OF HEARINGS FOR 3/19 AND FILE SAME IN BANKRUPTCY AND DISTRICT COURTS AND ATTENTION TO SERVICE OF SAME (.6). CONFERENCES WITH DAMON NELSON AND DAVID SCHENCK RE [REDACTED] AND HOW TO RESPOND TO SAME (.5). REVIEW LATEST FILINGS IN BARON MATTER (.7).	1.80
02/22/13	ALP	CONTINUED DRAFTING PRIVILEGE LOG CONCERNING US TRUSTEE DOCUMENT PRODUCTION.	2.50
02/22/13	DJSCH	MEETING W/ J./ FINE AND CALL TO P. VOGEL RE: [REDACTED] ISSUE (.5), EMAILS AND LETTER DRAFTED AND CIRCULATED BY J. FINE RE: SAME (.5); CALL W/ P. VOGEL RE: [REDACTED] MOTIONS AND STATUS CONFERENCE (.5).	1.50

PETER S. VOGEL, RECEIVER  
 MARCH 20, 2013

CLIENT-MATTER NO. 108946-0001  
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DATE	ID	DESCRIPTION	HOURS
02/22/13	JRF	RESEARCH AND RESPOND TO [REDACTED] EMAILS TO [REDACTED] (1.4), EMAIL TO [REDACTED] (2). EXTENDED TELEPHONE CALL WITH DAMON NELSON RE SAME (.5). TELEPHONE CONFERENCES WITH PETER VOGEL RE [REDACTED] RESPOND TO SIMILAR [REDACTED] (4). TELEPHONE CONFERENCE WITH JASON CROSS, ICANN COUNSEL RE [REDACTED] (3); MEETING WITH DAVID SCHENCK AND CALL TO PETER VOGEL RE [REDACTED] STRATEGY (.5)..	3.30
02/24/13	JRF	ATTENTION TO INQUIRY FROM PETER VOGEL ON VARIOUS DISTRICT COURT ENTRIES (.2).	0.20
02/25/13	DJSCH	MEETING W/ J. FINE RE: [REDACTED] (3) AND CONFERENCES W/ MR. URBANIK AND PRONSKE (1.0), REVIEW TRANSCRIPT ORDER REQUEST (.5), CALL TO COURT REPORTER RE: PROCESSING OF SAME (.2), READING BARON WIND DOWN PLAN (.5); CALL FROM P. VOGEL RE: [REDACTED] (.5).	3.00
02/25/13	JRF	EXTENDED TELEPHONE CONFERENCE WITH ICANN COUNSEL RE [REDACTED] (3). ATTENTION TO VARIOUS [REDACTED] (3). ATTENTION TO DOMAIN HOLDINGS GROUP ISSUES [REDACTED] (3). TELEPHONE CONFERENCE WITH PROSPECTIVE PURCHASER'S COUNSEL STEVAN LIEBERMAN RE STATUS OF CASES (.4). BRIEF MEETING WITH DAVID SCHENCK RE: SAME (.3).	1.60
02/26/13	ALP	CONTINUED DRAFTING PRIVILEGE LOG CONCERNING US TRUSTEE DOCUMENT PRODUCTION.	2.30
02/26/13	DJSCH	REVIEWING JANUARY TIME AND BILLING MATTERS.	0.50
02/26/13	JRF	RESPOND TO INQUIRIES RE [REDACTED] (3).	0.30
02/27/13	ALP	CONTINUED DRAFTING PRIVILEGE LOG CONCERNING US TRUSTEE DOCUMENT PRODUCTION.	2.20
02/27/13	JRF	RESEARCH [REDACTED] (2.0).	2.00
02/27/13	JRF	ATTENTION TO LATEST APPEAL STATUS ISSUES (.2).	0.20
02/28/13	ALP	CONTINUED DRAFTING PRIVILEGE LOG CONCERNING US TRUSTEE DOCUMENT PRODUCTION.	3.90
02/28/13	JRF	ANALYZE PETITIONING CREDITORS POSITION THAT INVOLUNTARY BANKRUPTCY DIVESTS RECEIVERSHIP (2.5) AND REPORT ON SAME (.5).	3.00
<b>TOTAL ATTORNEY &amp; PARALEGAL TIME .....</b>			<b>205.80</b>
<b>TOTAL LEGAL FEES .....</b>			<b>\$ 93,308.50</b>



PETER S. VOGEL, RECEIVER  
MARCH 20, 2013

CLIENT-MATTER NO. 108946-0001  
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**DISBURSEMENTS**

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02/11/13	TRAVEL-EXCEPT AIRFARE, HOTEL & MEALS - JEFFREY R. FINE PARKING AT COURTHOUSE FOR HEARING	<b>8.00</b>
02/13/13	TRAVEL-EXCEPT AIRFARE, HOTEL & MEALS - DAVID J. SCHENCK PARKING WHILE AT COURTHOUSE	<b>30.00</b>
02/20/13	TRAVEL-EXCEPT AIRFARE, HOTEL & MEALS - JEFFREY R. FINE PARKING AT COURTHOUSE FOR HEARING	<b>10.00</b>
	PHOTOCOPY EXPENSES	<b>182.00</b>
	SCANNING EXPENSES	<b>41.40</b>
	PRINTING EXPENSES	<b>154.80</b>
	LEGAL RESEARCH - OTHER DATABASES	<b>31.50</b>

**TOTAL DISBURSEMENTS ..... \$ 457.70**

**NOTE: INCURRED DISBURSEMENTS NOT APPEARING ON THIS INVOICE WILL BE BILLED LATER.**



PETER S. VOGEL, RECEIVER  
 MARCH 20, 2013

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**BILLING SUMMARY**

<b>ID</b>	<b>TIMEKEEPER</b>	<b>HOURS</b>	<b>RATE</b>	<b>AMOUNT</b>
JRF	JEFFREY R. FINE	45.30	560.00	25,368.00
CDKR	CHRISTOPHER D. KRATOVIL	27.00	505.00	14,850.00
DJSCH	DAVID J. SCHENCK	59.40	570.00	33,858.00
ARA	ALISON R. ASHMORE	21.40	320.00	6,848.00
ALP	ALEXA L. PARNELL	52.70	235.00	12,384.50
<b>TOTAL</b>		<b>205.80</b>		<b>93,308.50</b>





PETER S. VOGEL, RECEIVER

MARCH 20, 2013

CLIENT-MATTER NO. 108946-0001  
BARON RECEIVERSHIP MATTERS  
INVOICE NO. 1504822  
PAGE NO. 11

FEES.....	\$	93,308.50
DISBURSEMENTS .....		457.70
<b>TOTAL AMOUNT DUE .....</b>	<b>\$</b>	<b><u>93,766.20</u></b>

DYKEMA GOSSETT PLLC

DYKEMA GOSSETT PLLC  
DEPT CH 16382  
PALATINE, IL 60055-6382

CLIENT CHECK INFORMATION  
PLEASE COMPLETE:

**THIS INVOICE IS PAYABLE UPON RECEIPT.**

CHECK #: \_\_\_\_\_ DATE: \_\_\_\_\_ AMOUNT: \_\_\_\_\_  
**PLEASE RETURN THIS PAGE WITH YOUR REMITTANCE.**

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RECEIVED DATE: \_\_\_\_\_



400 Renaissance Center • Detroit, MI 48243 • EIN# 38-1446628

DUE UPON RECEIPT

PETER S. VOGEL, RECEIVER  
THANKSGIVE TOWER, SUITE 3000  
1601 ELM STREET  
DALLAS, TX 75201

APRIL 8, 2013  
CLIENT-MATTER NO. 108946-0001  
INVOICE NO. 1507990

*FOR PROFESSIONAL SERVICES RENDERED*

**RE: BARON RECEIVERSHIP MATTERS**

FEEs.....	\$ 112,864.00
DISBURSEMENTS .....	1,585.40
<b>TOTAL AMOUNT DUE .....</b>	<b><u>\$ 114,449.40</u></b>



PETER S. VOGEL, RECEIVER  
APRIL 8, 2013

CLIENT-MATTER NO. 108946-0001  
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**RE: BARON RECEIVERSHIP MATTERS**

DATE	ID	DESCRIPTION	HOURS
03/01/13	ALP	CONTINUED DRAFTING PRIVILEGE LOG CONCERNING US TRUSTEE DOCUMENT PRODUCTION.	3.20
03/01/13	DJSCH	CALL TO J. MACPETE RE: COMPLIANCE WITH ORDER (.2), BEGAN DRAFT MOTION [REDACTED] (1.0), MEETINGS WITH J. FINE RE: [REDACTED] (.3), FIFTH CIRCUIT ORDER (.2), EMAILS W/ P. VOGEL RE: [REDACTED] (.3).	2.00
03/01/13	JRF	REVIEW LATEST [REDACTED] AND CORRESPONDENCE (.3) AND MEET WITH DJS BRIEFLY RE: SAME (.3).	0.60
03/04/13	ALP	CONTINUED DRAFTING PRIVILEGE LOG CONCERNING US TRUSTEE DOCUMENT PRODUCTION.	3.70
03/04/13	DJSCH	CALL WITH P. VOGEL RE: [REDACTED] (.5), CALL TO JOSH COX (.3).	0.80
03/05/13	ALP	CONTINUED DRAFTING PRIVILEGE LOG CONCERNING US TRUSTEE DOCUMENT PRODUCTION.	3.80
03/05/13	CDKR	RECEIVED AND REVIEWED MULTIPLE FILINGS FROM MR. BARON RESPONDING TO THE RECEIVER'S MOTIONS TO PAY HIS PROFESSIONALS (1.3). ANALYSIS OF THE SAME AND INITIAL WORK ON RESPONSES (.7). CONFERENCE WITH MR. SCHENCK AND MR. FINE REGARDING SAME (NC).	2.00
03/05/13	DJSCH	REVIEW NEW BARON FILINGS RE: OUTSTANDING FEE MATTERS (.5), CALL AND EMAILS WITH VOGEL RE: SAME (.3), CALL AND EMAIL WITH M. MORRIS RE: PAYMENT (.2), REVIEW AND REVISE FEBRUARY STATEMENT (1.0), MEETING WITH C. KRATOVIL RE: MOTIONS (.5) RE: [REDACTED]	2.50
03/06/13	ALP	CONTINUED DRAFTING PRIVILEGE LOG CONCERNING US TRUSTEE DOCUMENT PRODUCTION.	5.60
03/06/13	CDKR	DRAFTING OF MOTION TO [REDACTED] BY THE JANUARY 2 ORDER OF THE DISTRICT COURT (1.0). CONFERENCE WITH MR. SCHENCK REGARDING SAME (NC).	1.00
03/06/13	DJSCH	CALLS AND EMAILS WITH P. VOGEL RE: DRAFT MOTION RE: [REDACTED] (.5), MEETING WITH C. KRATOVIL AND J. FINE RE SAME (.5), OUTLINE CONTEMPT MOTIONS WITH KRATOVIL (.5) AND CORRESPONDENCE WITH ICAAN W/ J. FINE (.5); CALL TO 5TH CIR. CLERK RE; STATUS OF EN BANC PETITION (.2 NC).	2.00

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DATE	ID	DESCRIPTION	HOURS
03/07/13	ALP	CONTINUED DRAFTING PRIVILEGE LOG CONCERNING US TRUSTEE DOCUMENT PRODUCTION (3.0); OFFICE CONFERENCE WITH DAVID SCHENCK REGARDING OUTSTANDING INVOICES TO COURT REPORTERS AND MOTION FILED REGARDING SAME (.5); TELEPHONE CONFERENCES WITH COURT REPORTERS REGARDING SAME (.2).	3.70
03/07/13	CDKR	DRAFTING, EDITING AND REVISION OF MOTION TO [REDACTED] BY THE JANUARY 2 ORDER OF THE DISTRICT COURT (4.0). CONFERENCE WITH MR. SCHENCK REGARDING SAME. CIRCULATION OF COMPLETED DRAFT TO MR. VOGEL AND TEAM, AND PREPARATION TO FILE SAME (.5).	4.50
03/07/13	DJSCH	CALL WITH P. VOGEL (.2) AND CALL TO J. MACPETE (SECOND) TO CONFER ON [REDACTED] (.2), REVIEW AND COMMENT ON DRAFT MOTION (1.6), FORWARD SAME AND REVIEW VOGEL COMMENTS (.2), REVISIONS TO FEBRUARY TIME AND BILL (.5 NC); REVIEWING COURT REPORTER BILLS FOR POSSIBLE SUPPLEMENTAL MOTION (.5), MEET WITH J. FINE RE: APPLICATION FOR GRANT THORNTON (.3), BARON'S NEW LOCAL COUNSEL; MEET WITH A. PARNELL RE: CONFIRMING TOTAL OUTSTANDING COURT REPORTER INVOICES (.5).	3.50
03/07/13	JRF	VERY EXTENDED TELEPHONE CONFERENCE WITH DOMAIN NAME UDRP CLAIMANT ATTORNEY LARRY LICHTMAN RE STATUS OF THEIR CLAIM AND [REDACTED] (.4); MEETING WITH DJS RE: SAME (NC).	0.40
03/08/13	ALP	CONTINUED DRAFTING PRIVILEGE LOG CONCERNING US TRUSTEE DOCUMENT PRODUCTION (1.0); DRAFTED E-MAIL TO AND MEET WITH DAVID SCHENCK REGARDING COURT REPORTER INVOICES (.5); TELEPHONE CONFERENCES WITH COURT REPORTERS REGARDING SAME (.2); OFFICE CONFERENCE WITH JEFF FINE REGARDING SAME (.1).	1.80
03/08/13	CDKR	FINAL REVIEW, EDITING AND FILING AND SERVICE OF MOTION TO HOLDS NETSPHERE IN CONTEMPT FOR ITS FAILURE TO PAY THE SETTLEMENT AS COMMANDED BY THE JANUARY 2 ORDER OF THE DISTRICT COURT.	0.50
03/08/13	DJSCH	REVIEW FINAL CONTEMPT DRAFT RE: NETSPHERE (1.0), MAKE P. VOGEL REVISIONS, FINALIZE AND FILE CONTEMPT (.6). MEETING WITH J. FINE RE: [REDACTED] CORRESPONDENCE/MOTION, MOTION RE: [REDACTED] (.4), AND MEET W/ ALEXA PARNELL RE: STATUS OF COURT REPORTERS BILLS (.5).	2.50
03/08/13	JRF	DRAFT MOTION TO [REDACTED] (.8). ANALYZE [REDACTED] RESPONSES AND HOW TO PROCEED (.7) AND MEET WITH DAVID SCHENCK RE: SAME (.4).	2.10
03/11/13	CDKR	CONFERENCE WITH MR. SCHENCK AND MR. FINE REGARDING CASE STATUS AND STRATEGY (NC).	NC
03/11/13	DJSCH	READING OBJECTIONS AND RESPONSES OF THE PARTIES (1.5), MEETING WITH FINE AND KRATOVIL RE: REPLY (.5).	2.00



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DATE	ID	DESCRIPTION	HOURS
03/11/13	JRF	CONFERENCE WITH JOSHUA COX RE NUMEROUS [REDACTED] INQUIRIES AND HOW HE SUGGESTS WE RESPOND TO SAME (.3). RESEARCH [REDACTED] (.7).	1.00
03/12/13	ALP	RESEARCHED PACER REGARDING NUMEROUS OBJECTIONS/RESPONSES FILED IN THE JEFFREY BARON USBC MATTER AND NETSPHERE USDC MATTER REGARDING RECEIVER'S EXPEDITED APPLICATION TO PAY EXPENSES (.8); PULLED SAME (1.5); AND DRAFTED E-MAILS TO JEFF FINE, CHRIS KRATOVIL AND DAVID SCHENCK (.2).	2.50
03/12/13	CDKR	PREPARATION FOR JOINT HEARING BEFORE DISTRICT COURT AND BANKRUPTCY COURT ON MARCH 19. REVIEW OF OBJECTIONS AND RESPONSES FILED BY NUMEROUS PARTIES TO THE RECEIVER'S MOTIONS (1.0).	1.00
03/12/13	DJSCH	COMPLETED READING OF RESPONSES/OBJECTIONS (1.0), PULLING AUTHORITIES CITED (1.0); RECEIVED AND REVIEWED CARRINGTON RESPONSE (.2); & BARCLAY'S UPDATE WITH CLIENT AND J. FINE (.3), MEET WITH FINE AND KRATOVIL RE: ASSIGNED DRAFTING TASKS (.5).	3.00
03/12/13	JRF	REVIEW AND MAKE NOTES RE 13 SEPARATE OBJECTIONS AND RESPONSES TO RECEIVER APPLICATIONS (2.4). CONFER WITH DAVID SCHENCK AND CHRIS KRATOVIL RE HOW TO RESPOND TO SAME (.5). DRAFT EMAIL TO BARBOUR INTERNATIONAL LONDON COUNSEL RE [REDACTED] (.6).	3.50
03/13/13	ALP	REVIEWED E-MAIL REQUEST FROM STEVE COHELL REGARDING "UNDER SEAL" EXHIBITS FROM NOVEMBER, 2012 CONFIRMATION HEARING (1.3); REVIEWED EXHIBITS AND PULLED SAME PER COHELL'S REQUEST (2.0); OFFICE CONFERENCE AND FOLLOW-UP E-MAIL WITH JEFF FINE REGARDING SAME (.2).	2.50
03/13/13	CDKR	DRAFTING OF OMNIBUS RESPONSE TO [REDACTED] (1.8). PREPARATION FOR JOINT HEARING BEFORE THE DISTRICT COURT AND THE BANKRUPTCY COURT ON MARCH 19, 2013 (.5).	2.30
03/13/13	DJSCH	INITIAL DRAFTING REPLY AND RESEARCH ON [REDACTED]; BRIEF MEETING WITH MR. KRATOVIL AND MR. FINE (NC).	3.50
03/13/13	JRF	RESEARCH AND ANALYZE RESPONSES TO MULTIPLE OBJECTIONS AND RESPONSES FOR MARCH 19 HEARING (2.0). CONFER WITH DAVID SCHENCK AND CHRIS KRATOVIL RE SAME (.3).	2.30
03/14/13	ALP	NUMEROUS OFFICE CONFERENCES WITH JEFF FINE AND DAVID SCHENCK RE: CERTAIN TESTIMONY IN HEARING TRANSCRIPTS FROM 1/16/13 AND 2/13/13 (.8); RESEARCHED AND REVIEWED BOTH TRANSCRIPTS REGARDING SAME (2.2); ASSISTED DAVID SCHENCK IN RESEARCHING AND PREPARATION OF EXHIBITS FOR OMNIBUS OBJECTION TO RESPONSE (2.0).	5.00

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DATE	ID	DESCRIPTION	HOURS
03/14/13	CDKR	PRIMARY DRAFTING OF OMNIBUS RESPONSE TO OBJECTIONS TO RECEIVER'S WIND-DOWN PLAN AND MOTION TO PAY THE RECEIVER'S PROFESSIONALS. PREPARATION FOR JOINT HEARING BEFORE THE DISTRICT COURT AND THE BANKRUPTCY COURT ON MARCH 19, 2013 (8.0). CONFERENCE REGARDING CASE STATUS AND STRATEGY WITH MR. SCHENCK AND MR. FINE (NC). EDITING AND REVISION OF OMNIBUS RESPONSE AND PREPARATION FOR FILING IN DISTRICT COURT (2.0).	10.00
03/14/13	DJSCH	DRAFTING [REDACTED] (3.5); REVIEW AND EDIT KRATOVIK CONTRIBUTION (2.0) & MEET WITH FINKELSTEIN AND FINE RE: [REDACTED] (1.5).	7.00
03/14/13	JRF	CALL WITH PETER VOGEL DISCUSSING PRESENTATION FOR MARCH 19 HEARING (.3). DRAFT OMNIBUS RESPONSE TO MULTIPLE OBJECTIONS (2.5) AND CONFERENCES WITH DAVID SCHENCK RE SAME (1.5).	4.30
03/14/13	WBF	REVIEW GARDERE OBJECTION (.4); WORK SESSION WITH DAVID SCHENCK RE: [REDACTED] (1.6); DEVELOP ARGUMENTS FOR REPLY (.8).	2.80
03/15/13	ALP	OFFICE CONFERENCES WITH JEFF FINE, DAVID SCHENCK AND ALISON ASHMORE, RE: CERTAIN TESTIMONY IN HEARING TRANSCRIPTS FROM 1/16/13 AND 2/13/13 (.2); RESEARCHED AND REVIEWED BOTH TRANSCRIPTS REGARDING SAME RE: PREPARATION OF OMNIBUS OBJECTION TO RESPONSE (.3).	0.50
03/15/13	ARA	RESEARCH ON WAIVER OF [REDACTED] AND ADD CITATIONS FOR RESPONSE TO BARON'S OBJECTIONS (.5); WORK ON DRAFT OMNIBUS REPLY TO VARIOUS OBJECTIONS AND MEET WITH MR. SCHENCK RE SAME (5.9).	6.40
03/15/13	CDKR	EDITING, REVISION AND REVIEW OF OMNIBUS RESPONSE TO OBJECTIONS TO RECEIVER'S WIND-DOWN PLAN AND MOTION TO PAY THE RECEIVER'S PROFESSIONALS (2.0).	2.00
03/15/13	DJSCH	FINALIZE AND CIRCULATE OMNIBUS REPLY (2.0), MEETING W/ FINE RE: [REDACTED] (.5), MEET WITH A. ASHMORE RE: SAME (.5), REVIEW AND REVISE (3.5), CIRCULATE TO CLIENT (.5).	8.00
03/15/13	JRF	DRAFT SECTIONS OF RECEIVER'S OMNIBUS RESPONSE TO MULTIPLE OBJECTIONS (4.0).	4.00
03/17/13	DJSCH	REVISE BOTH REPLIES, NOTICE OF HEARING FOR TOMORROW AND CALL RE: SAME	4.50
03/17/13	JRF	DRAFT PORTIONS OF AND REVISE OMNIBUS RECEIVER'S REPLY TO VARIOUS OBJECTIONS (3.0).	3.00

PETER S. VOGEL, RECEIVER  
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DATE	ID	DESCRIPTION	HOURS
03/18/13	CDKR	EDITING, REVIEW AND REVISION OF RECEIVER'S OMNIBUS REPLY TO OBJECTIONS OF MR. BARON, GARDERE, MUNCH HARDT AND THE PETITIONING CREDITORS (4.0). CONFERENCE WITH MR. SCHENCK REGARDING SAME (NC). PREPARATION FOR EMERGENCY HEARING BEFORE JUDGE JERNIGAN AND POSTPONEMENT OF MARCH 19 JOINT STATUS CONFERENCE (.5).	4.50
03/18/13	DJSCH	RESPONSES TO OBJECTIONS AND RESPONSES AND SEPARATE RESPONSE RE: GARDERE AND ONDOVA TRUSTEE.	5.50
03/18/13	JRF	REVISE AND FINALIZE AND FILE RECEIVER'S OMNIBUS REPLY TO OBJECTIONS AND RESPONSES (2.0). PREPARE FOR AND ATTEND HASTILY CALLED STATUS CONFERENCE AND POST HEARING MEETINGS RE NEW SETTLEMENT AGENDA (2.9). VERY EXTENDED SETTLEMENT CALL WITH PRONSKE AND ANALYSIS OF [REDACTED] (1.6).	6.50
03/19/13	ALP	OFFICE CONFERENCE WITH DAVID SCHENCK REGARDING HEARING TRANSCRIPT OF CERTAIN HEARING IN JUDGE FERGUSON'S COURT (.2); RESEARCH REGARDING SAME (.7); PULLING AND RESEARCHING VARIOUS PLEADINGS IN BARON AND ONDOVA BANKRUPTCY MATTERS AS WELL AS NETSPHERE USDC CASE (1.2); REVIEWING MUNSCH HARDT'S FEE APPLICATIONS IN ONDOVA BANKRUPTCY MATTER (2.5); DRAFTED "TOTAL FEES OWED TO MUNSCH HARDT" STATEMENT AS WELL AS E-MAIL TO DAVID SCHENCK REGARDING SAME (.9); DRAFTED LETTERS TO COURT REPORTERS (ESCRIBERS AND WORLDWIDE) FOR JEFF FINE REGARDING PAYMENT (.3).	5.80
03/19/13	CDKR	PREPARATION FOR COURT-ORDERED MANDATORY SETTLEMENT NEGOTIATIONS (2.5). IN-PERSON CONFERENCE WITH MR. VOGEL REGARDING [REDACTED] (NC).	2.50
03/19/13	DJSCH	SETTLEMENT CONFERENCES WITH TEAM (.3) AND CHECKING WITH FIFTH CIRCUIT RE: STATUS OF EN BANC AND BARON PETITIONS (.2), REVIEW BILLS (.8); MEETING WITH MS. PARNELL RE TRANSCRIPT (.2).	1.50
03/19/13	JRF	ANALYSIS OF PROPOSED SETTLEMENT AND DEFICIENCIES WITH SAME (2.5); MEETINGS WITH PETER VOGEL RE SAME WHICH INCLUDED A VERY LENGTHY SETTLEMENT CALL WITH RAY URBANIK (2.0). ADDRESS DOMAIN NAME CLAIMANT LICHTMAN REQUEST RE [REDACTED] (.2). ADDRESS VARIOUS DAMON NELSON REQUESTS [REDACTED] AND PAYMENT TO COURT REPORTERS (.6).	5.30
03/20/13	CDKR	DRAFTING, EDITING AND REVISION OF THE RECEIVER'S NOTICE OF [REDACTED] [REDACTED] [REDACTED] DISCUSSION OF OPTIMAL TIME TO FILE SAME (6.0). PREPARATION FOR COURT-ORDERED MANDATORY SETTLEMENT NEGOTIATIONS (.5). MULTIPLE CONFERENCES WITH MR. SCHENCK AND MR. FINE AND MR. FINKELSTEIN, AS WELL AS WITH MR. VOGEL (NC).	6.50
03/20/13	DJSCH	REVIEW AND REVISE RECEIVER'S NOTICE OF [REDACTED] [REDACTED]	1.00



PETER S. VOGEL, RECEIVER  
APRIL 8, 2013

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DATE	ID	DESCRIPTION	HOURS
03/20/13	DJSCH	CASH FLOW ANALYSIS FOR SETTLEMENT TALKS (1.5), PULLING AND REVIEWING FEE APPS. OF THE OTHER PARTIES (2.5), EMAILS RE: SAME, MEETING WITH TEAM (.5); STRATEGY MEETING WITH MR. FINE AND MR. FINKELSTEIN (1.2 NC).	4.50
03/20/13	JRF	VERY EXTENDED TELEPHONE CONFERENCE WITH DAMON NELSON RE VARIOUS PORTFOLIO ISSUES AND STATUS OF CASES AND SETTLEMENT DISCUSSIONS (.7). TELEPHONE CONFERENCE WITH GERRIT PRONSKE RE STATUS OF SETTLEMENT NEGOTIATIONS (.2). EMAILS TO RAY URBANIK AND OTHERS RE SETTLEMENT INFORMATION REQUESTS (.3). STRATEGY MEETING WITH DAVID SCHENCK TO PREPARE FOR SETTLEMENT CONFERENCE (1.2). WORK ON REVISING RESERVATION OF RIGHTS (.3).	2.70
03/20/13	WBF	STRATEGY WITH DAVID SCHENCK AND CHRIS KRATOVIL RE: UPCOMING SETTLEMENT CONFERENCE AND HEARING	1.20
03/21/13	CDKR	PREPARATION FOR COURT-ORDERED MANDATORY SETTLEMENT NEGOTIATIONS (.5). ATTENDED AND PARTICIPATED IN COURT-ORDERED MANDATORY SETTLEMENT NEGOTIATIONS AT THE OFFICES OF MUNCH HARDT; DURING COURSE OF NEGOTIATIONS MULTIPLE CONFERENCES WITH OPPOSING COUNSEL, AS WELL AS WITH MR. VOGEL AND MR. SCHENCK AND MR. FINE (5.0). DRAFTING AND EDITING OF NOTICE OF [REDACTED] (2.0).	7.50
03/21/13	DJSCH	PETER VOGEL'S BILLS (.5), REVIEW EDITS TO DYKEMA'S BILL (.5 NC), REVIEW SPREADSHEET FROM URBANIK (.5) ATTEND SETTLEMENT CONFERENCE (4.0); MEETING WITH JEFF FINE REGARDING LIEBERMAN CALL (.5 NC).	5.00
03/21/13	JRF	VERY EXTENDED TELEPHONE CONFERENCE INITIATED BY STEVAN LIEBERMAN ADVISING THAT [REDACTED] [REDACTED] [REDACTED] [REDACTED] (.8). PARTICIPATE IN MANDATORY SETTLEMENT CONFERENCE (4.3).	5.10
03/22/13	CDKR	CALL WITH COUNSEL TO MR. BARON REGARDING SETTLEMENT POSSIBILITIES (1.0). REVIEW AND EDITING OF LETTERS TO RAY URBANIK AND RICH ROBBERSON URGING THEM TO [REDACTED] [REDACTED] (5).	1.50
03/22/13	DJSCH	CALLS FROM BARON'S COUNSEL RE: SETTLEMENT AND TAX ISSUES (.8), LETTERS TO URBANIK AND GARDERE (1.5), REDACTING BILLS FOR FILING (.5).	2.80
03/22/13	JRF	TELEPHONE CONFERENCE WITH PETER VOGEL RE LATEST UPDATE ON SETTLEMENT INITIATIVE (.3). REVIEW AND REVISE LETTERS TO ROBERSON AND URBANIK (.4). VERY EXTENDED TELEPHONE CONFERENCE WITH MARK STROMBERG AND STEVE COHELL RE SETTLEMENT POTENTIAL (1.2).	1.90
03/25/13	CDKR	PREPARATION FOR COURT-ORDERED MANDATORY SETTLEMENT NEGOTIATIONS (1.5). MULTIPLE CONFERENCES WITH MR. SCHENCK AND MR. FINE, AS WELL AS WITH MR. VOGEL (NC). REVIEW OF KEY PLEADINGS AND ORDERS. REVIEW OF CASE STATUS AND STRATEGY (NC).	1.50





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APRIL 8, 2013

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DATE	ID	DESCRIPTION	HOURS
03/25/13	DJSCH	COMMUNICATIONS W/ P. VOGEL RE: [REDACTED] AND STATUS OF SAME (.5), CALL W/ D. NELSON RE: [REDACTED] (.5), SETTLEMENT CALL WITH PRONSKE AND ASSOCIATE (.5).	2.50
03/25/13	JRF	EXTENDED TELEPHONE CALLS WITH MARK STROMBERG RE SETTLEMENT POSSIBILITIES (.9), WITH PETER VOGEL (.5), WITH STEVAN LIEBERMAN (.3). STRATEGIES RE [REDACTED] (.3). REVIEW INFORMATION AND ANALYZE [REDACTED] (.9).	3.90
03/26/13	CDKR	ATTENDED AND PARTICIPATED IN COURT-ORDERED MANDATORY SETTLEMENT NEGOTIATIONS AT THE OFFICES OF MUCH HARDT; DURING COURSE OF NEGOTIATIONS, MULTIPLE CONFERENCES WITH OPPOSING COUNSEL, AS WELL AS WITH MR. VOGEL. REVIEW OF KEY PLEADINGS AND ORDERS.	7.00
03/26/13	DJSCH	ATTEND COURT-ORDERED MEDIATION AND MEETINGS WITH PARTIES DURING SAME (6.5), BARON LIVING EXPENSES PAYMENT (.2 NC) AND MULTIPLE NEW UDRP CLAIMS (.5).	7.00
03/27/13	CDKR	CONFERENCE WITH MR. FINE AND MR. SCHENCK REGARDING POSSIBLE SETTLEMENT (NC). CALL WITH MR. VOGEL REGARDING SAME (NC). CONFERENCE CALL WITH OPPOSING COUNSEL REGARDING SAME (.7).	0.70
03/27/13	DJSCH	CALLS WITH BARON'S COUNSEL AND WITH P. VOGEL RE: PROPOSAL TO SETTLE FROM PROCEEDS IN ONDOVA (1.0), RECEIVE AND REVIEW TRANSCRIPT AND ORDER FROM 2010 PLACING BARON FUNDS INTO ONDOVA (.5), CALL WITH STEVE LIEBERMAN RE: INTEREST IN SALE AND HIS RECENT COMMUNICATIONS WITH MR. URBANIK (1.0).	2.50
03/27/13	JRF	EMAIL TRAFFIC REGARDING VARIOUS OFFERS FROM AND TO STEVAN LIEBERMAN AND URBANIK RE SELLING DISCRETE NAMES (.7).	0.70
03/28/13	ALP	OFFICE CONFERENCES WITH DAVID SCHENCK REGARDING ORDERING 12/14/12 HEARING TRANSCRIPT RE: NETSPHERE V. BARON (USDC CASE) (.1); TELEPHONE CONFERENCE WITH COURT REPORTER CHARYCE CRAWFORD REGARDING SAME (.1); RESEARCHED PACER REGARDING SAME (.3).	0.50
03/28/13	CDKR	CONFERENCE CALLS TO FOLLOW UP ON AND COMPLETE COURT-ORDERED MANDATORY SETTLEMENT NEGOTIATIONS (2.0). REVIEW OF CASE STATUS AND STRATEGY WITH MR. FINE AND MR. SCHENCK (.5 NC).	2.00
03/28/13	DJSCH	BARON MOTIONS FOR FEES AND RETAINERS (1.0), CALLS WITH P. VOGEL RE SAME (.3), CALL WITH R. URBANIK RE: SETTLEMENT (.4), CALL WITH R. ROBERSON RE: SAME (.3), CALLS WITH M. STROMBERG RE: SAME, CALLS WITH CLIENT RE: SETTLEMENT AND POSSIBLE RESPONSE TO FEE MOTION (ABATED PENDING HEARING) (.5); REVISE AND EDIT COMPLETE JANUARY BILL (1.0); MEETING WITH MS. PARNELL (NC).	3.50



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DATE	ID	DESCRIPTION	HOURS
03/28/13	JRF	VERY EXTENDED NEGOTIATING CALLS WITH MARK STROMBERG (1.0), PETER VOGEL (.4), RICH ROBERSON (.3), STEVAN LIEBERMAN RE CASE STATUS AND [REDACTED] (.8), RAY URBANIK (.5) RE [REDACTED] FORWARD TO DAVID SCHENCK THE [REDACTED] AND REVIEW SAME (1.5). REVIEW AND FORWARD PLEADINGS FILED BY BARON IN VARIOUS COURTS (.8).	5.30
03/29/13	ALP	DRAFTED LETTER TO COURT REPORTER REGARDING 12/14/12 HEARING TRANSCRIPT.	0.30
03/29/13	CDKR	RECEIVED AND REVIEWED NETSPHERE'S RESPONSE IN OPPOSITION TO MOTION FOR ORDER TO SHOW CAUSE (.3). OUTLINING OF REPLY TO SAME (.2).	0.50
03/29/13	DJSCH	REVIEW NETSPHERE RESPONSE AND DISCUSS SAME WITH P. VOGEL.	0.50
03/29/13	DJSCH	CALL WITH P. VOGEL RE: SETTLEMENT STATUS AND MOTIONS RE: FEES.	0.50
03/29/13	JRF	EXTENDED CALL WITH PETER VOGEL RE SETTLEMENT STATUS AND RELATED MATTERS (.4).	0.40

**TOTAL ATTORNEY & PARALEGAL TIME ..... 229.90**  
**TOTAL LEGAL FEES ..... \$ 112,864.00**



PETER S. VOGEL, RECEIVER  
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**DISBURSEMENTS**

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03/28/13	COURT REPORTING SERVICES - CHARYSE CRAWFORD VOGEL TRANSCRIPT OF 12/14/12 HEARING (NETSPHERE USDC CASE)	<b>255.00</b>
02/20/13	BANK OF AMERICA BANKCARD - IN REFERENCE TO : JEFFREY BARON	<b>629.20</b>
02/21/13	BANK OF AMERICA BANKCARD - HEARING TRANSCRIPT	<b>160.80</b>
03/18/13	TRAVEL-EXCEPT AIRFARE, HOTEL & MEALS - JEFFREY R. FINE PARKING AT COURTHOUSE	<b>10.00</b>
	PHOTOCOPY EXPENSES	<b>59.20</b>
	SCANNING EXPENSES	<b>82.40</b>
	PRINTING EXPENSES	<b>388.80</b>

**TOTAL DISBURSEMENTS ..... \$ 1,585.40**

***NOTE: INCURRED DISBURSEMENTS NOT APPEARING  
 ON THIS INVOICE WILL BE BILLED LATER.***



PETER S. VOGEL, RECEIVER  
APRIL 8, 2013

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### BILLING SUMMARY

ID	TIMEKEEPER	HOURS	RATE	AMOUNT
JRF	JEFFREY R. FINE	53.00	560.00	29,680.00
CDKR	CHRISTOPHER D. KRATOVIL	49.50	505.00	24,997.50
DJSCH	DAVID J. SCHENCK	78.10	570.00	44,517.00
WBF	WILLIAM B. FINKELSTEIN	4.00	620.00	2,480.00
ARA	ALISON R. ASHMORE	6.40	320.00	2,048.00
ALP	ALEXA L. PARNELL	38.90	235.00	9,141.50
<b>TOTAL</b>		<b>229.90</b>		<b>112,864.00</b>



PETER S. VOGEL, RECEIVER

CLIENT-MATTER NO. 108946-0001  
BARON RECEIVERSHIP MATTERS  
INVOICE NO. 1507990  
PAGE NO. 12

APRIL 8, 2013

FEES.....	\$ 112,864.00
DISBURSEMENTS .....	1,585.40
<b>TOTAL AMOUNT DUE .....</b>	<b>\$ <u>114,449.40</u></b>

DYKEMA GOSSETT PLLC

DYKEMA GOSSETT PLLC  
DEPT CH 16382  
PALATINE, IL 60055-6382

**CLIENT CHECK INFORMATION**

**PLEASE COMPLETE:**

**THIS INVOICE IS PAYABLE UPON RECEIPT.**

**CHECK #:** \_\_\_\_\_ **DATE:** \_\_\_\_\_ **AMOUNT:** \_\_\_\_\_  
**PLEASE RETURN THIS PAGE WITH YOUR REMITTANCE.**

**FOR FIRM USE:**

RECEIVED DATE: \_\_\_\_\_

# **EXHIBIT I**

**Jeffrey R. Fine** works with clients to resolve complex business issues, focusing on insolvency, bankruptcy and creditor workout areas. He has wide experience in foreclosure and loan workout matters, and he advises lenders and servicers on a wide array of bankruptcy issues ranging from consumer chapter 7 and 13 matters to business bankruptcy matters. He also appears frequently in complex Chapter 11 cases representing creditors, debtors and creditor committees. Mr. Fine combines litigation skills and a wealth of diverse experience to represent clients throughout the United States.

Prior to joining Dykema, Mr. Fine was a partner at K & L Gates in Dallas, Texas.

### **Experience**

- Lender representation in the workout and bankruptcies of troubled secured real estate and unsecured consumer loan portfolios involving Chapter 7 and 13 filings, out of court loan modifications, and foreclosures
- Lender representation in the workout, bankruptcy and/or foreclosure of more than \$1 billion in secured commercial real estate loans in multiple jurisdictions
- Lead attorney, Unsecured Creditors' Committee in the Texas Rangers Baseball Partners Chapter 11, with 100% payout, plus interest to unsecured creditors.
- Lead counsel for QSR and specialty lender servicers in distressed portfolio workouts, foreclosures and bankruptcies
- Lead counsel to consortium of corporations regarding environmental issues in complex environmental services Chapter 11 cases.
- Lead bankruptcy counsel to large environmental trusts
- Lead counsel to liquidating trust asserting complex breach of multiple duties of loyalty of officers and directors of former Chapter 11 debtors
- Lead counsel in the successful Chapter 11 reorganization of the second largest vinyl and aluminum window manufacturer in the United States
- Lead counsel in the successful Chapter 11 reorganization of a VOIP telecommunications company
- Lead counsel in the successful Chapter 11 reorganization of the largest independent bookstore chain in the Southwest
- Litigated and successfully settled antitrust claims against more than 18 booksellers, including major publishing houses and a national bookstore chain
- Team member in the successful Chapter 11 reorganization of a major cargo and charter passenger airline
- Counsel to airports in more than 25 airline bankruptcies. Lead counsel working in conjunction with the United States Department of Transportation on Passenger Facility Charge litigation on behalf of various airports in airline bankruptcy cases nationwide
- Nationwide representation of various equipment lessors in complex Chapter 11 cases

- Nationwide representation of various truck manufacturers in dealer bankruptcy and workout matters

## Significant Decisions

- *In the Matter of Hargis (Palmer & Palmer, P.C. v. United States Trustee)*, 887 F.2d 77 (5th Cir. 1989), Transfers made to prepetition creditors out of non estate assets may not be avoided
- *In the Matter of Hargis (Palmer & Palmer, P.C. v. United States Trustee)*, 895 F.2d 1025 (5th Cir. 1990), Bankruptcy Code Section 329 does not apply to services which were unrelated to bankruptcy proceeding
- *In re Altman Nursing, Inc. (Clay Capital Corp. v. Gerrit M. Pronske)*, 299 B.R. 813 (Bankr. N.D.Tex. 2003) Order Affirmed at 306 B.R. 854 (N.D.Tex. 2004) Vacated and Remanded by *In re Altman Nursing, Inc.* 121 Fed.Appx. 56 (5th Cir. 2005), Contest between claimant and its counsel regarding rights to attorney fees in Chapter 7 case
- *In re Susan R. Miles (MAXIM Healthcare Services, Inc. v. Susan R. Miles)*, 2005 WL 1981040 (N.D.Tex.), Finality of bankruptcy court order and jurisdiction to hear appeal in Chapter 13 case
- *In re Financial Corporation of America*, 119 B.R. 728 (Bankr. C.D.Cal. 1990), Scope of Rule 2004 discovery by Chapter 7 trustee of 70,000 boxes of bank records
- *In re Avado Brands, Inc. (William Kaye v. Thomas E. Dupree)*, 358 B.R. 868 (Bankr. N.D.Tex. 2006), Analysis of bankruptcy court's subject matter jurisdiction over post-confirmation proceedings
- *Thomas E. DuPree v. William Kaye, et al.*, 2008 WL 294532 (N.D.Tex), Analysis of standards to permit an appeal under Section 1292(b)
- *In re DataVoN, Inc.*, 303 B.R. 119 (Bankr. N.D.Tex. 2003), Analysis of what constitutes "substantial contribution" in a Chapter 11 case
- *In re Midway Airlines, Inc. (Sheldon L. Solow v. Dallas/Fort Worth International Airport)*, 1994 WL 197480 (Bankr. N.D. Ill.), Analysis of standard for permitting leave to amend complaint under Rule 7015
- *In re Coleman Pipe, Inc.*, 40 B.R. 338 (Bankr. N.D.Tex. 1984), Analysis of extent of creditor's security interest in light of draw on letter of credit
- *In re The Seasons Apartments, Limited Partnership*, 215 B.R. 953 (Bankr. W.D.La. 1997), Analysis of whether claims are unimpaired for plan confirmation purposes
- *In re Gulf Coast Holdings, Inc. d/b/a Unidynamics, Inc.*, 2007 WL 1340802 (Bankr. N.D.Tex.), Plan confirmation issues

## Seminars and Speeches

- 2011 *Tousa's Impact on Fee Disgorgement, Fee Shifting, and Other Lawyer Nightmares*, Article and ethics seminar presentation, American Bankruptcy Institute Spring Meeting
- 2006 *Property Portability and Taxability Issues*, 20th Annual Legal Seminar on Ad Valorem Taxation, State Bar of Texas



- 2003 *Airline Bankruptcy - Major Issues Confronting the Industry*, Webcast and seminar presentation, American Association of Airport Executives
- 2001 *Foreclosure Practice*, State Bar of Texas Advanced Real Estate Short Course
- 2001 *Bankruptcy -- What Every Aviation Lawyer Should Know*, ABA Air & Space Law Forum
- 1999 *Enforcement Issues Concerning Passenger Facility Charges*, American Association of Airport Executives (AAAE) Training Institute, Palm Springs, California
- 1995 *Bankruptcy Litigation Ethics*, Norton Bankruptcy Litigation Institute, Las Vegas, Nevada

### **Professional Associations**

- Master, John C. Ford Inn of Court
- Dallas Bar Association - Business Law Section - Business Bankruptcy
- American Bankruptcy Institute
- Northern District of Texas, Criminal Justice Act Panel

### **Civic and Cultural Involvements**

Mr. Fine is a member of a number of non-profit boards

**DAVID JOHN SCHENCK**  
**6239 Lupton Drive**  
**Dallas, Texas 75225**  
**(214) 533-9353**

**EXPERIENCE**

DEPUTY ATTORNEY GENERAL FOR LEGAL COUNSEL— Austin, Texas (2010-12)

Chief Legal Counsel to the Attorney General, Responsible for Management of Opinions, Public Finance, General Counsel, Grants Administration, and Legal, Technical Support Divisions.

JONES DAY — Washington, D.C. & Dallas, Texas (2004-10)

Partner, Primarily Responsible for Texas Issues and Appeals Practice Group (2004 - 10) Associate D.C. (1993-95).

COMMISSIONER, TEXAS LOTTERY COMMISSION (2007-10)

Appointed by Gov. Perry to Supervise and Regulate Operations of State Lottery and Charitable Bingo.

HUGHES & LUCE — Dallas, Texas (1995-2004)

Litigation Associate (1995-2000), Partner (2000-04), Appellate Section Head (2001-04).

SOUTHERN METHODIST UNIVERSITY LAW SCHOOL — Dallas, Texas

Adjunct Professor, Legal Research & Writing (1995-1998)

HONORABLE HENRY POLITZ, CHIEF JUDGE U.S. COURT OF APPEALS, FIFTH CIRCUIT.

Law Clerk (1992-93)

HONORABLE WALTER SMITH, U.S. DISTRICT JUDGE, WESTERN DIST. OF TEXAS

Judicial Intern (1991)

**PROFESSIONAL AWARDS AND ACTIVITIES**

BOARD CERTIFIED IN CIVIL APPELLATE LAW -- Texas Board of Legal Specialization

TEXAS "SUPERLAWYERS" TEXAS MONTHLY MAGAZINE, APPELLATE

"AV" RATED MARTINDALE HUBBELL

OUTSTANDING LEAD ARTICLE, TEXAS TECH LAW REVIEW 2009

RECOGNITION UPON ADMISSION, Second Highest Score on Texas Bar Exam 1992

STATE BAR OF TEXAS, President's Award 1998

TEXAS EQUAL ACCESS TO JUSTICE COMMISSION, Stars of Justice Award 2003

DALLAS VOLUNTEER ATTORNEYS PROGRAM, Special Service Award 2003

FIFTH CIRCUIT RULES ADVISORY COMMITTEE, Representative from Texas (2003-06)

TEXAS STATE RIFE ASSOCIATION, Special Service Award 2000, 2007

BARRISTER, PATRICK HIGGINBOTHAM INN OF COURT, 2004-2006

**EDUCATION**

BAYLOR UNIVERSITY SCHOOL OF LAW— Waco, Texas

Juris Doctor (with highest honors) (Feb. 1992)

Editor-in-Chief, Baylor Law Review

Valedictorian

Highest Grade in Nine Subjects and Outstanding Student Awards in Property, Torts, Civil Procedure, Remedies, Evidence and Others

Fulbright & Jaworski Outstanding First Year Student Award

Vinson & Elkins Full Academic Scholarship

National & Baylor Order of Barristers & Member

TYLA Interscholastic Moot Court Team

STATE UNIVERSITY OF NEW YORK-ALBANY—NELSON ROCKEFELLER COLLEGE OF PUBLIC AFFAIRS & POLICY

Bachelor of Arts (magna cum laude) in Criminal Justice, Economics and Philosophy (Dec. 1989)

First Place, ABA National Writing Competition

Alpha Phi Sigma Honor Society

### **PUBLICATIONS**

*Remedies for Environmental Liability: Rights of the Toxic Grantee*, 43 BAYLOR L. REV. (1991)  
*Reasonable Accommodation of the Disabled Worker - A Job for the Man or a Man for the Job*, 44 BAYLOR L. REV. (1992)  
*Exceptions to Chevron*, Administrative Law News (Jan. 1993)  
The King Has Been Known to Err: *Satterfield & Pontikes Const. v. Irving I.S.D.*, TEXAS SCHOOL LAW REPORT (2004)  
*Escape From New York: Tennessee Telecommuters Due Process Challenge To New York Income Taxes Will Not Be Heard By The Supreme Court* (2005)  
*What Part Of "In Michigan" Do You Not Understand? Michigan Court Of Appeals Rejects Attempt To Impose Use Tax On Bowling Balls Used Outside Of Michigan*, Jones Day State Tax Return (2005)  
*Technical "Foot Fault" Over The Commerce Clause Line May Cost The Texas Comptroller Big Time -- Texas "Throwback Provision" Struck Down As Unduly Burdening Interstate Commerce As Applied, Even Though No Real Additional Burden Was Shown*, Jones Day State Tax Return (2005)  
*Are We Finally Ready to Reshape Texas Appellate Courts for the 21st Century?* 41 TEXAS TECH. L. REV. 221 (2009)  
*Litigation With the Sovereign in Texas* 61 THE ADOVCATE (2012)

### **ADMISSIONS**

Texas (1992); District of Columbia (1994); United States Courts of Appeals for the First, Fourth, Fifth, Tenth, Eleventh and D.C. Circuits; United States Supreme Court and U.S. Court of International Trade.

### **REPRESENTATIONS**

*Perez v. Perry*, No. SA-11-CA-360 (W.D. Tex. 2011-) & *Texas v. United States*, No. 1:11-CV-01303 (D.D.C. 2011-12). Lead Counsel for Texas & Gov. Perry in three judge panel redistricting cases under Sections 2 and 5 of the Voting Rights Act.

*Abbott v. United States*, 131 S. Ct. 18 (2010). Co-counsel to Petitioner in federal sentencing/ statutory construction matter.

*Verizon v. 2020 Live Oak*, Dallas County (2009). Lead counsel to Verizon in significant real estate lease dispute; obtained preliminary injunction prior to settlement.

*In re Lennar*, No. 07-0024 (Tex. 2007). Lead counsel to Lennar in mandamus proceeding to foreclose pre-suit discovery pending administrative exhaustion. Case settled following Supreme Court's order granting stay and requesting merits briefs.

*Heller v. District of Columbia*, No. 07-290, 554 U.S. 570 (2008). Amicus brief on behalf of forty state rifle and pistol associations urging confirmation of an individual right under Second Amendment to U.S. Constitution.

*In re Child Protective Services*, 255 S.W.3d 618 (Tex. 2008). Successful pursuit of mandamus relief on behalf of FLDS mothers separated from their children following a highly-publicized raid on their west Texas ranch.

*United States ex. rel Gudur v. Delloite & Touche*, 2008 WL 3244000 (5th Cir. 2008). Argued successfully in defense of summary judgment dismissal of multi-billion dollar *qui tam* suit.

*Rogers v. McDorman*, 521 F.3d 381 (5th Cir. 2008). Successful defense of judgment incorporating *in pari delicto* defense into the civil RICO statute.

*In re Volkswagen*, 371 F.3d 201 (5th Cir. 2004). Successful petition for writ of mandamus from order denying 28 U.S.C. § 1404(a) motion to transfer venue.

*Wen Ho Lee v. U.S. Dep't of Justice*, 413 F.3d 53 (D.C.Cir. 2006). Obtained affirmance of contempt findings for unlawful and harmful leaks disseminated to the media by U.S. officials, in violation of the Privacy Act, and secured a landmark settlement in conjunction with denial of Supreme Court review for former nuclear physicist at Los Alamos National Laboratory.

*Ballard v. Commissioner*, 544 U.S. 40 (2005). Successful petition to U.S. Supreme Court of decision denying taxpayers access to original decision of trial judge in U.S. Tax Court. Following reversal, the record was supplemented to confirm an off-the-record reversal of trial judge's original determination in favor of taxpayer.

*Grande Communications v. Verizon*, No. 2006-30206-11 (211th Dist. Ct. Denton County, Tex. 2007). Set aside temporary restraining order and defeated action brought by competing carrier to bar Verizon's access in new development by purported exclusive easements with developers.

*Texas Equal Access v. Washington Legal Fndn.*, 524 U.S. 156 (1998) (Petitioner's Counsel); *Phillips v. Washington Legal Fndn.*, 123 S.Ct 1654 (2003) (Petitioner's Counsel); *Brown v. Washington Legal Fndn.*, 538 U.S. 216 (2003) (Counsel for TX Sup. Ct./amicus). Successful defense of challenge to the constitutionality of the Texas IOLTA program and like programs in 50 states.

*John v. Marshall Health Services*, 58 S.W.3d 738 (Tex. 2001), 91 S.W.3d 44 (Tex. App. - Texarkana 2002, pet. denied) (on remand). Petition to Texas Supreme Court following dismissal of trial counsel's appeal as untimely. The Petition was granted, the appeal was reinstated and the trial court's judgment was reversed after oral argument on remand.

*CoServ v. Southwestern Bell*, 2003 WL 22514907 (5th Cir. 2003). Successful appellate representation in case presenting complex jurisdictional questions under the Federal Telecommunications Act affecting state commission authority to arbitrate interconnection arrangements.

*Southwestern Bell v. City of El Paso*, 346 F.3d 541 (5th Cir. 2003). Successful appellate representation in case opposing local governmental agency's attempt to impose a fee on utilities for crossing the agency's property.

*In re Altman Nursing*, 121 Fed. App'x 56 (5th Cir. 2005). Secured reversal and remand of complex bankruptcy matter on behalf of creditor whose sizeable secured interest had been acquired by his own counsel at auction after withdrawal.

*Northrup v. Southwestern Bell*, 72 S.W.3d 16 (Tex. App. —Corpus Christi 2002, pet. denied). Successful appellate defense of first ever *cy pres* class action settlement in Texas.

*Supreme Beef v. Maddox*, 67 S.W.3d 453 (Tex. App.—Texarkana 2002, pet. denied). Wrote Appellants' briefs urging reversal of Plaintiff's verdict based on error in jury instructions prior to withdrawal of firm. The court reversed without argument.

*Southwestern Bell v. El Paso County Water Imp. Dist.*, 243 F.3d 936 (5th Cir. 2001). Successful appellate representation in case involving immunity from suit of Texas political subdivision.

*AT&T v. City of Dallas*, 243 F.3d 928 (5th Cir. 2001). Successful appeal of case concerning competitive neutrality among competing local telephone service providers.

*Spinal Concepts v. Curasan*, 2006 WL 2577820 (N.D. Tex. 2006). Secured reversal in substantial part of arbitration award.

*Marathon Oil Co. v. Ruhrgas*, 115 F.3d 315 (5th Cir. 1997), 182 F.3d 291 (5th Cir. 1999) (en banc), *rev'd*, 526 U.S. 574 (1999). This international oil and gas controversy presented numerous issues relating to the funding and development of North Sea gas production infrastructure. Argued successfully to the panel and the *en banc* Fifth Circuit and appeared on the briefs in the U.S. Supreme Court.

*Humphrey v. Cain*, 120 F.3d 526 (5th Cir. 1997), 138 F.3d 552 (5th Cir. 1998) (en banc), *cert. denied*, 525 U.S. 935 (1998). Appointed representation on behalf of a Louisiana inmate serving life at hard labor without possibility of parole. The Court *en banc* agreed that the instruction of reasonable doubt denied due process and granted habeas corpus relief.

*In re Policy Management Systems Corp.*, 23 Media L. Rptr. 2486 (4th Cir. 1994). Successful appellate representation urging reversal of district court order releasing to press certain court filings under First Amendment.

*United We Stand America, Inc. v. United We Stand America New York, Inc.*, 128 F.3d 86 (2d Cir. 1997). Successful appellate representation urging affirmance of Lanham Act coverage of trademark (and rejection of First Amendment attack) in the name of a political party, notwithstanding noncommercial use of the name.

*Testmasters Educational Services v. Singh*, 64 U.S.P.Q.2d 1469 (5th Cir. 2002). Set aside jury finding of common-law trademark infringement judgment and secured invalidation of opponent's trademark in cross appeal.

*United States v. Emerson*, 270 F.3d 230 (5th Cir. 2001). Counsel for *amici* Texas State Rifle Association. Filed brief urging recognition of individual right under the Second Amendment.

*QuestMedical v. Appril*, 90 F.3d 1080 (5th Cir. 1996). Wrote brief persuading Fifth Circuit to uphold complex election of remedy decision.

*Michael Irvin, et al. v. KXAS, et al.*, obtained dismissal without participation in settlement on behalf of television news reporter in connection with highly-publicized libel action brought by Dallas Cowboys football players against station and reporter.

## Christopher D. Kratovil

Member

### Dallas

Comerica Bank Tower  
1717 Main Street  
Suite 4000



T: 214-462-6458 ckratovil@dykema.com

### Areas Of Practice

Appellate  
Class Action Defense  
Business & Commercial  
Litigation  
White-Collar Criminal Defense &  
Internal Investigations

### Bar Admissions

Texas

### Court Admissions

U.S. Supreme Court  
U.S. Court of Appeals, 2nd Circuit  
U.S. Court of Appeals, 5th Circuit  
U.S. Court of Appeals, 11th Circuit  
U.S. District Court, Eastern District  
of Texas  
U.S. District Court, Northern  
District of Texas  
U.S. District Court, Southern  
District of Texas  
U.S. District Court, Western  
District of Texas  
U.S. District Court, Eastern District  
of Arkansas  
U.S. District Court, Western  
District of Arkansas  
U. S. District Court for the District  
of Nebraska

### Education

University of Texas at Austin, J.D.

- with honors

Christopher D. Kratovil is a member of Dykema's Litigation practice in the Firm's Dallas office. Prior to joining Dykema, Mr. Kratovil was a partner at K&L Gates. Mr. Kratovil is a former law clerk to the Honorable Edith H. Jones, Chief Judge of the United States Court of Appeals for the Fifth Circuit.

Mr. Kratovil focuses his practice on appellate matters, representing clients in complex commercial disputes before tribunals ranging from small town Texas trial courts to the U.S. Supreme Court, with a particular concentration on matters in the U.S. Court of Appeals for the Fifth Circuit and in the Texas courts of appeals. He has considerable experience in federal and state mandamus practice, including serving as the lead draftsman of the winning briefs in the landmark Fifth Circuit case that authorized the use of mandamus to compel convenience-based venue transfers, *In re Volkswagen II*, 545 F.3d 304 (5th Cir. 2008)(*en banc*).

In addition to his extensive appellate work, Mr. Kratovil regularly handles case dispositive briefing and argument, jury charges, complex motions, research intensive legal issues and error preservation in the trial courts. He also regularly assists in the white collar defense of clients accused of financial, securities and tax crimes. Mr. Kratovil is the author of several high-profile *amicus curiae* briefs, including on behalf United States Senator John Cornyn and, separately, for the Texas state representative who sponsored the so-called "Pole Tax" user fee on patrons of adult entertainment.

A frequent author and lecturer, Mr. Kratovil earned a B.A. *magna cum laude* from University of Notre Dame and a J.D. with honors from University of Texas at Austin School of Law, where he was an editor of the *Texas Law Review*. He has been recognized repeatedly as a "Rising Star" by *Texas Monthly* and was recently named one of the "Best Lawyers in Dallas" by *D Magazine*.

### Experience

- Primary draftsman of briefs in a victory before the U. S. Supreme Court on behalf of taxpayers challenging the legality of secretive procedures used by the U.S. Tax Court, *Ballard v. Commissioner of Internal Revenue*, 544 U.S. 40 (2005).
- Primary author of winning briefs to the en banc Fifth Circuit in that court's leading decision on venue transfers under 28 U.S.C. § 1404(a), resulting in the issuance of a writ of mandamus against the United States District Court for the Eastern District of Texas. *In re Volkswagen II*, 545 F.3d 304 (5th Cir. 2008) (*en banc*).

Christopher D. Kratovil (Cont.)

- Order of the Coif
- Law Review, Administrative Editor

University of Notre Dame, B.A.,  
*magna cum laude*

- Lead Counsel in successful effort to prevent the confirmation and enforcement of a \$27 million arbitration award against a foreign utility company in federal district court.
- Lead appellate counsel for one of the nation's largest defense contractors in a dispute with a major union concerning the interpretation and application of the parties' collective bargaining agreement, ultimately resulting in a victory for the defense contractor in the Fifth Circuit.
- Co-lead counsel in obtaining the dismissal in federal district court of a \$25 million fraud and breach of fiduciary duty lawsuit against a major national law firm.
- Assisted with successful petition for writ of mandamus in the United States Court of Appeals for the Federal Circuit, resulting in the issuance of a writ of mandamus against the United States District Court for the Eastern District of Texas on a venue issue in a patent case.
- Lead counsel in the preparation and filing of an *amicus curiae* brief with the Texas Supreme Court on behalf of a United States Senator.
- Lead counsel in preparation and filing *amicus curiae* brief in the Texas Supreme Court on behalf of a Texas Representative and a state association.
- Prepared winning briefs to the Supreme Court of Texas on behalf of a policy holder in a commercial insurance coverage dispute.
- Lead counsel in obtaining set-aside of seven-figure default judgment in multi-tiered complex commercial proceedings involving Texas, federal and bankruptcy procedural law issues.
- Co-counsel in preparation of *amicus curiae* brief on behalf of law professors in the first major piece of "global warming litigation" heard by the Supreme Court of the United States.
- Primary draftsman of winning briefs to the Fifth Circuit in a trademark case concerning the attempted re-litigation of "secondary meaning" of a descriptive trademark.
- Author of prevailing briefs to the Fifth Circuit on behalf of appellant taxpayers accused of engaging in elaborate civil tax fraud and "kick-back" scheme.
- Obtained certification of a novel question of Texas Insurance law from the Fifth Circuit to the Supreme Court of Texas.
- Author of briefs to the Fifth Circuit resulting in reversal of the trial court's grant of judgment notwithstanding the verdict in a precedent-setting multimillion dollar age discrimination lawsuit.
- Assisted with briefing in the Fifth Circuit in an appeal resulting in the reversal of a jury verdict based on cumulative evidentiary errors by the trial judge.
- Obtained reversal from the Dallas Court of Appeals of a grant of summary judgment in UCC Article 9 foreclosure appeal.
- As appellate counsel, preserved a favorable class-action settlement against appellate challenges brought by multiple dissatisfied class members in the Texas Supreme Court.
- As trial counsel in an appointed federal criminal case, achieved the partial acquittal of an inmate who had allegedly escaped from incarceration and assaulted armed guards.

Christopher D. Kratovil (Cont.)

## In The News

Kratovil Quoted in Texas Lawyer Article—What “Conservative” Means in State Judiciary  
June 5, 2012

Three Dykema Lawyers Named to *D Magazine*’s “Best Lawyers in Dallas”  
May 24, 2012

Kratovil Delivers Podcast—Discusses Significance of *Marmet* Decision  
March 12, 2012

## Seminars & Speeches

*Marmet Health Care Center, Inc. v. Brown—Post-Decision*, SCOTUScast, Federalist Society  
March 12, 2012

*Litigation in the U. S. Federal System*, A delegation of Visiting Lawyers from Vietnam’s Ministry of Justice  
March 4, 2011

*The Fraud Exception*, Panel presentation to the Mergers & Acquisitions Section of the Dallas Bar Association  
December 12, 2010

*Mandamus Practice in the Fifth Circuit*, presented to the Appellate Section of the Dallas Bar Association  
June 17, 2010

*Federal Mandamus and the East Texas Venue Wars*, presented to the Appellate Section of the San Antonio Bar Association  
February 18, 2010

*Perfecting the Appeal and Securing the Record*, presented to the State Bar of Texas Appellate Section “Boot Camp” CLE  
September 9, 2009

*A Look Ahead: The Next Year at the Supreme Court of Texas*, presented to the Dallas Lawyers’ Chapter of the Federalist Society  
October 16, 2008

*Recent Developments in Arbitration*, presented to the 18th Annual University of Texas Conference on Federal and State Appeals  
May 30, 2008

*Challenging Arbitration Awards*, presented to the Appellate Section of the El Paso Bar Association  
April 18, 2007

*Challenging Arbitration Awards*, presented to the Appellate Section of the San Antonio Bar Association  
April 11, 2007

*Appellate Options After Arbitration*, presented to the Appellate Section of the Dallas Bar Association  
March 16, 2007

*Reducing the ‘Daunting Finality’ of Arbitration Awards: Crafting an Appellate Option*, North Dallas Bar CLE Clinic  
January 2007

*Everyday rules for Better Legal Writing*, presented to the Dallas Area Paralegal Association  
May 10, 2006

*Enhancing Your Appellate Prospects*, moderator of panel presentation to the Dallas Bar Association CLE Clinic  
May 5, 2006

*Appellate Options from Arbitration Awards*, presented to the Appellate Section of the Houston Bar Association  
April 19, 2006

*Choosing the Right Legal Career Path For You*, presented to Phi Alpha Delta chapter at Texas Tech University Law School  
April 5, 2006



Christopher D. Kratovil (Cont.)

*Challenging Arbitration Awards: A Role for the Courts*, presented to the Judiciary Committee of the Dallas Bar Association  
February 9, 2006

*Reducing the 'Daunting Finality' of Arbitration Awards: Crafting an Appellate Option*, presented to the Appellate Law Section  
of the Dallas Bar Association  
January 18, 2006

*Injunctions and Temporary Restraining Orders*, presented to the Trial Skills Section of the Dallas Bar Association  
December 8, 2004

## **Memberships & Involvement**

- Dallas Bar Association
- Business Litigation Section of the Dallas Bar Association, Council Member, 2009, Treasurer, 2010; Secretary, 2011
- State Bar of Texas Appellate Section, Co-Chair of the Corporate Counsel Committee, 2010-2011
- Higginbotham Inn of Court, Associate, 2005-2006
- Dallas Association of Young Lawyers, Leadership Class, 2003
- Dallas Volunteer Attorney Program Volunteer

## **Community/Civic Activities**

- Cisterclan Preparatory School Alumni Association, Board of Directors, President, 2007-2008
- Lamplighter School Alumni Council, 2005-2008
- Notre Dame Alumni Club of Dallas
- Texas Law Review Association, Former managing director, 1999-2000
- Leadership Las Colinas-Irving Class of 2008
- College of the State Bar of Texas

## **Awards & Recognition**

- Named a "Best Lawyer in Dallas" by *D-Magazine*, 2011-2012
- Named a "Rising Star" by *Law & Politics*, 2007-2013

## **Press Releases**

Kratovil Joins Dykema In Dallas  
July 14, 2011

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

**NETSPHERE, INC.,  
MANILA INDUSTRIES, INC., AND  
MUNISH KRISHAN**

**PLAINTIFFS,**

**V.**

**JEFFREY BARON AND ONDOVA  
LIMITED COMPANY,**

**DEFENDANTS.**

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**CIVIL ACTION NO. 3:09-CV-0988-F**

**CERTIFICATE OF CONFERENCE TO ACCOMPANY  
MOTION TO QUASH (DOCKET # 1226)**

Prior to filing the Motion to Quash counsel for the Receiver conferred with counsel for the Trustee and offered to make the Receiver available for a brief deposition voluntarily, notwithstanding the lack of any currently authorized discovery, provided the Trustee would also agree to provide any written documentation in support of his claim to payment from the Receivership in advance of said deposition. Counsel for the Trustee indicated that the documentation was too extensive to permit such a production. Thus, the parties were unable to agree on the relief requested in the Motion to Quash.

Respectfully submitted,

DYKEMA GOSSETT PLLC

By: /s/ David J. Schenck

David J. Schenck  
State Bar No. 17736870  
Jeffrey R. Fine  
State Bar No. 07008410  
Christopher D. Kratovil  
State Bar No. 24027427  
1717 Main Street, Suite 4000  
Dallas, Texas 75201  
(214) 462-6455  
(214) 462-6401 (Telecopier)

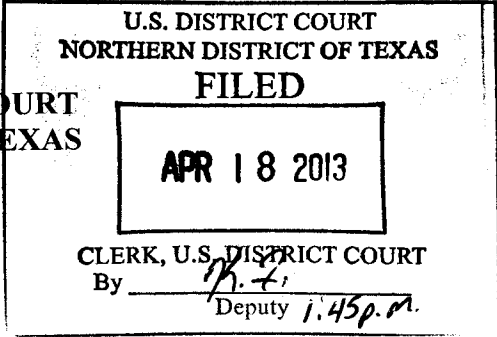
ATTORNEYS FOR THE RECEIVER, PETER S.  
VOGEL

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served via the Court's ECF system on all counsel of record on April 18, 2013.

By: /s/ David J. Schenck  
David J. Schenck

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



NETSPHERE, INC.,  
 MANILA INDUSTRIES, INC., AND  
 MUNISH KRISHAN

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PLAINTIFFS,

V.

CIVIL ACTION NO. 3:09-CV-0988-F

JEFFREY BARON AND  
 ONDOVA LIMITED COMPANY,

DEFENDANTS.

**ORDER DENYING MOTION TO SET DATES FOR SUBMISSION OF FEE  
 APPLICATIONS FOR JEFFREY BARON**

BEFORE THE COURT is Jeffrey Baron's Motion to Set Dates for Submission of Fee Applications for Jeffrey Baron or for Other Appropriate Relief and Request for Expedited Ruling Thereon, filed April 17, 2013 (Docket No. 1231). Jeffrey Baron and his counsel ask the Court to set a deadline for Baron's counsel to submit fee applications and requests for retainers for the past and continued representation of Jeffrey Baron in the above-numbered case. The Court is of the opinion that this Motion should be DENIED.<sup>1</sup>

On April 5, 2013, following a joint-status conference, the Bankruptcy Court entered a Sua Sponte Order Modifying Automatic Stay (Section 362) to Permit Adjudication of Allowable Receivership Fees and Expenses in District Court (Bankruptcy Case No. 12-37921-SGJ-7, Docket No. 115). This narrow order modified the stay to allow this Court to determine the reasonable administrative receivership fees and expenses in accordance with the Fifth Circuit opinion. The Order did not lift the stay to allow this Court to pay Mr. Baron's counsel for services already rendered nor did it lift the stay to allow this Court to resolve pending matters

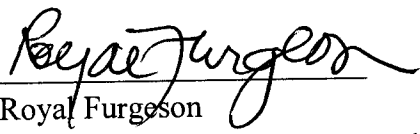
<sup>1</sup> This resolves Docket No. 1231.

requesting retainers for Mr. Baron's current counsel. Accordingly, the Court will not entertain fee applications from any of Mr. Baron's former or current attorneys as their claims remain properly with the Bankruptcy Court. Mr. Baron may respond to all fee applications submitted by the Receiver and his counsel, but may not submit his own fee applications at this time.

The Court reminds all parties that its rulings on the receivership fees and expenses will not go into effect immediately. None of these claims will be paid until the Bankruptcy Court rules whether the involuntary bankruptcy is proper. At this time, depending on whether an order for relief is entered or not, the Bankruptcy Court will either entertain this Court's fee determinations as "allowed claims" or the District Court will order payment as part of the Receivership wind down process.

IT IS SO ORDERED.

SIGNED this 18<sup>th</sup> day of April, 2013.

  
Royal Furgeson  
Senior United States District Judge

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

NETSPHERE, INC.,  
MANILA INDUSTRIES, INC., AND  
MUNISH KRISHAN

PLAINTIFFS,

V.

JEFFREY BARON AND  
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CIVIL ACTION NO. 3:09-CV-0988-F

**THE RECEIVER’S INVENTORY OF ASSETS AS OF APRIL 19, 2013**

Pursuant to this Court’s Order of April 8, 2013 [Docket No. 1123], the Receiver files this,  
Inventory.

Respectfully submitted,

PETER S. VOGEL, RECEIVER

*By: /s/ Peter S. Vogel*  
Peter S. Vogel  
Texas Bar No. 206010500  
1601 Elm Street, Suite 3000  
Dallas, Texas 75201  
(214) 999-3000  
(214) 999-3422 (Fax)

**PETER S. VOGEL RECEIVER**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served via the Court’s ECF system on all counsel of record on April 19, 2013.

*By: /s/ Peter S. Vogel*  
Peter S. Vogel

**Receiver's Inventory of Assets as of April 19, 2013**  
**(Redacted Account Numbers)**

1. Stock Account:

The following stock account was brought under the Receiver's control, the cash portion (\$412,293.20) was transferred to Comerica account xxxxxx5361 listed below in Table 3C\*\* with a March 31, 2013 balance of \$3,036.20, but the stock was never liquidated:

<b>Institution</b>	<b>Account Name</b>	<b>Account Number</b>	<b>Account Type</b>	<b>Amount Believed to Be in Stock Account</b>
TD Ameritrade	Jeffrey Baron	XX#XX581	Stock	\$378,930.87

2. IRA Account:

A. The following IRA accounts were frozen at the request of the Receiver but never liquidated:

<b>Institution</b>	<b>Account Name</b>	<b>Account Number</b>	<b>Account Type</b>	<b>Amount Believed to Be in Account</b>
The Vanguard Group	Jeffrey D. Baron	XXXX-XXXXXXXX792	Non-Roth IRA	\$40,006.34
Dreyfus Investments	The Bank of New York Mellon Cust f/b/o Jeffrey D. Baron	XXXXXXXXXXXX491	Roth Conversion IRA	\$4,915.26
Sterling Trust Co.	Jeff Baron	XX855	Roth IRA	\$48,570.75
Mid-Ohio Securities Corp.	Equity Trust Co. Cust IRA of Jeffrey Baron	XXX-XXX396	Roth IRA	Monies included in Equity Trust below in Table 2B.
Delaware Charter Guarantee & Trust d/b/a Principal Trust Co. (dealt with Interactive Brokers, LLC)	Jeff Baron	XXXX003	Non-Roth IRA	Cash balance of \$242,979.70  Stock balance of \$64,800.00

B. The following IRA account was identified but never accessed/frozen by the Receiver due to the institution's refusal to cooperate:

Institution	Account Name	Account Number	Account Type	Component Investments	Amount Believed to Be in Account
Equity Trust Co.	Jeffrey Baron	XX471	Roth IRA	\$792,279.50 cash \$135,424 brokerage account \$350 Buena Vista investment \$250 Buena Vista investment \$1 option to purchase real estate \$400 Northeastern Mortgage \$179 20 domain names	\$839,818.05  Includes Mid-Ohio Securities Corp.

3. Bank Accounts:

A. Current Receiver's Comerica Banking Account

Type	Comerica account	Current Balance March 31, 2013
Checking	XXXXXX6589	\$27,871.21

B. The following are the Quantec and Novo Point bank accounts at BBVA Compass Bank:

Account Name	Account Number	Account Type	BBVA Current Balance March 31, 2013
Quantec, LLC	XXXXXXX323	Operating	\$243,586.83
Novo Point, LLC	XXXXXXX315	Operating	\$289,732.30

C. The following are the Baron bank accounts from which the Receiver moved funds to Receiver accounts at Comerica:

Institution	Account Name	Account Number	Account Type	Amount Transferred to Receiver Accounts at Comerica at the beginning of the Receivership	Current Comerica Account	Comerica Current Balance March 31, 2013
Las Colinas Federal Credit Union	Jeff D. Baron	XXXXX290	Money Market	\$156,874.52	XXXXXXX4497	\$0
Capitol One Bank	Jeffrey D. Baron	XXXXXXXX908	Money Market	\$139,080.53	XXXXXXX4471	\$0
Capitol One Bank	Jeffrey D. Baron	XXXXXXXX961	Savings	\$3,921.75	XXXXXXX9426	\$4,026.13



<b>Institution</b>	<b>Account Name</b>	<b>Account Number</b>	<b>Account Type</b>	<b>Amount Transferred to Receiver Accounts at Comerica at the beginning of the Receivership</b>	<b>Current Comerica Account</b>	<b>Comerica Current Balance March 31, 2013</b>
Capitol One Bank	Jeffrey D. Baron	XXXXXXXX614	Checking	\$41.84	XXXXXXXX8455	\$141.84
Woodforest National Bank	Jeffrey D. Baron	XXXXXXXX261	Checking	\$226,771.62	XXXXXXXX6373	\$573.49
American Century Investments	Jeffrey D. Baron	XXXXXXXX893	Prime Money Market	\$4,799.94	XXXXXXXX4943	\$3,115.95
Comerica investigating	Netsphere check		Checking	\$15,715.80	XXXXXXXX4463	\$7,703.72
TD Ameritrade** (Table 1)			Money Market		XXXXXXXX5361	\$3,036.20

D. Comerica Bank Account Opened in January, 2011 with \$100, and still open today but no transactions

<b>Name</b>	<b>Comerica#</b>	<b>AMOUNT</b>
Manassas	XXXXXXXX5064	\$100

E. Comerica Bank Accounts Opened on January 6, 2011 by the Receiver with \$100 but no transactions

<b>Name</b>	<b>Comerica#</b>	<b>AMOUNT</b>	<b>CLOSED</b>
Dreyfus Appreciation Fund	XXXXXXXX4448	\$100	July 7, 2011
Dreyfus Basic Government Money Market	XXXXXXXX4794	\$100	July 7, 2011
SouthPac Funds	XXXXXXXX5056	\$100	July 11, 2011

4. Accounts Receivable:

<b>Account Debtor</b>	<b>Nature of Account</b>	<b>Estimated Amounts Due</b>
Netsphere	Settlement Payments	Estimates \$700,000.00 plus variable monthly payments
Ondova Bankruptcy Trustee	September 15, 2010 Order of Judge Jernigan for Novo Point and Quantec to fund Ondova's attorneys' fees claims	\$330,000.00
Ondova Bankruptcy Trustee	Disgorgement of Prior Payment in May 2012	\$379,761.18
Domain Holdings Group	Monthly Monetizer Payments	Varies by month, March 2013 payments were: Novo Point -\$43,362.92 Quantec -\$201,747.92

5. Domain Names:

The Novo Point LLC portfolio contains approximately 3,324 domain names.

The Quantec LLC portfolio contains approximately 150,944 domain names.

Gardere01 - 6272360v.2



ATTORNEYS FOR DEFENDANT/  
APPELLEE CHAPTER 11 TRUSTEE  
DANIEL J. SHERMAN FOR ONDOVA

**CERTIFICATE OF SERVICE**

I hereby certify that, on 19th day of April, 2013, a true and correct copy of the foregoing document was served via the Court's ECF system on all counsel of record.

/s/ Richard M. Hunt  
Richard M. Hunt

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

<b>NETSPHERE, INC.,</b>	§	
<b>MANILA INDUSTRIES, INC.,</b>	§	
<b>AND MUNISH KRISHAN</b>	§	
	§	
<b>PLAINTIFFS,</b>	§	
	§	
<b>V.</b>	§	<b>CIVIL ACTION NO. 3:09-CV-0988-F</b>
	§	
<b>JEFFREY BARON AND</b>	§	
<b>ONDOVA LIMITED COMPANY,</b>	§	
	§	
<b>DEFENDANTS.</b>	§	

**MOTION FOR DISCOVERY, FOR CONTINUANCE AND TO RE-CONSIDER  
FUNDING FOR JEFFREY BARON’S COUNSEL**

Jeffrey Baron, by and through his attorneys, file their Motion for Discovery, for Continuance and Motion Funding for Trial, and in support states:

**I. Statement of Facts**

1. The court issued a scheduling order on April 5, 2013 [1220] for a trial on the issue of various fee applications filed by the Receiver.
  
2. On April 4, 2013, the court denied Baron’s request for attorney fees and for fees for experts to contest the matter.
  
3. The Receiver, Trustee and their lawyers has just yesterday afternoon provided their fee applications, which the undersigned counsel has not yet reviewed, but understands that there are thousands, if not tens of thousands

of billing entries upon which the Receiver, Trustee and their lawyers rely in of their claims for millions in fees. Baron's counsel has not been permitted discovery and has not been provided funds to conduct such discovery, as all of Baron's funds are in the receivership estate. It would take the undersigned counsel and co-counsel several weeks of non-stop document review to understand and determine the reasonableness and/or the necessity of the billing.

4. The court's deadline for Mr. Baron's objections to the billing motions are eight days from the date the motions were made, twelve days to hearing on the objections and a trial within and barely 20 days from the time of disclosure to trial.

5. In the meantime, counsel have been preparing substantive mediation position papers for submission to Judge Clark for mediation ordered by the Bankruptcy Court, and will be engaged in mediation from April 22-23, 2013. Thus, the real time allowed for preparation for the trial on fees is barely 15 days prior to trial.

6. It is appears that many of the Receiver, Trustee and their lawyers' billings in this case are inflated, duplicative or unnecessary. However,

counsel needs adequate time and resources to analyze the billings, to retain experts and staff to assist in this monumental task.

7. With Mr. Baron prohibited, by virtue of the receivership order, from using his own funds to hire counsel, the undersigned counsel has been working unpaid in this case since September 28, 2013 and Ed Wright has not been paid at all.

8. Counsel also need the assistance of their client on this project. However, the Bankruptcy Court ordered production of documents and parallel deadlines, for Mr. Baron's involuntary bankruptcy trial, during the same period that counsel are preparing for trial on the fees in this Court, diverting Mr. Baron from preparation on the fee trial in this Court..

9. Baron respectfully moves the District Court to reconsider his request to have access to his funds to hire attorneys along with support staff to represent him in objecting to the fee applications. Unlike large law firms, who have staff on hand to assist counsel, both Mr. Cochell and Mr. Wright are solo practitioners who have limited resources, which make it difficult to set aside work for other clients and devote numerous hours of time to reviewing invoices mounting a defense for Mr. Baron.

10. Baron also requests discovery from the claimants to review all invoices and billing records and to depose fact witnesses. Baron hereby requests the Court to grant Mr. Baron authorization to make such requests to the Receiver, Trustee and their counsel and to compel the same to comply.

11. A copy of the requested discovery is attached as Exhibits A and B.

## **II. Discovery and Continuance is a Matter of Due Process.**

The Fifth Circuit vacated the receivership and held that receivership orders do “not allow for a determination of the substantive rights of involved parties” and may not be used “as a vehicle to adjudicate the substantive rights of non-judgment third parties.” The Fifth Circuit held that this rule ultimately springs from due process concerns. (such a remedy “completely bypasses our system of affording due process”).

In its remand, the Court held that “charging the current receivership fund for reasonable receivership expenses, without allowing any additional assets to be sold, is an equitable solution.” 5<sup>th</sup> Cir. Opinion at 27.

In light of our ruling that the receivership was improper, equity may well require the fees to be discounted meaningfully from what would have been reasonable under a proper receivership. Fees already paid were calculated on the basis that the receivership was proper. Therefore, the amount of all fees and expense must be reconsidered by the district court. Any other payments made from the receivership fund may also be reconsidered as appropriate. (emphasis supplied).



5<sup>th</sup> Cir. Opinion at 27.

Counsel for Mr. Baron are relatively new to the overall litigation and have a challenge duplicating the knowledge of the Trustee and Receiver, who retained large, well funded law firms and were actively involved in the case. On the flip side, Baron has two solo practitioners who are not in a position to focus all their time, money and limited resources on detailed fee applications over the next three week period without some assistance, and an advance or assurance of payment to secure help in the effort. Unlike the Receiver, the Trustee and their lawyers, Mr. Baron either directly owns, or has a beneficial interest in the property at issue, and should be allowed access to his own resources to properly contest the fees incurred by the Trustee and the Receiver.

Mismatched parties simply create the appearance, but not the reality of due process. The Supreme Court has held that a party must be afforded a fair opportunity to secure counsel “of his own choice.” This right applies “in any case, civil or criminal” as a due process right “in the constitutional sense”. *Powell v. Alabama*, 287 U.S. 45, 53-69 (1932). As a fundamental cornerstone of due process, the Constitution guarantees every citizen the right to a *meaningful* opportunity to be heard in a *meaningful* manner. *Williams v. McKeithen*, 939 F.2d 1100, 1105 (5th Cir. 1991). As a matter of established law, this means the right to be represented by paid counsel. *E.g., Mosley*, 634 F. 2d at 946; *Powell*, 287 U.S. at

53; *Chandler v. Fretag*, 348 U.S. 3, 10 (1954); *Potashnick v. Port City Const. Co.*, 609 F.2d 1101, 1104 (5<sup>th</sup> Cir. 1980). In the instant proceedings, Jeffrey Baron has paid millions to the Receiver and Trustee but has not been allowed the resources to match the deadlines and issues before the Court.

WHEREFORE, Jeffrey Baron respectfully requests that this Honorable Court grant his Motion in its entirety.

Very respectfully,

/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 April 19, 2013, a copy of this Response was served on all counsel through the Court's ECF system.

/s/ Stephen R. Cochell  
Stephen R. Cochell

**CERTIFICATE OF CONFERENCE**

Defendant Jeffrey Baron presumes that the Chapter 11 Trustee does not oppose this Motion as he set the deposition of the Receiver, Peter Vogel, and based on the opposition of the Noticed deposition by Receiver, Baron presumes counsel for Receiver will oppose this Motion. Therefore, the Motion is submitted to the Court for consideration.

/s/ Stephen R.Cochell  
Stephen R.Cochell

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

<b>NETSPHERE, INC.,</b>	§	
<b>MANILA INDUSTRIES, INC.,</b>	§	
<b>AND MUNISH KRISHAN</b>	§	
	§	
<b>PLAINTIFFS,</b>	§	
	§	
<b>V.</b>	§	<b>CIVIL ACTION NO. 3:09-CV-0988-F</b>
	§	
<b>JEFFREY BARON AND</b>	§	
<b>ONDOVA LIMITED COMPANY,</b>	§	
	§	
<b>DEFENDANTS.</b>	§	

**JEFF BARON’S SECOND REQUEST  
FOR PRODUCTION TO DANIEL J. SHERMAN, TRUSTEE**

To: Daniel J. Sherman, Receiver, through his attorney of record, Raymond J Urbanik, Esq., Munsch Hardt Kopf & Harr, P.C., 3800 Lincoln Plaza, 500 North Akard Street, Dallas, Texas 75201-6659

Jeffrey Baron serves this request for production on Peter Vogel, Receiver, as authorized by Federal Rule of Civil Procedure 34. Daniel J. Sherman, Trustee (the “Trustee”) must produce all requested documents, electronically stored information, or tangible things within his possession, custody or control within the time deadline specified by the Court, or as agreed to between the parties, at the offices of Stephen R. Cochell, 7026 Old Katy Rd., Ste 259, Houston Texas 77024 or at another time and place agreed on by the parties.

Definitions

The following terms have the following meanings, unless the context requires otherwise:

1. Parties. The term “plaintiff” or “defendant,” as well as a party’s full or abbreviated name or a pronoun referring to a party, means the party and, when applicable, his agents, representatives, officers, directors, employees, partners, corporate parent, subsidiaries, or affiliates. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.
  
2. Person. The term “person” means any natural person, a business, a legal or governmental entity, or an association.
  
3. You & your. The terms “you” and “your” mean the Trustee, Daniel Sherman and his

agents, representatives, attorneys, including Munsch Hardt Kopf & Harr, experts, and other persons acting or purporting to act on the Trustee's behalf.

4. Material. The term "material" means all documents, electronically stored information, or tangible things. The term is synonymous with and equal in scope to the terms "documents," "electronically stored information," and "tangible things" in Federal Rule of Civil Procedure 34(a)(1). A draft or nonidentical copy of a document, electronically stored information, or a tangible thing is a separate item within the meaning of this term.

- a. Document. The term "document" means information that is fixed in a tangible medium, such as paper. It includes, but is not limited to, writings, drawings, films, charts, photographs, notices, memoranda, diaries, minutes, correspondence, books, journals, ledgers, reports, worksheets, notes, printed e-mails, letters, abstracts, audits, charts, checks, diagrams, drafts, instructions, lists, logs, resumes, and summaries.
- b. Electronically stored information. The term "electronically stored information" means electronic information that is stored in a medium from which it can be retrieved and examined. It includes, but is not limited to, all electronic files that are electronically stored.
  - (1) "Electronic file" includes, but is not limited to, the following: voicemail messages and files; e-mail messages and files; deleted files; temporary files; system-history files; Internet- or web-browser-generated information stored in textual, graphical, or audio format, including history files, caches, and cookies; computer-activity logs; and/or metadata.. Unless otherwise defined, each example used to illustrate the term "electronic file" will have the meaning assigned to it by {*identify source for definitions, e.g., Sedona Conference Glossary: E-Discovery & Digital Information Management (Second Edition) (2007), Webster's New World Computer Dictionary (10th ed. 2003), or Microsoft Computer Dictionary (5th ed. 2002)*}.
  - (2) "Electronic information system" refers to a computer system or network that contains electronic files and electronic storage. Unless otherwise defined, each example used to illustrate the term "electronic information system" will have the meaning assigned to it by the *Sedona Conference Glossary: E-Discovery & Digital Information Management (Second Edition) (2007), Webster's New World Computer Dictionary (10th ed. 2003), or Microsoft Computer Dictionary (5th ed. 2002)*}.
  - (3) "Electronic storage" refers to electronic files contained on magnetic, optical, or other storage media, such as hard drives, flash drives, DVDs, CDs, tapes, cartridges, floppy diskettes, smart cards, and/or integrated-circuit cards (e.g., SIM cards). Unless otherwise defined, each example used to illustrate the term "electronic storage" will have the meaning assigned to it by the *Sedona Conference Glossary: E-Discovery &*

*Digital Information Management (Second Edition) (2007), Webster's New World Computer Dictionary (10th ed. 2003), Microsoft Computer Dictionary (5th ed. 2002)}*.

- c. Tangible thing. The term “tangible thing” means a physical object that is not a document or electronically stored information.
  
5. Communication. The term “communication” means the transmittal of information in the form of facts, ideas, inquiries, or otherwise.
  
6. Relating. The term “relating” means concerning, referring, describing, evidencing, or constituting, either directly or indirectly.
  
7. Any. The term “any” should be understood in either its most or its least inclusive sense as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside its scope.
  
8. And & or. The connectives “and” and “or” should be construed either conjunctively or disjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside its scope.
  
9. Number. The use of the singular form of any word includes the plural and vice versa.
  
10. Relevant Time Period. The relevant time period for all document requests herein spans from the date the Court authorized appointment of the receivership through the date of production of documents requested herein.
  
11. “Appraisal Reports”: Means all reports, data compilations, print-outs, charts, lists, and the like, that contain, or purport to contain appraisals, valuations, price estimate, or any other designation of value, estimated value, income, or income potential for any domain name or right in or to a domain name owned by Quantec LLC or NovoPoint LLC.
  
12. “Bankruptcy Case”: refers to Case No. 09-34784-SGJ pending in the Bankruptcy Court, Northern District of Texas, Dallas Division and any other related cases or matters relating to, or ancillary to that action.
  
13. “District Court Case” or “Receivership Case”: refers to Case Number 3:09cv00988 pending the District Court, Northern District of Texas, Dallas Division and any other related cases or matters relating to, or ancillary to that action.
  
14. “Receivership”: refers to the receivership created in, or arising out of the District Court Case.
  
15. “Domain Names” or “domain names”: refers to the 150,000 domain names that are the subject of the proposed auction.

Instructions

1. Respond to each request for production separately by listing the materials and by describing them as defined above. If the material is numbered or labeled for production, in each response provide both the information that identifies the material and the material's number or label.

2. Produce documents and tangible things in the forms as they are kept in the ordinary course of business, or organize and number or label them to correspond with the categories in the discovery request.

3. Produce electronically stored information in electronic format. Specifically, we request that you produce documents in native format **and** in TIFF format maintaining all associated metadata. For any electronically stored information produced:

- a. Produce a discovery log that details the type of information, the source of the information, the discovery request to which the information corresponds, and the information's electronic ID number.
- b. Write all of the electronically stored information to a cd, dvd, flash drive or external hard drive.

4. For electronically stored information, identify every source containing potentially responsive information that the Trustee is not searching or producing.

5. If objecting to a request for production, state the objection with particularity, providing specific grounds for the objection.

6. For any materials that the Trustee asserts are privileged, protected, or otherwise exempt from discovery, provide the following:

- a. The specific grounds for the claim of privilege, protection, or other exemption.
- b. The type of material being withheld, and, if the material is electronically stored information, the file format of the material.
- c. The subject matter of the material.
- d. The date of the material.
- e. The name, job title, and address of the author of the material.
- f. The name, job title, and address of each addressee of the material.
- g. The name, job title, and address of each person who received, was copied on, or otherwise saw all, part, or a summary of the material.
- h. The name, job title, and address of the custodian of the material and the

material's current location.

7. For any materials that you claim no longer exist or cannot be located, provide all of the following:

- a. A statement identifying the material.
- b. A statement of how and when the material ceased to exist or when it could no longer be located.
- c. The reasons for the material's nonexistence or loss.
- d. The identity, address, and job title of each person having knowledge about the nonexistence or loss of the material.
- e. The identity of any other materials evidencing the nonexistence or loss of the material or any facts about the nonexistence or loss.

### **REQUESTS FOR PRODUCTION**

**REQUEST 1:** Any and all documents relating to the solicitation of Baron's lawyers or lawyers who are claimants in the receivership.

RESPONSE:

**REQUEST 2:** Documents relating to contacts with potential claimants who made claims asserting that Jeffrey Baron owed them money for legal services.

RESPONSE:

**REQUEST 3:** Documents relating to contacts with potential claimants who did not make claims against Jeffrey Baron asserting that he owed them money for legal services.

RESPONSE:



**REQUEST 4:** Document pertaining to sales, or proposed sales of domain names prior to the auction conducted in the Ondova case.

RESPONSE:

**REQUEST 5:** All affidavits signed by Damon Nelson regarding sale, marketing, or negotiations for the sale of domain names.

RESPONSE:

**REQUEST 6:** Correspondence Relating to Joseph Dauben and issues including, but not limited to, statements by Mr. Dauben regarding Mr. Vogel and prior judgments obtained or being enforced by Gardere against Dauben.

RESPONSE:

**REQUEST 7:** Communications between Receiver and Trustee's counsel (and/or counsel) regarding the receivership

RESPONSE:

**REQUEST 8:** Documents between the Trustee, Receiver and/or Elizabeth Shurig regarding tax liability and related issues for any receivership party.

RESPONSE:

**REQUEST 9:** Documents relating to communications between any of the attorney claimants and Peter Vogel, Daniel Sherman, and/or the Receiver's lawyers.

RESPONSE:

**REQUEST 10:**

Documents relating to communications between the Receiver and the Trustee or protector of the Village Trust.

RESPONSE:

**REQUEST 11:** Documents concerning meetings and calendars of meetings between Receiver & Trustee.

RESPONSE:

**REQUEST 12:** Documents related to communications between Trustee or Trustee's counsel and Receiver or Receiver's counsel.

RESPONSE:

**REQUEST 13:** Documents concerning communications between Jeff Baron and Peter Vogel from 2001 through 2004.

RESPONSE:

**REQUEST 14:** Documents concerning communications between Jeff Baron and Dawn Estes at Gardere from 2001 through 2004.

RESPONSE:

**REQUEST 15:** Documents reflecting the cash and asset balances of the Ondova Estate from the beginning of the bankruptcy to the present (by month/quarter/year).

RESPONSE:

Very respectfully,

/s/Stephen R. Cochell

Stephen R. Cochell

The Cochell Law Firm, P.C.  
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(713)980-8796 (phone)  
(713)980-1179 (facsimile)  
[srcochell@cochellfirm.com](mailto:srcochell@cochellfirm.com)

**CERTIFICATE OF SERVICE**

I hereby certify that this document was served electronically to counsel for the Receiver, David Schenk and Jeff Fine, and counsel for the Trustee, Ray Urbanik and Richard Hunt, and John MacPete by email on April 19, 2013.

Ray Urbanik  
Richard M. Hunt  
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/S/ Stephen R. Cochell



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

<b>NETSPHERE, INC.,</b>	§	
<b>MANILA INDUSTRIES, INC.,</b>	§	
<b>AND MUNISH KRISHAN</b>	§	
	§	
<b>PLAINTIFFS,</b>	§	
	§	
<b>V.</b>	§	<b>CIVIL ACTION NO. 3:09-CV-0988-F</b>
	§	
<b>JEFFREY BARON AND</b>	§	
<b>ONDOVA LIMITED COMPANY,</b>	§	
	§	
<b>DEFENDANTS.</b>	§	

**JEFF BARON’S FIRST REQUEST  
FOR PRODUCTION TO PETER VOGEL, RECEIVER**

To: Peter Vogel, Receiver, through his attorney of record, David Schenck, Dykema Gossett, 1717 Main Street, Ste 4000, Dallas Texas 75201

Jeffrey Baron serves this request for production on Peter Vogel, Receiver, as authorized by Federal Rule of Civil Procedure 34. As agreed between the parties, Peter Vogel, Receiver (the “Receiver”) must produce all requested documents, electronically stored information, or tangible things within the time deadline specified by the Court, or as agreed to between the parties, at the offices of Stephen R. Cochell, 7026 Old Katy Rd., Ste 259, Houston Texas 77024 or at another time and place agreed on by the parties.

Definitions

The following terms have the following meanings, unless the context requires otherwise:

1. Parties. The term “plaintiff” or “defendant,” as well as a party’s full or abbreviated name or a pronoun referring to a party, means the party and, when applicable, his agents, representatives, officers, directors, employees, partners, corporate parent, subsidiaries, or affiliates. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.
  
2. Person. The term “person” means any natural person, a business, a legal or governmental entity, or an association.
  
3. You & Your. The terms “you” and “your” mean the Receiver, Peter Vogel and his

agents, representatives, attorneys, including Dykema Gossett, experts, and other persons acting or purporting to act on the Receiver's behalf.

4. Material. The term "material" means all documents, electronically stored information, or tangible things. The term is synonymous with and equal in scope to the terms "documents," "electronically stored information," and "tangible things" in Federal Rule of Civil Procedure 34(a)(1). A draft or nonidentical copy of a document, electronically stored information, or a tangible thing is a separate item within the meaning of this term.

- a. Document. The term "document" means information that is fixed in a tangible medium, such as paper. It includes, but is not limited to, writings, drawings, films, charts, photographs, notices, memoranda, diaries, minutes, correspondence, books, journals, ledgers, reports, worksheets, notes, printed e-mails, letters, abstracts, audits, charts, checks, diagrams, drafts, instructions, lists, logs, resumes, and summaries.
- b. Electronically stored information. The term "electronically stored information" means electronic information that is stored in a medium from which it can be retrieved and examined. It includes, but is not limited to, all electronic files that are electronically stored.
  - (1) "Electronic file" includes, but is not limited to, the following: voicemail messages and files; e-mail messages and files; deleted files; temporary files; system-history files; Internet- or web-browser-generated information stored in textual, graphical, or audio format, including history files, caches, and cookies; computer-activity logs; and/or metadata.. Unless otherwise defined, each example used to illustrate the term "electronic file" will have the meaning assigned to it by {*identify source for definitions, e.g., Sedona Conference Glossary: E-Discovery & Digital Information Management (Second Edition) (2007), Webster's New World Computer Dictionary (10th ed. 2003), or Microsoft Computer Dictionary (5th ed. 2002)*}.
  - (2) "Electronic information system" refers to a computer system or network that contains electronic files and electronic storage. Unless otherwise defined, each example used to illustrate the term "electronic information system" will have the meaning assigned to it by the *Sedona Conference Glossary: E-Discovery & Digital Information Management (Second Edition) (2007), Webster's New World Computer Dictionary (10th ed. 2003), or Microsoft Computer Dictionary (5th ed. 2002)*}.
  - (3) "Electronic storage" refers to electronic files contained on magnetic, optical, or other storage media, such as hard drives, flash drives, DVDs, CDs, tapes, cartridges, floppy diskettes, smart cards, and/or integrated-circuit cards (e.g., SIM cards). Unless otherwise defined, each example used to illustrate the term "electronic storage" will have the meaning assigned to it by the *Sedona Conference Glossary: E-Discovery &*

*Digital Information Management (Second Edition) (2007), Webster's New World Computer Dictionary (10th ed. 2003), Microsoft Computer Dictionary (5th ed. 2002)}*.

- c. Tangible thing. The term “tangible thing” means a physical object that is not a document or electronically stored information.
  
5. Communication. The term “communication” means the transmittal of information in the form of facts, ideas, inquiries, or otherwise.
  
6. Relating. The term “relating” means concerning, referring, describing, evidencing, or constituting, either directly or indirectly.
  
7. Any. The term “any” should be understood in either its most or its least inclusive sense as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside its scope.
  
8. And & or. The connectives “and” and “or” should be construed either conjunctively or disjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside its scope.
  
9. Number. The use of the singular form of any word includes the plural and vice versa.
  
10. Relevant Time Period. The relevant time period for all document requests herein spans from the date the Court authorized appointment of the receivership through the date of production of documents requested herein.
  
11. “Appraisal Reports”: Means all reports, data compilations, print-outs, charts, lists, and the like, that contain, or purport to contain appraisals, valuations, price estimate, or any other designation of value, estimated value, income, or income potential for any domain name or right in or to a domain name owned by Quantec LLC or NovoPoint LLC.
  
12. “Bankruptcy Case”: refers to Case No. 09-34784-SGJ pending in the Bankruptcy Court, Northern District of Texas, Dallas Division and any other related cases or matters relating to, or ancillary to that action.
  
13. “District Court Case” or “Receivership Case”: refers to Case Number 3:09cv00988 pending the District Court, Northern District of Texas, Dallas Division and any other related cases or matters relating to, or ancillary to that action.
  
14. “Receivership”: refers to the receivership created in, or arising out of the District Court Case.
  
15. “Domain Names” or “domain names”: refers to the 150,000 domain names that are the subject of the proposed auction.



Instructions

1. Respond to each request for production separately by listing the materials and by describing them as defined above. If the material is numbered or labeled for production, in each response provide both the information that identifies the material and the material's number or label.

2. Produce documents and tangible things in the forms as they are kept in the ordinary course of business, or organize and number or label them to correspond with the categories in the discovery request.

3. Produce electronically stored information in electronic format. Specifically, we request that you produce documents in native format **and** in TIFF format maintaining all associated metadata. For any electronically stored information produced:

- a. Produce a discovery log that details the type of information, the source of the information, the discovery request to which the information corresponds, and the information's electronic ID number.
- b. Write all of the electronically stored information to a cd, dvd, flash drive or external hard drive.

4. For electronically stored information, identify every source containing potentially responsive information that the Receiver is not searching or producing.

5. If objecting to a request for production, state the objection with particularity, providing specific grounds for the objection.

6. For any materials that the Receiver asserts are privileged, protected, or otherwise exempt from discovery, provide the following:

- a. The specific grounds for the claim of privilege, protection, or other exemption.
- b. The type of material being withheld, and, if the material is electronically stored information, the file format of the material.
- c. The subject matter of the material.
- d. The date of the material.
- e. The name, job title, and address of the author of the material.
- f. The name, job title, and address of each addressee of the material.
- g. The name, job title, and address of each person who received, was copied on, or otherwise saw all, part, or a summary of the material.
- h. The name, job title, and address of the custodian of the material and the

material's current location.

7. For any materials that you claim no longer exist or cannot be located, provide all of the following:

- a. A statement identifying the material.
- b. A statement of how and when the material ceased to exist or when it could no longer be located.
- c. The reasons for the material's nonexistence or loss.
- d. The identity, address, and job title of each person having knowledge about the nonexistence or loss of the material.
- e. The identity of any other materials evidencing the nonexistence or loss of the material or any facts about the nonexistence or loss.

## **REQUESTS FOR PRODUCTION**

**REQUEST 1:** Any and all documents relating to any review by Dykema of a potential conflict of interest in undertaking representation of the Receiver, including potential conflict of interest in being adverse to Jeffrey Baron.

**RESPONSE:**

**REQUEST 2:** Documents relating to contacts with potential claimants who made claims asserting that Jeffrey Baron owed them money for legal services.

**RESPONSE:**

REQUEST 3: Document pertaining to sales, or proposed sales, of domain names prior to the auction conducted in the Ondova case.

RESPONSE:

REQUEST 4: All affidavits signed by Damon Nelson regarding sale, marketing, or negotiations for the sale of domain names.

RESPONSE:

REQUEST 5: All correspondence relating to UDRP claims filed against Novo Point, LLC, or Quantec, LLC

RESPONSE:

REQUEST 6: Copies of form letters used by the Receiver or their agents, including Joshua Cox and James Eckels responding to UDRP claims.

RESPONSE:

REQUEST 7: Documents relating to tax services provided by Grant Thornton undertaken for the receivership concerning Novo Point, Quantec, and/or Jeffrey Baron.

RESPONSE:

REQUEST 8: Correspondence Relating to Joseph (a.k.a. “Joey”) Dauben and issues including but not limited to statements by Mr. Dauben regarding Mr. Vogel and prior judgments being enforced by Gardere against Dauben.

RESPONSE:

REQUEST 9: Documents relating to the Hellerman Barret public relations firm and investigation of Mr. Baron and that firm for alleged violations of the receivership order.

RESPONSE:

REQUEST 10: Communications between Receiver and Trustee’s counsel (and/or counsel) regarding the Receivership .

RESPONSE:

REQUEST 11: Documents relating to communication between the Receiver, his lawyers, and Jeff Harbin.

RESPONSE:

REQUEST 12: Documents between the Trustee, Receiver and/or Elizabeth Shurig regarding tax liability and related issues for Novo Point, LLC, Quantec, LLC, and Jeff Baron.

RESPONSE:

REQUEST 13: Documents relating to communications between any of the attorney claimants and Peter Vogel, Daniel Sherman, and/or the Receiver's lawyers.

RESPONSE:

REQUEST 14: Documents concerning selling or monetizing domain names.

RESPONSE:

REQUEST 15: Documents relating to communications between the Receiver and the Village Trust or the Trustee.

RESPONSE:

REQUEST 16: Documents relating to communications between the Receiver and the registrar Fabulous.

RESPONSE:

REQUEST 17: Documents relating to communications between the Receiver and Domain Holdings, including but not limited to dashboard reports.

RESPONSE:

REQUEST 18: Documents relating to communications between the Receiver and sedo.com .

RESPONSE:

REQUEST 19: Documents relating to communications between the Receiver and the UDRP dispute resolution service providers: WIPO or National Arbitration Forum.

RESPONSE:

REQUEST 20: Documents relating to communications between the Receiver and ICANN.

RESPONSE:

REQUEST 21: Produce calendars reflecting telephone or in-person meetings between the Receiver & Trustee and any agendas for said meetings.

RESPONSE:

REQUEST 22: Documents regarding substitution of counsel, including memoranda, correspondence, or emails regarding the same.

RESPONSE:

Very respectfully,

/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](mailto:srcochell@cochellfirm.com)

**CERTIFICATE OF SERVICE**

I hereby certify that this document was served electronically to counsel for the Receiver, David Schenk and Jeff Fine, and counsel for the Trustee, Ray Urbanik and Richard Hunt, and John MacPete by email on April 19, 2013.

Ray Urbanik  
Richard M. Hunt  
MUNSCH HARDT  
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jmacpete@jmacpeteiplaw

*/s/ Stephen R. Cochell*







IT IS FURTHER ORDERED that Baron be allowed to obtain discovery from the claimants to review all invoices and billing records as well as depose fact witnesses.

SIGNED on this \_\_\_\_ day of April, 2013.

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U.S. DISTRICT JUDGE

Gerrit M. Pronske  
State Bar No. 16351640  
Melanie P. Goolsby  
State Bar No. 24059841  
PRONSKE & PATEL, P.C.  
2200 Ross Avenue, Suite 5350  
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**COUNSEL FOR THE PETITIONING CREDITORS**

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

**NETSPHERE, INC., MANILA** §  
**INDUSTRIES, INC., AND MUNISH** §  
**KRISHAN,** §  
**Plaintiffs** § **CIVIL ACTION NO. 3:09-cv-0988-F**  
v. §  
**JEFFREY BARON AND ONDOVA** §  
**LIMITED COMPANY,** §  
**Defendants.** §

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

**In re:** §  
**JEFFREY BARON,** § **CASE NO. 12-37921-7**  
**Debtor.** § **INVOLUNTARY CHAPTER 7**  
§ **PROCEEDING**

**DECLARATION DESIGNATING SETTLEMENT AUTHORITY**

I hereby state as follows under penalty of perjury pursuant to 28 U.S.C. § 1746:

1 My name is Gary G. Lyon. I am over the age of eighteen (18) years and am competent to testify to the matters set forth herein.

2 This Declaration is provided pursuant to the Order Directing Mediation entered in the above-captioned cases.

3 I am a petitioning creditor in the above-captioned involuntary case (together, the "Petitioning Creditors").

4 I hereby designate Gerrit Pronske, counsel for the Petitioning Creditors who will be personally attending the court-ordered mediation in the above-captioned cases, as my personal representative with full and complete authority to enter into a settlement on my behalf without the necessity of consulting with me during the mediation.

5 To the best of my knowledge, the information contained herein is true and accurate.

FURTHER DECLARANT SAYETH NOT.

I declare on April 21, 2013 under penalty of perjury that the foregoing is true and correct.

/s/

---

Gerrit M. Pronske  
State Bar No. 16351640  
Melanie P. Goolsby  
State Bar No. 24059841  
PRONSKE & PATEL, P.C.  
2200 Ross Avenue, Suite 5350  
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**COUNSEL FOR THE PETITIONING CREDITORS**

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

**NETSPHERE, INC., MANILA  
INDUSTRIES, INC., AND MUNISH  
KRISHAN,**

**Plaintiffs**

v.

**JEFFREY BARON AND ONDOVA  
LIMITED COMPANY,**

**Defendants.**

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**CIVIL ACTION NO. 3:09-cv-0988-F**

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

**In re:**

**JEFFREY BARON,**

**Debtor.**

§  
§ **CASE NO. 12-37921-7**  
§  
§ **INVOLUNTARY CHAPTER 7**  
§ **PROCEEDING**

**DECLARATION DESIGNATING SETTLEMENT AUTHORITY**

I hereby state as follows under penalty of perjury pursuant to 28 U.S.C. § 1746:

1 My name is Robert J. Garrey am over the age of eighteen (18) years and am  
competent to testify to the matters set forth herein.

2 This Declaration is provided pursuant to the Order Directing Mediation entered in the above-captioned cases.

3 I am a petitioning creditor in the above-captioned involuntary case (together, the "Petitioning Creditors").

4 I hereby designate Gerrit Pronske, counsel for the Petitioning Creditors who will be personally attending the court-ordered mediation in the above-captioned cases, as my personal representative with full and complete authority to enter into a settlement on my behalf without the necessity of consulting with me during the mediation.

5 To the best of my knowledge, the information contained herein is true and accurate.

FURTHER DECLARANT SAYETH NOT.

I declare on April 22, 2013 under penalty of perjury that the foregoing is true and correct.

1st Robert J. Luning





2 This Declaration is provided pursuant to the Order Directing Mediation entered in the above-captioned cases.

3 I am a petitioning creditor in the above-captioned involuntary case (together, the "Petitioning Creditors").

4 I hereby designate Gerrit Pronske, counsel for the Petitioning Creditors who will be personally attending the court-ordered mediation in the above-captioned cases, as my personal representative with full and complete authority to enter into a settlement on my behalf without the necessity of consulting with me during the mediation.

5 To the best of my knowledge, the information contained herein is true and accurate.

FURTHER DECLARANT SAYETH NOT.

I declare on April 22, 2013 under penalty of perjury that the foregoing is true and correct.

/s/  \_\_\_\_\_



2 This Declaration is provided pursuant to the Order Directing Mediation entered in the above-captioned cases.


3 I am a petitioning creditor in the above-captioned involuntary case (together, the "Petitioning Creditors").

4 I hereby designate Gerrit Pronske, counsel for the Petitioning Creditors who will be personally attending the court-ordered mediation in the above-captioned cases, as my personal representative with full and complete authority to enter into a settlement on my behalf without the necessity of consulting with me during the mediation.

5 To the best of my knowledge, the information contained herein is true and accurate.

FURTHER DECLARANT SAYETH NOT.

I declare on April 22, 2013 under penalty of perjury that the foregoing is true and correct.

/s/   
Patrick Powers, Partner  
Powers Taylor LLP



Peter Vogel, and based on the opposition of the Noticed deposition by Receiver, Baron presumes counsel for Receiver will oppose this Motion. Therefore, the Motion is submitted to the Court for consideration.” These presumptions are insufficient to meet the requirements as set forth in the local rules. It is precisely for these types of disputes that the conference requirement is in place; a motion to compel discovery should be filed only after the parties have made legitimate attempts to reach an agreement and then only on those specific matters for which the parties cannot agree. At this time, given that the parties have not meaningfully discussed discovery, it is premature to compel it. Therefore, the Motion for Discovery is DENIED WITHOUT PREJUDICE.

The Court adds, to hopefully guide the parties, that the Bankruptcy Court, this Court and the Fifth Circuit have not found bad faith on the part of any of the Receivership parties. The Court therefore encourages counsel to avoid over-reliance on arguments which have already been rejected by various courts and to instead focus on the merits of the fees themselves.

## **II. Motion for Continuance**

Baron also moves for a continuance to allow more time for his counsel to review the submitted fee applications on the grounds that there are thousands of entries to review, “inflated, duplicative or unnecessary” billings by the Receiver, Trustee and their lawyers, and that the time allotted is not sufficient for Baron’s counsel, both sole practitioners, to review all of the billings. Although the Court is sympathetic to the amount of work that needs to be done, it is not convinced that a continuance is necessary.

First, the Court set the deadlines for the fee applications, the objections, the pre-trial conference and the trial itself in the presence of all parties and with their input. After the Court’s initial suggestion for deadlines, counsel for the Trustee suggested a longer time frame to allow for the preparation of complete fee applications and objections; the deadlines were accordingly

adjusted. When the Court addressed Mr. Cochell, he raised no concerns or objections to the finalized schedule itself and merely expressed concern about obtaining funds from the Receivership to hire staff to assist on this project (addressed below). To facilitate the expedited schedule and the physical constraints of Mr. Baron's attorneys, the Court satisfied Mr. Cochell's concerns by allowing for general and not line-by-line objections.

Second, throughout the duration of the Receivership, all parties requesting payment from its funds have filed applications to the Court. Accompanying these filings are appendices supporting the requested fees and expenses. Although there will undoubtedly be additional, new entries for counsel to review in the most recently filed applications, the substance of the earlier fee requests has been on the record for months; these billings cannot, therefore, be a surprise to Baron or his counsel. Similarly, the Court informed the parties of its intents with regard to fees in light of the Fifth Circuit opinion and asked the parties to respond. Now that the Mandate has issued, the Court can proceed. This issue has been pending for months and much of the Receiver's, Trustee's and their counsel's billing information has been available for some time.

Finally, all parties are aware that this Court will be leaving the bench at the end of May and has limited availability to resolve these important issues. Given that the Fifth Circuit directed this Court, with its particular knowledge of this complicated case, to re-examine the Receivership fees, it is to the benefit of all involved, including Mr. Baron, to have these matters resolved promptly and by the Court most familiar with the case. Any additional continuance will make it impossible for this Court to try this issue; if this Court cannot do so, the resulting delay that will undoubtedly result if this case is transferred will be a prejudice to all parties.

As to the due process concern raised by Mr. Baron, the Court is not convinced that any violation has occurred. Baron must be given a meaningful opportunity to be heard in a

meaningful manner. *Williams v. McKeithen*, 939 F.2d 1100, 1105 (5th Cir. 1991) (“This notice requirement, with few exceptions, implies ‘a hearing in which the defendant is given a fair opportunity to oppose the application and to prepare for such opposition [to the injunction].’) (quoting *Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers Local No. 70 of Alameda*, 415 U.S. 423, 94 S.Ct. 1113, 1121 n. 7, 39 L.Ed.2d 435 (1974)). The Court has in no way restricted Baron’s ability or authority to object to the fee applications submitted to the Court. Baron was notified of this issue months in advance, was present when the Court scheduled deadlines to submit and respond to fee applications and will have a full opportunity to be heard at the May 8, 2013 trial. The Court acknowledges the difficulties of responding to these applications in the time period prescribed, but does not think it entirely deficient to allow Baron to meaningfully prepare for trial.

It is for these reasons that Baron’s Motion for Continuance is DENIED.

### **III. Motion to Re-Consider Funding for Baron’s Counsel**

Finally, Baron has again renewed his request for attorney’s fees. At the April 4, 2013 Joint Hearing, both Judge Jernigan and this Court explicitly stated, numerous times, that no one would be paid until a ruling could be made on the involuntary bankruptcy. Nevertheless, the Court noted Baron’s attorneys were in no way foreclosed from seeking compensation at a later time: if no order for relief is entered in the involuntary, a wind down of the Receivership will commence and Mr. Baron’s assets will be returned to him, but if an order for relief is entered they can seek payment through the bankruptcy process. Furthermore, the Court clarified that Mr. Cochell and Mr. Wright could have engagement letters with Mr. Baron, but with the understanding that he did not have assets available at present. The Court reiterates its statements

from the hearing: there will be no favoritism here. No one has been paid in months and no one will be paid right now.

The Court certainly recognizes that particular challenges faced by solo practitioners in complex cases such as this one, but cannot be in the position of providing special treatment. The Court has clearly stated that no professionals will be paid until the Bankruptcy Court issues its opinion on the involuntary bankruptcy. The Court cannot be in a position of assuring payment to Baron's counsel at this time. Both Mr. Cochell and Mr. Wright were aware of the posture and complexities of this case, as well as their own limitations, when they decided to represent Mr. Baron. Now that counsel's right to obtain engagement letters from Mr. Baron has been clarified, the Court sees no reason to further intervene.

The Court also reminds Baron that not only have the Receiver, the Trustee and their counsel been working without payment for many months, but that they all stand to lose recoupment of anticipated fees and expenses in addition to the threat of potential disgorgement. All parties may expend considerable resources to litigate on the Receivership fees without the assurance of any repayment.

As to the constitutional issue raised by Mr. Baron in this regard, the Court finds no infringement of rights. Baron has been afforded a fair opportunity to secure counsel of his own choosing; neither Mr. Cochell nor Mr. Wright was appointed to represent Mr. Baron and both have continued to represent Baron by his consent. *Powell v. Alabama*, 287 U.S. 45 (1932). The Court disagrees with Baron's assertion that he has a right to be represented by paid counsel. The Court, however, does agree that Baron has a right to *retained* counsel. *Mosley v. St. Louis Sw. Ry.*, 634 F.2d 942, 946 (5th Cir. 1981) ("The right of access to retained counsel is one of constitutional dimensions and should be freely exercised without impingement."); *Chandler v.*



*Fretag*, 348 U.S. 3, 10, 75 S. Ct. 1, 5, 99 L. Ed. 4 (1954) (“If in any case, civil or criminal, a state or federal court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing, and, therefore, of due process in the constitutional sense...A necessary corollary is that a defendant must be given a reasonable opportunity to employ and consult with counsel; otherwise, the right to be heard by counsel would be of little worth.”); *Potashnick v. Port City Const. Co.*, 609 F.2d 1101, 1104 (5th Cir. 1980) (“Our analysis of the fifth amendment to the United States Constitution establishes that a civil litigant has a constitutional right to retain hired counsel”). There can be no question that Mr. Cochell and Mr. Wright have been retained, in the constitutional sense. They were selected by Mr. Baron to provide legal advice and to represent him before this Court. There has been no infringement on their authority to do so. That Mr. Baron cannot pay them at this time does not transform this authority.

Baron’s Motion for Reconsideration is DENIED.

#### IV. Conclusion

For the reasons articulated above, the Court is of the opinion that this Motion should be DENIED IN PART AND DENIED WITHOUT PREJUDICE IN PART.

IT IS SO ORDERED.

SIGNED this 22<sup>nd</sup> day of April, 2013.



Royal Furgeson  
Senior United States District Judge

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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No. 10-11202

---

NETSPHERE, INC., ET AL

Plaintiffs

v.

JEFFREY BARON,

Defendant - Appellant

v.

ONDOVA LIMITED COMPANY,

Defendant - Appellee

---

CONS. w/ 11-10113

NETSPHERE, INC., ET AL

Plaintiffs

v.

JEFFREY BARON, Et Al

Defendants

v.

QUANTEC L.L.C.; NOVO POINT L.L.C.,

Movants - Appellants

v.

PETER S. VOGEL

Appellee

-----  
CONS. w/ 11-10289

NETSPHERE, INC., ET AL

Plaintiffs

v.

JEFFREY BARON,

Defendant - Appellant

v.

DANIEL J. SHERMAN,

Appellee

-----  
CONS. w/ 11-10290

NETSPHERE, INC., ET AL,

Plaintiffs

v.

JEFFREY BARON, ET AL

Defendants

v.

QUANTEC L.L.C.; NOVO POINT L.L.C.,

Movants - Appellants

v.

PETER S. VOGEL,

Appellee

-----  
CONS. w/ 11-10390

NETSPHERE, INC., ET AL

Plaintiffs

v.

JEFFREY BARON,

Defendant - Appellant

QUANTEC, L.L.C.; NOVO POINT, L.L.C.,

Movants - Appellants

v.

ONDOVA LIMITED COMPANY,

Defendant - Appellee

PETER S. VOGEL

Appellee

-----  
CONS. w/ 11-10501

NETSPHERE, INCORPORATED, ET AL

Plaintiffs

v.

JEFFREY BARON,

Defendant - Appellant

QUANTEC L.L.C.; NOVO POINT L.L.C.,

Movants - Appellants

CARRINGTON, COLEMAN, SLOMAN & BLUMENTHAL, L.L.P.,

Appellant

v.

PETER S. VOGEL; DANIEL J. SHERMAN,

Appellees

-----  
CONS. w/ 12-10003

NETSPHERE, INC, ET AL

Plaintiffs

v.

JEFFREY BARON,

Defendant-Appellant

QUANTEC, L.L.C. NOVO POINT, L.L.C.

Movants-Appellants

GARY SCHEPPS,

Appellant

v.

PETER S. VOGEL

Appellee.

---

CONS. w/ 12-10444

In re: NOVO POINT L.L.C.

Petitioner

---

CONS. w 12-10489, 12-10657, and 12-10804

NETSPHERE, INCORPORATED, ET AL

Plaintiffs

v.

JEFFREY BARON,

Defendant - Appellant

NOVO POINT L.L.C.; QUANTEC L.L.C.,

Movants - Appellants

v.

PETER S. VOGEL; DANIEL J. SHERMAN,

Appellees

---

CONS. w/ 12-11082

NETSPHERE, INCORPORATED, ET AL

Plaintiffs

v.

JEFFREY BARON,

Defendant - Appellant

QUANTEC L.L.C.; NOVO POINT, L.L.C.,

Movants - Appellants

v.

PETER S. VOGEL,

Appellee

---

Appeal from the United States District Court for the  
Northern District of Texas, Dallas

---

Before DEMOSS, SOUTHWICK, and HIGGINSON, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the opposed emergency motion of Jeffrey Baron for stay pending appeal is DENIED.

IT IS FURTHER ORDERED that the opposed emergency motion to stay the issuance of the mandate is DENIED.

Gerrit M. Pronske  
State Bar No. 16351640  
Melanie P. Goolsby  
State Bar No. 24059841  
PRONSKE & PATEL, P.C.  
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Email: mgoolsby@pronskepatel.com

**COUNSEL FOR THE PETITIONING CREDITORS**

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

**NETSPHERE, INC., MANILA  
INDUSTRIES, INC., AND MUNISH  
KRISHAN,**

**Plaintiffs**

**v.**

**JEFFREY BARON AND ONDOVA  
LIMITED COMPANY,**

**Defendants.**

§  
§  
§  
§  
§ **CIVIL ACTION NO. 3:09-cv-0988-F**  
§  
§  
§  
§  
§  
§

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

**In re:**

**JEFFREY BARON,**

**Debtor.**

§  
§ **CASE NO. 12-37921-7**  
§  
§ **INVOLUNTARY CHAPTER 7**  
§ **PROCEEDING**

**DECLARATION DESIGNATING SETTLEMENT AUTHORITY**

I hereby state as follows under penalty of perjury pursuant to 28 U.S.C. § 1746:

1 My name is Gary G. Lyon. I am over the age of eighteen (18) years and am competent to testify to the matters set forth herein.



2 This Declaration is provided pursuant to the Order Directing Mediation entered in the above-captioned cases.

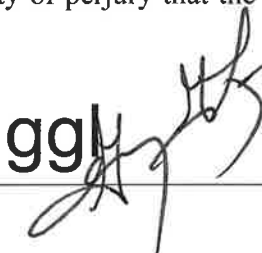
3 I am a petitioning creditor in the above-captioned involuntary case (together, the "Petitioning Creditors").

4 I hereby designate Gerrit Pronske, counsel for the Petitioning Creditors who will be personally attending the court-ordered mediation in the above-captioned cases, as my personal representative with full and complete authority to enter into a settlement on my behalf without the necessity of consulting with me during the mediation.

5 To the best of my knowledge, the information contained herein is true and accurate.

FURTHER DECLARANT SAYETH NOT.

I declare on April 21, 2013 under penalty of perjury that the foregoing is true and correct.

/s/ **gg**   
Digitally signed by ggl  
DN: cn=ggl, c=US, o=Willingham Law Firm,  
ou=Legal-initials, email=gglon.attorney@gmail.  
com  
Location: Anna, Texas  
Date: 2013.04.21 22:23:00 -05'00'

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

NETSPHERE, INC.,	§	
MANILA INDUSTRIES, INC., AND	§	
MUNISH KRISHAN	§	
	§	
PLAINTIFFS,	§	
	§	
V.	§	CIVIL ACTION NO. 3:09-CV-0988-F
	§	
JEFFREY BARON AND	§	
ONDOVA LIMITED COMPANY,	§	
	§	
DEFENDANTS.	§	

**RECEIVER’S OBJECTION TO TRUSTEE’S FEE APPLICATION**

Based on this Court’s Scheduling Order of April 5, 2013 [Docket No. 1220] Peter S. Vogel, Receiver over Jeffrey Baron and the Receivership Parties (the “Receiver”), files this Objection to the Fee Application filed by the Chapter 11 Trustee Daniel J. Sherman (the “Trustee”) on April 17, 2013 [Docket No. 1229] since the Trustee has never been hired by the Receiver as a Receivership Professional.

**I. RECEIVERSHIP PROFESSIONALS**

Based on the recommendation of the Honorable Stacey Jernigan, judge in the Ondova Bankruptcy (*In re Ondova Ltd. Co.*, No. 09-34784), on November 24, 2010 the Trustee in the Ondova Bankruptcy, filed an Emergency Motion of Trustee for Appointment of a Receiver Over Jeffrey Baron. On November 24, 2010 this Court issued the Order Appointing Receiver (the “Receivership Order”) [Docket No. 124] which included authority for the Receiver to “...choose, engage, and employ attorneys, accountants, appraisers, and other Independent contractors and technical specialists (collectively, “Professionals”) ... Receiver deems advisable or necessary...” Receivership Order, p. 8. As a result of the Receivership Order, from November 24, 2010 until

today the Receiver has dedicated time almost daily to the Receivership estate, which work has been extremely complex and involves a unique set of circumstances created by Mr. Baron's vexatious behavior in this Court, and many other Courts. As the Court is well-aware, the Receiver has hired many Professionals in the ensuing litigation and for the management of the Receivership estate as listed in chronological order below, **HOWEVER THE TRUSTEE IS NOT INCLUDED IN THIS LIST:**

<b>Professionals</b>	<b>Purpose</b>	<b>Beginning Date</b>	<b>Ending Date</b>
Gardere Wynne Sewell LLP	Counsel for the Receiver	November 2010	July 2012
13 law firms outside of Texas	Served as local counsel for the filing of 28 USC §754 miscellaneous actions to reach Receivership assets	December 2010	Present
Thomas Jackson	Counsel for Receivership parties Novo Point, LLC and Quantec, LLC	December 2010	March 2011
Joshua Cox	Counsel for Receivership party Quantec, LLC	December 2010	Present
James Eckels	Counsel for Receivership party Novo Point, LLC	December 2010	Present
Jeffrey Harbin	Manager of Receivership parties Novo Point, LLC and Quantec, LLC	December 2010	February 2011
Gary Lyon	Counsel for the Receiver	December 2010	Present
Grant Thornton LLP	CPAs for Receivership	December 2010	Present
Martin Thomas	Counsel for Jeffery Baron in the Ondova Bankruptcy	December 2010	September 2012
Damon Nelson	Manager of Receivership parties Novo Point, LLC and Quantec, LLC	February 2011	Present
Dykema Gossett PLLC	Counsel for the Receiver	July 2012	Present
Matt Morris	Expert Witness for Confirmation Hearing in Ondova Bankruptcy	October 2012	Present

The Receiver has contracts with the Receivership Professionals to pay their fees and expenses subject to the approval of the Court, **HOWEVER THE RECEIVER HAS NEVER HAD A CONTRACT WITH THE TRUSTEE, AND ACCORDINGLY THE TRUSTEE IS NOT A RECEIVERSHIP PROFESSIONAL.**

**II. FEES AND EXPENSES OF THE RECEIVERSHIP**

On April 17, 2013 the Receiver filed a Fee Application for the Receivership Professionals and the Receiver which did not include the Trustee since the Trustee has never been hired as a Receivership Professional, and accordingly the Receiver objects to the Trustee's Fee Application in its entirety.

Respectfully submitted,

*By: /s/ Peter S. Vogel*  
Peter S. Vogel  
State Bar No. 20601500  
1601 Elm Street, Suite 3000  
Dallas, Texas 75201  
(214) 999-3000  
(214) 999-3422 Facsimile

**RECEIVER, PETER S. VOGEL**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served via the Court's ECF system on all counsel of record on April 25, 2013.

*By: /s/ Peter S. Vogel*  
Peter S. Vogel



## OBJECTIONS AND ARGUMENT

### **I. The Trustee and his counsel are not “Receivership Professionals” under the Receivership Order.**

Under this Court’s underlying Receivership Order [Dkt. #130], the Receiver was empowered to “choose, *engage and employ* attorneys, accountants, appraisers and other independent contractors and technical specialists (collectively ‘Professionals’) as each Receiver deems necessary or advisable in the performance of duties and responsibilities under the authority granted by this Order.” Receivership Order at p. 3, ¶ K (emphasis added). However, it is undisputed that neither the Trustee nor his counsel were ever formally “engaged” or “employed” by the Receiver, as required by Paragraph K of this Court’s Receivership Order; in contrast to the Receiver’s current counsel (Dykema) and his former counsel (Gardere), there is no engagement letter or other written agreement between the Receiver and the Trustee’s counsel (Munsch Hardt). Indeed, the Trustee admits that there is no contract or other writing indicating that the Receiver—who, at all times, has been represented by his own Court-approved counsel—ever made the affirmative election to “choose, engage and employ” the Trustee’s counsel (Munsch Hardt) as required by Paragraph K of the Receivership Order. Absent such formal engagement, the Trustee’s counsel do not qualify as “Receivership Professionals” entitled to compensation under the terms of the Receivership Order. *See* Receivership Order [Dkt. #130] at 8-9.

### **II. The Trustee and his counsel defended the Receivership out of self-interest, not because the Receiver retained them.**

At the core of the Trustee’s claim that he should receive funds to pay his counsel from the Receivership Estate is his argument that his counsel was working to defend the validity of the Receivership from Mr. Baron’s challenge in the Fifth Circuit. To be sure, the Trustee’s counsel

took various actions intended to defend the Receivership in the Fifth Circuit and elsewhere. However, it was in the Trustee's interest to do so, and the Trustee's counsel undertook these actions in order to protect their own client—the Trustee—rather than because they had been engaged by the Receiver. As the Fifth Circuit noted in its opinion in this matter, the costs for an improper receivership are *ordinarily* the responsibility of the party that moved for the imposition of the improper receivership—here, the Trustee. *See* Fifth Circuit Opinion of December 18, 2012 at 24.

As the Fifth Circuit explained, the general rule is as follows: “When a receivership is improper or the court lacks equitable authority to appoint a receiver, the party that sought the receivership at times has been held accountable for the receivership fees and expenses.” *Id.* (citing *W.F. Potts & Co. v. Cochrane*, 59 F.2d 375, 377-78 (5th Cir. 1932)). To be sure, this case presents an exception to that general rule, as the Fifth Circuit held that “the record supports that the circumstances that led to the appointment of a receiver were primarily of Baron’s own making” and thus held Baron himself—rather than the Trustee—responsible for the costs of this particular Receivership. *Id.* at 26. However, in instructing his counsel to defend the validity of the Receivership, the Trustee had no way of knowing that this would be the ultimate holding of the Fifth Circuit, and the Trustee was thus reasonably trying to defend his own self-interest by avoiding having to pay the costs of the Receivership. And, in this, the Trustee was successful, as the Fifth Circuit relieved him of any obligation for the expenses of the Receivership. But the fact that the Trustee’s self-interest-based position happened to overlap with the position of the Receiver in the Fifth Circuit does not somehow entitle the Trustee to funds to pay for his attorneys from the Receivership Estate. On the contrary, as the Trustee’s own December 31,

2012 Fee Application [Dkt. #1125] in this Court admitted, the Fifth Circuit rejected the Trustee's motion that he be substituted for the Receiver as the appellee in appeal #11-10113:

This began with Case No. 11-10113, the very first appeal to name the Receiver as appellee. In that case the Receiver filed a *Motion specifically requesting that the Trustee be named appellee* so that the Trustee, rather than the Receiver, would have the briefing obligation. *That Motion was denied*, and so the Trustee filed a lengthy brief as Amicus Curiae in which the Receiver joined.

*See* Trustee's Fee Application [Dkt. #1125] at 5-6 (emphasis added). In other words, the Fifth Circuit itself recognized that while the interests and positions of the Receiver and the Trustee might overlap vis-à-vis Mr. Baron, they remained separate parties for purposes of the appellate process. Consistent with that ruling and with the Trustee's distinct interest in defending the appeal, neither the Trustee nor his counsel ever appeared or any signed any pleading on behalf of the Receiver.

In the final measure, the Trustee's counsel defended the Receivership on appeal not because the Receiver engaged or hired them, but because they were quite properly defending their own client, the Trustee, against the very real risk that he would be held responsible for the costs of an improper Receivership. The defensive efforts of the Trustee's counsel were successful, and the Trustee was not held responsible by the Fifth Circuit for the costs of the Receivership—but this success does not somehow transform the Trustee's counsel into "Receivership Professionals" entitled to payment from the Receivership Estate under either this Court's Receivership Order or the Fifth Circuit's Opinion. On the contrary, this Court's Advisory of January 2, 2013 was precisely correct; "In light of the Trustee's role in pursuing the Receivership and the Fifth Circuit's opinion which only authorizes payment of fees to the Receiver and his counsel, this Court believes that it was not and is not authorized to pay any of



the Trustee's expenses from Receivership funds." Advisory at 3. Now that the Fifth Circuit's Mandate has finally issued, the Court can transform its Advisory into an Order.

**III. There is a bona fide dispute between the Receiver and the Trustee concerning these attorneys' fees, with such dispute settled by the Joint Plan confirmed by the Bankruptcy Court.**

The Receiver's obligation, or lack thereof, to pay the fees incurred by the Trustee's counsel in defense of the Receivership is the subject of a bona fide dispute (indeed, a hotly contested dispute) between the Receiver and the Trustee. Indeed, it was precisely that disputed claim for attorneys' fees that the Joint Plan sponsored by the Receiver and the Trustee in the Ondova bankruptcy was designed to settle. After a five-day hearing that included testimony from the Trustee and the Receiver concerning the disputed claim, the Joint Plan was confirmed by the Bankruptcy Court on November 19, 2012. However, the Fifth Circuit's subsequent opinion disrupted both the confirmation of the Joint Plan and the settlement between the Trustee and the Receiver that it embodied. This does not change the fact that the Trustee's claim for funds to pay his attorneys' fees from the Receivership is the subject of a real and unresolved dispute.

**Conclusion**

For all the foregoing reasons, the Trustee respectfully requests that the Court transform its January 2, 2013 Advisory into an Order that, *inter alia*, denies the Trustee's claim for attorneys' fees from the Receivership Estate.

Respectfully submitted,

DYKEMA GOSSETT PLLC

By: /s/ David J. Schenck

David J. Schenck

State Bar No. 17736870

Jeffrey R. Fine

State Bar No. 07008410

Christopher D. Kratovil

State Bar No. 24027427

1717 Main Street, Suite 4000

Dallas, Texas 75201

(214) 462-6455

(214) 462-6401 (Telecopier)

ATTORNEYS FOR THE RECEIVER, PETER S.  
VOGEL

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served via the Court's ECF system on all counsel of record on April 25, 2013.

By: /s/ David J. Schenck

David J. Schenck



2 This Declaration is provided pursuant to the Order Directing Mediation entered in the above-captioned cases.

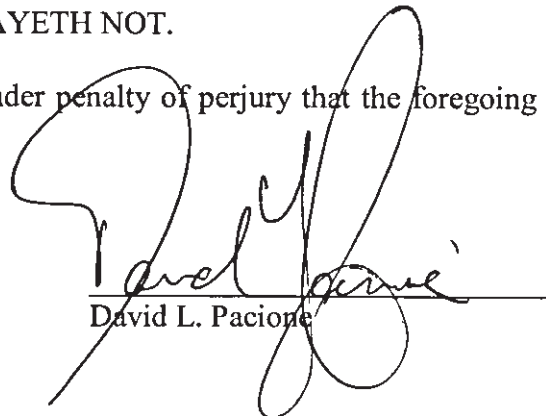
3 I am a petitioning creditor in the above-captioned involuntary case (together, the "Petitioning Creditors").

4 I hereby designate Gerrit Pronske, counsel for the Petitioning Creditors who will be personally attending the court-ordered mediation in the above-captioned cases, as my personal representative with full and complete authority to enter into a settlement on my behalf without the necessity of consulting with me during the mediation.

5 To the best of my knowledge, the information contained herein is true and accurate.

FURTHER DECLARANT SAYETH NOT.

I declare on April 26, 2013 under penalty of perjury that the foregoing is true and correct.



David L. Pacione

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

United States Court of Appeals  
Fifth Circuit

**FILED**

December 18, 2012

Lyle W. Cayce  
Clerk

\_\_\_\_\_  
No. 10-11202  
\_\_\_\_\_

NETSPHERE, INC., ET AL,

Plaintiffs

v.

JEFFREY BARON,

Defendant - Appellant

v.

ONDOVA LIMITED COMPANY,

Defendant - Appellee

CLERK OF DISTRICT COURT  
NORTH DOWNS, TEXAS  
FILED  
2013 APR 24 AM 11:16  
DEPUTY CLERK NT

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CONS. w/ 11-10113

NETSPHERE, INC., ET AL,

Plaintiffs

v.

JEFFREY BARON, ET AL,

Defendants

v.

QUANTEC, L.L.C.; NOVO POINT, L.L.C.,

Movants - Appellants

v.

PETER S. VOGEL,

No. 10-11202

Appellee

-----  
CONS. w/ 11-10289

NETSPHERE, INC., ET AL,

Plaintiffs

v.

JEFFREY BARON,

Defendant - Appellant

v.

DANIEL J. SHERMAN,

Appellee

-----  
CONS. w/ 11-10290

NETSPHERE, INC., ET AL,

Plaintiffs

v.

JEFFREY BARON, ET AL,

Defendants

v.

QUANTEC, L.L.C.; NOVO POINT, L.L.C.,

Movants - Appellants

No. 10-11202

v.

PETER S. VOGEL,

Appellee

-----  
CONS. w/ 11-10390

NETSPHERE, INC., ET AL,

Plaintiffs

v.

JEFFREY BARON,

Defendant - Appellant

QUANTEC, L.L.C.; NOVO POINT, L.L.C.,

Movants - Appellants

v.

ONDOVA LIMITED COMPANY,

Defendant - Appellee

PETER S. VOGEL,

Appellee

-----  
CONS. w/ 11-10501

NETSPHERE, INC., ET AL,

Plaintiffs

v.

No. 10-11202

JEFFREY BARON,

Defendant - Appellant

QUANTEC, L.L.C.; NOVO POINT, L.L.C.,

Movants - Appellants

CARRINGTON, COLEMAN, SLOMAN & BLUMENTHAL, L.L.P.,

Appellant

v.

PETER S. VOGEL; DANIEL J. SHERMAN,

Appellees

-----  
CONS. w/ 12-10003

NETSPHERE, INC., ET AL,

Plaintiffs

v.

JEFFREY BARON,

Defendant - Appellant

QUANTEC, L.L.C.; NOVO POINT, L.L.C.,

Movants - Appellants

GARY SCHEPPS,

Appellant

v.



No. 10-11202

PETER S. VOGEL,

Appellee

---

CONS. w/ 12-10444

In re: NOVO POINT, L.L.C.,

Petitioner

---

CONS. w/ 12-10489, 12-10657, and 12-10804

NETSPHERE, INC., ET AL,

Plaintiffs

v.

JEFFREY BARON,

Defendant - Appellant

NOVO POINT, L.L.C.; QUANTEC, L.L.C.,

Movants - Appellants

v.

PETER S. VOGEL; DANIEL J. SHERMAN,

Appellees

---

CONS. w/ 12-11082

NETSPHERE, INCORPORATED, ET AL

Plaintiffs

No. 10-11202

v.

JEFFREY BARON,

Defendant - Appellant

QUANTEC L.L.C.; NOVO POINT, L.L.C.,

Movants - Appellants

v.

PETER S. VOGEL,

Appellee

---

Appeals from the United States District Court  
for the Northern District of Texas

---

Before DeMOSS, SOUTHWICK, and HIGGINSON, Circuit Judges.

LESLIE H. SOUTHWICK, Circuit Judge:

These consolidated interlocutory appeals arise from the district court's appointment of a receiver over Jeffrey Baron's personal property and entities he owned or controlled. The district court sought to stop Baron's practice of regularly firing one lawyer and hiring a new one. This practice vexed the litigation involving Baron's alleged breaches of a settlement agreement and a related bankruptcy. It also created new claims in bankruptcy by unpaid attorneys. Baron appealed the receivership order and almost every order entered by the district court thereafter. We hold that the appointment of the receiver was an abuse of discretion and REVERSE and REMAND.

No. 10-11202

Numerous motions and a writ of mandamus to overturn the bankruptcy court's striking of notices of appeal to the district court are also before us. Most are denied as moot. We address below the motions that remain relevant.

#### FACTUAL AND PROCEDURAL HISTORY

Jeffrey Baron and Munish Krishan formed a joint venture involving the ownership and sale of internet domain names. Disputes arose between the venturers, resulting in at least seven lawsuits. In April 2009, after four mediation attempts and several years of litigation, Baron, Krishan, and other parties signed a Memorandum of Understanding ("MOU") settling all disputes. Soon, Baron and one of his companies, Ondova Limited Company, allegedly breached the MOU. In May 2009, Krishan and his company, Netsphere, Inc., filed a lawsuit in the United States District Court for the Northern District of Texas to enforce the MOU. That suit is the one from which the current appeals have been brought.

In June 2009, the district court entered a preliminary injunction to compel Baron's compliance with the MOU. That injunction was later amended to include a \$50,000 per day penalty for a violation. The injunction was entered to prevent deletion of domain names and to force compliance with parts of the MOU. The district court also began expressing concern with the multitude of lawyers appearing for Baron, concerns that would continue in the months ahead.

In July 2009, Netsphere moved to have Baron held in contempt for violating the preliminary injunction. On the day before the scheduled contempt hearing, Baron caused Ondova to file for bankruptcy, which automatically stayed the district court litigation. Netsphere sought to lift the automatic stay, arguing that the domain names at issue in the lawsuit were not owned by Ondova and were not subject to the stay. Ondova allegedly admitted it did not own the domain names that were the subject of the district court litigation – i.e.,

No. 10-11202

the ones involving plaintiff Krishan and defendant Baron that the settlement provided would be divided between them.

The bankruptcy creditors and Ondova eventually agreed to a settlement, but Baron continued to hire new lawyers. Many of the lawyers claimed they had not been paid and began to file claims for legal fees in the bankruptcy proceedings. In September 2009, in bankruptcy court, Baron asserted his Fifth Amendment right not to answer questions that might reveal he was violating the June preliminary injunction. Six days later, the bankruptcy court appointed Daniel Sherman as Chapter 11 trustee. The bankruptcy court recommended that the district court appoint a special master to mediate among the trustee, Baron, and the attorneys with claims against the Ondova bankruptcy estate, but no master was appointed at that time.

Beginning in February 2010, negotiations began for another settlement. On May 5, 2010, the bankruptcy court held a status conference. If no settlement could be reached by May 14, the bankruptcy judge suggested the trustee file to convert the case to one in Chapter 7. The trustee did so, stating liquidation was in the best interest of creditors. Several hearings were held over the next month. On June 22, 2010, the parties announced a global settlement in principle. At a July 12 bankruptcy court hearing, the parties represented that most issues had been resolved. Two days later at another hearing, the bankruptcy judge approved the settlement subject to six remaining issues.

The settlement, dated July 2, 2010, provided for the division of domain names between companies controlled by Baron and Krishan. The odd-numbered names were assigned to Quantec, LLC, for Baron's benefit, while Manila Industries, Inc. – under Krishan's control – was assigned the even-numbered names. The agreement was not to become effective until the "Settlement Date," which was defined as "the day after the date on which the Bankruptcy Court's order approving this Agreement becomes a Final Settlement Order." On July 28,

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2010, the bankruptcy court approved the settlement and ordered it to be fully executed by July 30. The bankruptcy court maintained jurisdiction to resolve disputes arising under the agreement. Attached to the agreement was a “Stipulated Dismissal with Prejudice” of the district court suit. Though signed by the parties and attorneys, the district court never entered the dismissal.

On September 15, 2010, a hearing was held on the settlement agreement. The trustee said that 30 or 40 items in the agreement had been completed and the remaining items were the execution of a supplemental agreement appointing a trustee of a trust and the transfer of domain names to Quantec from Manila.

At this hearing, the trustee’s attorney also addressed Baron’s repeated hiring and firing of lawyers – he presented a chart identifying 45 lawyers whom Baron had not paid. Gerrit Pronske, one of Baron’s former attorneys who was seeking to withdraw, testified that he worked for Baron full-time for six months and had not been paid. Pronske testified that Baron planned to move assets that were at the time subject to jurisdiction in the United States to a trust in a foreign country. The trust to which Pronske was referring was the Village Trust, a Cook Islands entity which owned Novo Point, LLC and Quantec, LLC. Its trustee is SouthPac, which is also a Cook Islands entity, and Baron is the trust’s sole beneficiary. Pronske indicated that the assets being transferred out of the United States would have been the principal source of payment for his allegedly unpaid attorney fees. The attorney for the trustee was concerned because the money to pay the lawyers and satisfy other claims would be lost if the domain names that Baron’s entities were to own under the settlement left control of the trust that was subject to the court’s jurisdiction.

At this point, the bankruptcy judge stated that “no more lawyers [are] going to be allowed. The question is: Whether any are going to be released; is he going to be pro se; or is he going to have lawyers?” In light of those questions, the bankruptcy judge said she was considering recommending the district court

No. 10-11202

appoint a receiver over Baron and his assets “and let that receiver implement the settlement agreement.” Additionally, the bankruptcy court ordered Baron to request from the trust that \$330,000 be deposited with the bankruptcy trustee as security, to be held until further court order. The money was deposited and held “to pay [Baron’s] obligations.”

On October 13, 2010, in a report and recommendation to the district court, the bankruptcy court reported substantial progress toward the settlement, including “steps towards transferring the ‘Odd Names Portfolio’ portion of the internet domain names to a new Registrar away from Ondova.” Included in the order, in bold, was the bankruptcy court’s judgment that Baron’s hiring and firing of lawyers was exposing the Ondova bankruptcy estate to great expense that should be paid by Baron’s other entities such as Quantec and Novo Point. The court expressed it was “perhaps most concerned about the risk that the bankruptcy estate has and will be exposed to administrative expense claims” because of Baron’s failure to pay lawyers.

Also in this October 13, 2010 report, the bankruptcy court recommended that the district court appoint Peter S. Vogel as special master to mediate the claims for unpaid legal fees. The bankruptcy court further stated that if Baron chose not to cooperate with final consummation of the settlement, Baron could “expect [it] to recommend to His Honor that he appoint a receiver over Mr. Baron.” The court adopted the bankruptcy court’s recommendation and appointed Vogel as special master. Baron again fired his attorney. At this point, the bankruptcy trustee filed an Emergency Motion for Appointment of a Receiver over Baron on November 24, 2010. The trustee asserted the receivership was necessary because of Baron’s failure to cooperate with the order to mediate the legal-fee claims and his continued hiring and firing of lawyers in violation of the court’s order. The trustee argued that Baron’s practice of hiring and firing lawyers would expose the bankruptcy estate to additional administrative claims

No. 10-11202

and further delay the resolution of the bankruptcy proceedings. On November 24, the same day the motion was filed, the district court entered the receivership order without notice to Baron. On December 2, Baron appealed to the Fifth Circuit Court of Appeals and five days later moved for a stay. While “express[ing] no view on the ultimate merits,” we held on December 20, that he had made an inadequate showing for a stay. Baron renewed his motion on occasion but was never granted a stay. Somewhat belatedly, we now express our views on the ultimate merits.

In the district court, the receiver moved to revise the receivership order to make it clear that Novo Point, LLC and Quantec, LLC had always been subject to the receivership. The original order identified Novo Point, Inc., and Quantec, Inc., which are actual but distinct legal entities. The two LLCs filed objections on several grounds. At a hearing on December 17, 2010, attorneys for Novo Point, LLC and Quantec, LLC appeared and agreed they were subject to the receivership order. The district court entered an order stating that the receivership had always included Novo Point, LLC and Quantec, LLC and ordered the LLCs to comply with all reasonable instructions given to them by the receiver. On January 28, 2011, the LLCs filed a notice of appeal challenging their inclusion as receivership parties.

On January 4, 2011, the district court held an evidentiary hearing on Baron’s motion to vacate the receivership order. A month later, the district court entered an order denying Baron’s motion to vacate the receivership. The district court gave six reasons for denying the motion to vacate: (1) “Baron hired and fired counsel in bad faith as a means of delaying court proceedings[;]” (2) “Baron’s vexatious litigation tactics have increased the cost of [the] litigation for all parties[;]” (3) “Baron’s practice of hiring and firing attorneys exposed the Ondova bankruptcy estate to significant expense[;]” (4) “Baron has repeatedly ignored court orders[;]” (5) “Baron repeatedly hired attorneys in bad faith

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without the intention of paying them[;]" and (6) "the appointment of a receiver is necessary to stop Baron from attempting to transfer funds outside the jurisdiction of the United States." Nowhere in its order did the district court find that Baron failed to assign half of the domain names as required by the settlement agreement.

Baron appealed the appointment of the receiver and then appealed numerous subsequent orders entered by the district court. An order appointing a receiver is appealable to courts of appeals as a matter of right. 28 U.S.C. § 1292(a)(2).<sup>1</sup> There is less clarity as to which orders during the pendency of a receivership may properly be appealed. As we later discuss, our conclusions about the receivership itself make most of the later appeals irrelevant.

## DISCUSSION

The central issue on appeal is whether a court can establish a receivership to control a vexatious litigant. The district court appointed a receiver primarily to control Baron's hiring, firing, and non-payment of numerous attorneys. The receiver was granted exclusive control over assets, including Baron's personal property, that were not at issue in the underlying litigation over the domain names. We find no authority to permit establishing a receivership for this purpose. We set out below our reasons for that conclusion and its effect on what has occurred since the receivership was put in place.

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<sup>1</sup> In one of the consolidated appeals in this case, Carrington, Coleman, Sloman & Blumenthal, L.L.P. ("CCSB"), a firm that served as counsel to Baron and Ondova in the bankruptcy proceedings, claimed it is owed \$224,232.69 in unpaid fees. CCSB filed a separate appeal from the district court's disbursement order providing for payment to unpaid attorneys. Under the disbursement order, CCSB is to receive no payments from the receivership; instead, CCSB is to be paid out of the Ondova bankruptcy estate. CCSB agreed that this court lacks jurisdiction over CCSB's appeal given that the firm filed a motion to reconsider that remains pending in the district court. *Ross v. Marshall*, 426 F.3d 745, 752, n.13 (5th Cir. 2005).

Thus, the CCSB appeal is dismissed.



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*I. Propriety of the Receivership Order*

We review a district court's appointment of a receiver for an abuse of discretion. *Santibanez v. Weir McMahon & Co.*, 105 F.3d 234, 242 (5th Cir. 1997). Federal Rule of Civil Procedure 66 gives limited guidance, stating that the civil rules govern in an action involving a receiver. "Under that rule, the appointment of a receiver can be sought 'by anyone showing an interest in certain property or a relation to the party in control or ownership thereof such as to justify conservation of the property by a court officer.'" *Santibanez*, 105 F.3d at 241 (quoting 7 James Moore et al., *Moore's Federal Practice* § 66.05[1] (2d ed. 1996)). Correspondingly, a district court has authority to place into receivership assets in litigation "to preserve and protect the property pending its final disposition." *Gordon v. Washington*, 295 U.S. 30, 37 (1935). Examples the Court gave of the proper use of a receivership included the preservation of property until the foreclosure of a mortgage, or of trust property until appointment of a new trustee, or of a debtor's property until a judgment creditor has it applied to his judgment. *Id.* In none of those situations was the receiver named simply to secure or preserve funds for the satisfaction of a potential later judgment. Receivership is "an extraordinary remedy that should be employed with the utmost caution" and is justified only where there is a clear necessity to protect a party's interest in property, legal and less drastic equitable remedies are inadequate, and the benefits of receivership outweigh the burdens on the affected parties. *See* 12 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2983 (3d ed. 2012); *see also Santibanez*, 105 F.3d at 241-42 (summarizing factors courts must consider before appointing a receiver).

Even if a reasonable basis exists for believing there are benefits to the court and the parties to imposing a receivership, and those reasons likely existed here, resort to that remedy may be inappropriate. The cases on which the district court initially relied in appointing a receiver establish that the court has

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inherent power “to manage [its] own affairs so as to achieve the orderly and expeditious disposition of cases.” *Woodson v. Surgitek, Inc.*, 57 F.3d 1406, 1417 (5th Cir. 1995). These cases, however, refer to a court’s power to dismiss a case with prejudice and the district court’s authority to impose monetary sanctions. *Id.*; *FDIC v. Maxxam, Inc.*, 523 F.3d 566, 584 (5th Cir. 2008). In a later order disbursing attorney fees, the district court also relied on precedents stating that a receivership is an equitable remedy. *Santibanez*, 105 F.3d at 241. That is so, but for the reasons discussed below, equity does not allow a receivership to be imposed over property that was not the subject of the underlying dispute.

Receivers have been used in a number of contexts. “Secured creditors, lien- holders, and mortgagees” may seek appointment of a receiver because they “clearly have an interest in the property in which they have a security interest that may provide a basis for convincing the court to appoint a receiver ending a foreclosure suit or any other action to enforce one or more outstanding liens.” *Wright & Miller, supra*, § 2983; *see also Bookout v. First Nat’l Mortg. & Disc. Co.*, 514 F.2d 757, 758 (5th Cir. 1975). Additionally, a receivership is a remedy for taking possession of a judgment debtor’s property. *Santibanez*, 105 F.3d at 241. A receivership also can be utilized when a judgment creditor seeks “to set aside allegedly fraudulent conveyances by the judgment debtor, or who has had execution issued and returned unsatisfied . . . or who otherwise is attempting to have the debtor’s property preserved from dissipation until his claim can be satisfied.” *Id.* (quoting *Wright & Miller, supra*, § 2983). Importantly, to justify the appointment of a receiver such claims would already have been reduced to judgment. That was not the case here, as the receivership was deemed imposed for unresolved claims.

The receiver and trustee pointed us to another line of cases where a receivership was proper as an adjunct to injunctive relief for a securities fraud. *E.g., SEC v. Keller Corp.*, 323 F.2d 397, 402 (7th Cir. 1963). Receiverships also

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have been upheld in derivative actions by stockholders against corporations to prevent the threatened diversion of assets through fraud or mismanagement. *E.g., Tanzer v. Huffines*, 408 F.2d 42, 43 (3d Cir. 1969). Thus, in cases of non-compliance with SEC regulations, a receiver may be appointed to prevent the corporation from dissipating corporate assets and to pay defrauded investors. *Id.*; *SEC v. Hardy*, 803 F.2d 1034, 1035 (9th Cir. 1986). Nonetheless, in a derivative suit or a suit for non-compliance with SEC regulations, the corporate assets are the underlying subject matter of the dispute. Here, the only assets that were the subject matter of the dispute were the domain names that were to be transferred under the settlement agreement. They were transferred.

Last, the receiver and trustee relied on cases where courts appointed receivers to run institutions where constitutional violations were occurring. Such receiverships are generally ordered in the context of ensuring a governmental entity's compliance with court orders. *See, e.g., Morgan v. McDonough*, 540 F.2d 527 (1st Cir. 1976) (upholding a receivership imposed to insure a high school's compliance with desegregation orders); *Plata v. Schwarzenegger*, 603 F.3d 1088 (9th Cir. 2010) (upholding a receivership to administer and improve prison health care). This is not a case where a governmental organization will not comply with the law. *Plata*, 603 F.3d at 1094.

We now look at the specific arguments for the receivership presented by the receiver and trustee and explain why none is consistent with the limited purposes for this "extraordinary remedy." *Strickland v. Peters*, 120 F.2d 53, 56 (5th Cir. 1941).

A. *Preserving Jurisdiction and Bringing Litigation to a Close*

Among the justifications presented by the receiver and trustee for the receivership is that it was needed to preserve the court's jurisdiction over Baron's assets, given that one of Baron's former attorneys had testified that

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Baron intended to move assets outside of the country. They further asserted that the receivership order was a valid exercise of the court's inherent authority because bringing the Netsphere litigation and Ondova bankruptcy to a close required that Baron be prevented from either hiring or firing additional counsel. The receiver halted the hiring and firing of counsel by seizing all of Baron's personal assets and the assets of the companies he controlled.

We first examine the argument that assets needed to satisfy a future money judgment were being transferred beyond the court's jurisdiction. The All Writs Act "empowers a federal court to employ procedures necessary to promote the resolution of issues in a case properly before it." *ITT Cmty. Dev. Corp. v. Barton*, 569 F.2d 1351, 1359 (5th Cir. 1978); 28 U.S.C. § 1651. This authority, though, "is firmly circumscribed, its scope depending on the nature of the case before the court and the legitimacy of the ends sought to be achieved through the exercise of the power." *ITT Cmty. Dev. Corp.*, 569 F.2d at 1358-59. A court is limited to issuing orders "to curb conduct which threaten[s] improperly to impede or defeat the subject matter jurisdiction then being exercised by the court." *Id.* at 1359.

The jurisdiction "being exercised" by the district court in this case prior to the receivership order was enforcing a settlement agreement and the transfer of domain names, which would end the Netsphere litigation and the Ondova bankruptcy. Baron executed the settlement agreement in July 2010 and agreed to quitclaim the "Even Group" of domain names to Netsphere. Neither the trustee nor the receiver has pointed to record evidence that Baron failed to transfer the domain names in accordance with the agreement. He had other obligations, but there is no record evidence brought to our attention that any discrete assets subject to the settlement agreement were being moved beyond the reach of the court.

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At a September 15, 2010 hearing in bankruptcy court, the attorney for the trustee gave an update on the parties' progress toward completing the terms of the settlement agreement. In addition to addressing the few minor unresolved issues with respect to domain names to be conveyed to Baron, the trustee's attorney discussed the increasing number of attorneys who had formerly represented Baron and Ondova and were now making claims against the bankruptcy estate. At this point, when the bankruptcy court considered recommending the district court appoint a receiver, the bankruptcy court was not responding to a threatened loss of control over domain names or other discrete property. Instead, it was trying to prevent the loss of the funds necessary to pay the various claims that continued to mount up against the Ondova bankruptcy estate. It was at this hearing that the bankruptcy court heard testimony from Baron's attorney, Pronske, explaining that he had learned Baron was planning to transfer "assets" offshore. Based on these allegations, the bankruptcy court ordered Baron to direct the Village Trust to deposit \$330,000 with the bankruptcy trustee as a form of security to pay Baron's "obligations."

Baron continued to hire and fire attorneys, causing the bankruptcy trustee to move for the appointment of a receiver over Baron, followed soon by the district court's *ex parte* appointment of a receiver. In the January 2011 hearing that followed, the district court provided its justifications for appointing the receiver. Those justifications centered almost entirely on the court's concern that Baron's vexatious litigation tactics – particularly the hiring and firing of lawyers – were increasing the costs of litigation and exposing the bankruptcy estate to additional administrative claims. The court briefly mentioned its concern that Baron would transfer "funds" outside of the court's jurisdiction, a concern grounded in the court's desire to fashion a remedy through a receivership to pay the claims of Baron's former attorneys.

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There certainly was evidence that Baron's actions were disrupting, complicating, and making more expensive both the bankruptcy and the district court suit. We do not, though, find evidence that Baron was threatening to nullify the global settlement agreement by transferring domain names outside the court's jurisdiction. Accordingly, the receivership cannot be justified in this instance on the basis that it was needed to take control of the property that was the subject of the litigation. Rather, the receivership was established to pay the attorneys and to control vexatious litigation. We will now examine each of those reasons.

*B. Paying Attorneys*

The district court in its order establishing a receivership referred to the testimony received by the bankruptcy court on Baron's debts to former attorneys. The district court described those debts as the primary rationale for the receivership. A receiver may be appointed for a secured creditor who has legitimate fears his security may be dissipated; "an unsecured simple contract creditor has, in the absence of a statute, no substantive right, legal or equitable, in or to the property of his debtor." *Pusey & Jones Co. v. Hanssen*, 261 U.S. 491, 497 (1923). Baron's former attorneys were free to make claims against the bankruptcy estate. Many had done so. Alternatively, to the extent that they represented Baron or his companies in matters unrelated to the Ondova bankruptcy, the attorneys could file suit in a court of appropriate jurisdiction to collect the fees owed, which many had done. Establishing a receivership to secure a pool of assets to pay Baron's former attorneys, who were unsecured contract creditors, was beyond the court's authority. *Id.*

Moreover, for those unpaid attorneys who had filed claims, the claims had not been reduced to judgment such that a receiver would have been proper to "set aside allegedly fraudulent conveyances by [Baron]." *Santibanez*, 105 F.3d at 241. "[R]eceptors may be appointed to preserve property pending final

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determination of its distribution in supplementary proceedings in aid of execution.” *Id.* (internal quotation marks omitted). They may also be properly appointed for a judgment creditor who “is attempting to have the debtor’s property preserved from dissipation until his claim can be satisfied.” *Id.*

Although the attorneys’ allegations and claims were delaying the district court and bankruptcy proceedings, they were not the subject matter of the underlying litigation. “The general federal rule of equity is that a court may not reach a defendant’s assets unrelated to the underlying litigation and freeze them so that they may be preserved to satisfy a potential money judgment.” *In re Fredeman Litig.*, 843 F.2d 821, 824 (5th Cir. 1988). *Fredeman* involved a civil action under RICO for treble damages. *Id.* at 822. The district court entered a preliminary injunction that effectively froze all of the defendants’ assets, which were unrelated to the underlying lawsuit, based solely on the need to protect the potential RICO judgment. *Id.* at 825. This court set aside the injunction as an improper exercise of the court’s equitable powers. *Id.*

In setting aside the injunction in *Fredeman*, this court relied on *De Beers Consolidated Mines, Ltd. v. United States*, 325 U.S. 212, 222-23 (1945). *Id.* In *De Beers*, the government sought and obtained a pretrial preliminary injunction freezing the domestic assets of a foreign corporation suspected of violating antitrust laws. *DeBeers*, 325 U.S. at 215. The government argued that freezing the corporation’s assets was the only method of ensuring compliance with future court orders. *Id.* The government also speculated that the corporation would withdraw its domestic assets in an effort to evade the jurisdiction of the courts of the United States. *Id.* at 215-16. Though the Supreme Court acknowledged a court’s inherent power to protect its jurisdiction, it concluded that the injunction exceeded the court’s powers. *Id.* at 222-23. The Court explained that if it were to hold otherwise, every plaintiff in an action for a personal judgment would apply for a “so-called injunction sequestering his opponent’s assets

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pending recovery and satisfaction of a judgment . . . . No relief of this character has been thought justified in the long history of equity jurisprudence.” *Id.*

In a more recent articulation of its “cautious approach to equitable powers,” the Supreme Court stated that equity is “confined within the broad boundaries of traditional equitable relief.” *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 322, 329 (1999). The Court identified the issue as being “whether, in an action for money damages, a United States District Court has the power to issue a preliminary injunction preventing the defendant from transferring assets in which no lien or equitable interest is claimed.” *Id.* at 310. The Court answered “no.” *Id.* at 333. The opinion thoroughly reviewed the breadth of equitable powers before reaching that conclusion. *Id.* “[F]ederal courts in this country have traditionally applied the principle that courts of equity will not, as a general matter, interfere with a debtor’s disposition of his property at the instance of a nonjudgment creditor.” *Id.* at 329. We conclude that the limits of equity there described are relevant to the receivership remedy, too.

The trustee and receiver are correct that *Grupo Mexicano* involved a claim only for money damages, in which the district court improperly relied on its equitable authority to issue a preliminary injunction to preserve a fund. Even so, the Court detailed the relevant principles that confine the equitable power of federal courts. *Id.* at 319-22. It rejected that the merger of law and equity had altered the relevant limitations on that power. *Id.* at 322. The *Grupo Mexicano* Court distinguished its ruling from a case in which the suit sought the equitable relief of contract rescission and restitution. *Id.* at 325 (citing *Deckert v. Independence Shares Corp.*, 311 U.S. 282, 287-88 (1940)). The equitable relief was not, therefore, simply in aid (as in *Grupo Mexicano*) of a legal claim for a money judgment. *Id.* The case before us is similar to *Grupo Mexicano* to the extent that the receivership remedy was for the purpose of controlling Baron’s



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transferring of funds that were to be paid to attorneys – nonjudgment creditors. This receivership was intended to control vexatiousness, but it is more similar to *Grupo Mexicano* than it is to *Deckert*.

While these precedents dealt with injunctions, the jurisdictional principle that a court's equitable powers do not extend to property unrelated to the underlying litigation applies with equal force to receiverships. A court lacks jurisdiction to impose a receivership over property that is not the subject of an underlying claim or controversy. *Cochrane v. W.F. Potts Son & Co.*, 47 F.2d 1026, 1029 (5th Cir. 1931). In *Cochrane*, a holder of corporate bonds, which were alleged to be part of a fraud scheme, sought the establishment of a receivership. *Cochrane*, 47 F.2d at at 1027. The bondholder only claimed an interest in one series of bonds – series E. *Id.* at 1028. The district court appointed a receiver over the series E bonds as well as five other series that were not part of the underlying complaint. *Id.* This court held that the district court only had jurisdiction over the series E bonds, which were the subject of the litigation. *Id.* at 1029. Because the district court lacked subject matter jurisdiction over the other bonds, which were not at issue in the litigation, it lacked authority to appoint a receiver over them. *Id.*

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.

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C. *Controlling Vexatious Litigation*

Baron's vexatious litigation tactics were his ignoring court orders and hiring and firing of attorneys, which delayed court proceedings, increased the general cost of litigation, and increased expenses for the bankruptcy estate. Such tactics, though, have not been recognized as a basis for invoking the equitable remedy of a receivership. A receiver has been allowed to halt fraudulent, evasive litigation tactics, but only when a specific provision of the Internal Revenue Code applied. *In re McGaughey*, 24 F.3d 904 (7th Cir. 1994); *United States v. Bartle*, 159 F. App'x 723 (7th Cir. 2005) (unpublished). In *McGaughey*, the court derived its power to appoint a receiver to collect unpaid taxes from a specific provision of the Code. *In re McGaughey*, 24 F.3d at 907. A district court may use authority from 26 U. S. C. § 7403 to appoint a receiver over a debtor's assets in a proceeding to enforce a tax lien if the Government makes the necessary showing of need. *Id.* *Bartle* did not provide its own extensive analysis but relied on *McGaughey* to support a receiver for that purpose. *Bartle*, 159 F. App'x at 725. Here, unlike in *McGaughey* and *Bartle*, the court had no statutory authority to appoint the receiver nor were the receivership assets at issue in the litigation.

Baron's longstanding vexatious litigation tactics presented the district court with an exceedingly difficult situation. The district court recognized that it had the inherent authority to address those tactics. At the beginning of the suit, the district court entered a preliminary injunction to compel compliance with the first settlement agreement – i.e., the MOU. The court later held a hearing to address Baron's non-compliance with the preliminary injunction. The injunction was amended to include a \$50,000 per day penalty for a violation. When Baron's hiring and firing of attorneys were first addressed, the court found clear and convincing evidence of Baron's contempt of court and said it could employ such tools as monetary sanctions or jailing Baron until he complied with

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court orders. The court concluded, though, that these remedies were insufficient because Baron had repeatedly ignored court orders.

If the district court entered a sufficiently specific order, it could have held Baron in contempt, imposed a fine or imprisoned him for “disobedience . . . to its lawful . . . command.” 18 U.S.C. § 401. At oral argument in the appeal, it seemed conceded that no clear order existed. Instead, the receiver and trustee cited only to hearings at which the district court admonished Baron not to hire or fire any more attorneys. Whether there was a clear order ultimately does not matter in our resolution. The question before us concerns the receivership.

The district court also could have required Baron to proceed with the same lawyer or pro se at his choice. *McCuin v. Tex. Power & Light Co.*, 714 F.2d 1255, 1263 (5th Cir. 1983) (explaining that the right to retain the counsel of one’s choosing may be restricted where it is misused “for purposes of delay or obstruction of the orderly conduct of the trial” and when “the needs of effective administration of justice” so require). The court noted some of these remedies and determined they would be inadequate. No authority has been cited to us, though, that a receivership becomes appropriate when traditional means might not fully prevent a litigant from engaging in vexatious litigation tactics.

A court has undeniable authority to control its docket but not through creating a receivership over assets, including personal assets, that were not the subject of the litigation. The terms of the receivership order had far-reaching implications for Baron’s personal property. For example, the receiver was empowered to take possession of Baron’s mobile phone and computers and to divert mail. Baron was required to turn over his bank accounts and keys to any property he owned or rented, including his own home. Moreover, when Baron needed funds for medical care, he had to request such funds from the receiver.

We conclude that the receivership improperly targeted assets outside the scope of litigation to pay claims of Baron’s former attorneys and control Baron’s

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litigation tactics. This was an improper use of the receivership remedy. The order appointing a receiver is vacated.

## II. *The Receivership Fees*

When a receivership is proper, the general rule is that receivership fees and expenses “are a charge upon the property administered.” *Gaskill v. Gordon*, 27 F.3d 248, 251 (7th Cir. 1994); see also *Atl. Trust Co. v. Chapman*, 208 U.S. 360, 374 (1908). When a receivership is improper or the court lacks equitable authority to appoint a receiver, the party that sought the receivership at times has been held accountable for the receivership fees and expenses. *W.F. Potts & Co. v. Cochrane*, 59 F.2d 375, 377-78 (5th Cir. 1932). Baron relied on a somewhat later case for the same point. *Porter v. Cooke*, 127 F.2d 853 (5th Cir. 1942). That court held that “the parties whose property has been wrongfully seized are entitled, on equitable principles, to recover costs from those who have wrongfully provoked the receivership.” *Id.* at 859. In the present case, no party “provoked” the receivership. The bankruptcy court recommended a receiver, and the trustee then moved in district court for the appointment as recommended.

We discover no controlling rule on assessing costs for an improperly created receivership other than that equity is the standard. For example, in *W.F. Potts*, this court evaluated the assignment of responsibility for the receivership fees by recognizing that the district court itself ordered the receivership. *W. F. Potts*, 59 F. 2d at 377-78. After holding that the receivership should not have been imposed, we rejected that the party who sought the receivership had to bear its costs:

[The parties whose assets were seized] treat the matter too much as though this were a suit for the wrongful and forcible taking of property by plaintiff or its agents. They overlook the fact that, though it is true that one who invokes without sufficient equitable grounds the administration by a receiver of the property of another

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may be in a proper case held accountable for the costs and expenses of the receivership and for losses which the receivership has visited upon the property, the appointment of a receiver is at last the court's appointment; the administration, its administration. We think it perfectly clear that in a case like this, where there was no malice nor wrongful purpose, and only an effort to conserve property in which plaintiff believed, though it did not show, it was interested, the question of its liability should be considered and adjudged from the standpoint of working as little hardship as may be, plaintiff in the end to be held liable for only the actual losses which its mistaken course has caused.

*Id.* (citations omitted). An equitable allocation was ordered. The plaintiff who sought the receivership was not charged with disbursements that benefitted the fund, but it was ordered to reimburse the defendant for actual losses to the fund.

*Id.* at 379.

With a similar focus on equity, the Supreme Court evaluated how to assign the costs of an improper receivership created by a federal court when that court had erroneously concluded that a state court receivership no longer had possession of the relevant property. *Palmer v. Texas*, 212 U.S. 118, 125-26 (1909). The Court reversed the lower court's assessment of the costs against the party who had sought the receivership, because the Court concluded "that justice will be done if the costs of the receivership are paid out of the fund realized in the Federal court . . . ." *Id.* at 132.

These precedents are consistent with analysis in one of our precedents that without "convincing evidence that the appointment of a receiver was either collusive, capricious, venal, or in bad faith," ordinarily the expenses of the receivership will not be charged "other than against the fund administered by the receiver, even though the [c]ourts are vested with a discretion in determining who should pay the costs and expenses of a receivership in unusual instances." *Commercial Nat'l Bank v. Connolly*, 176 F.2d 1004, 1009 (5th Cir. 1949). In holding that the receivership expenses should be paid out of receivership funds,

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we reasoned that, though appointment of a receiver was a “mistake,” the large recovery by the plaintiffs in the trial indicated the receivership was not “needless.” *Id.* On remand, the lower court was to enter a decree directing the receiver to pay one-fourth of the costs of the retrial and appeal, the party moving for the receiver to pay one-half, and the intervenors one-fourth. *Id.* at 1010.

We do not find that Baron received any benefit from this receivership. Nonetheless, these precedents establish that equity controls when addressing the costs created by an improper receivership. Here, the record supports that the circumstances that led to the appointment of a receiver were primarily of Baron’s own making. The district court had an array of fairly onerous remedies to apply but chose another remedy that it did not have. The manner in which the district court responded to those circumstances was errant, but the court’s perception was reasonable that a vigorous response was required.

We must decide how equitably to resolve this misapplication of an equitable remedy. Baron did in fact contend that the appointment of the receiver was in bad faith or collusive but fails to convince. He supported the argument by saying the appointment was prohibited by law by virtue of the receiver’s previous appointment as special master. Baron relied on this statutory language: “A person holding any civil or military office or employment under the United States or employed by any justice or judge of the United States shall not at the same time be appointed a receiver in any case in any court of the United States.” 28 U.S.C. § 958. The trustee pointed out that a special master is neither an employee of the United States nor of the judge who appointed him. While the special master is subject to the court’s supervision, his fee is paid by the parties to the litigation, not the court. Fed. R. Civ. P. 53(g)(2). The fact that the receiver was previously special master is no indication of bad faith or collusion in the appointment of the receiver.

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Additionally, we hold, based on this record, that in creating the receivership “there was no malice nor wrongful purpose, and only an effort to conserve property in which [the court] believed” it was interested in maintaining for unpaid attorney fees and to control Baron’s vexatious litigation tactics. *W.F. Potts*, 59 F.2d at 377-78. We recognize that the district court was dealing with a conundrum when it decided to appoint the receiver – the problem was great, but standard remedies seemed inadequate. We also take into account that, to a large extent, Baron’s own actions resulted in more work and more fees for the receiver and his attorneys. For these reasons, charging the current receivership fund for reasonable receivership expenses, without allowing any additional assets to be sold, is an equitable solution.

In light of our ruling that the receivership was improper, equity may well require the fees to be discounted meaningfully from what would have been reasonable under a proper receivership. Fees already paid were calculated on the basis that the receivership was proper. Therefore, the amount of all fees and expenses must be reconsidered by the district court. Any other payments made from the receivership fund may also be reconsidered as appropriate.

We also conclude that everything subject to the receivership other than cash currently in the receivership, which Baron asserts in a November 26, 2012 motion amounts to \$1.6 million, should be expeditiously released to Baron under a schedule to be determined by the district court for winding up the receivership. The new determination by the district court of reasonable fees and expenses to be paid to the receiver, should the amount be set at more than has already been paid, may be paid from the \$1.6 million. To the extent the cash on hand is insufficient to satisfy fully what is determined to be the reasonable charges by

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the receiver and his attorneys, those charges will go unpaid. No further sales of domain names or other assets are authorized.<sup>2</sup>

### III. *Other Issues*

Baron raised other issues related to the receivership. Additionally, there are multiple outstanding motions. We address those that would remain unresolved despite our holding that the receivership was improper.

#### A. *Subpoena of IOLTA Account*

Baron contended the district court erred in allowing the receiver to subpoena bank records related to Baron's attorney's IOLTA account. When the receiver learned that Baron's attorney, Gary Schepps, was paying another Baron attorney through an IOLTA account, he served a subpoena on the bank holding the account. The receiver argued that Baron was using the account to hide receivership assets and retain additional counsel in defiance of the district court's orders.

The receiver argued that the issue regarding bank records is moot given that the subpoena issued, the bank produced the records, and the receiver has reviewed them. An appeal must be dismissed when "an event occurs while a case is pending on appeal that makes it impossible for the court to grant any effectual relief whatever to a prevailing party." *Motient Corp. v. Dondero*, 529 F.3d 532, 537 (5th Cir. 2008). Yet, an appellate court's "continued jurisdiction does not depend upon being able to provide complete relief; if there is some means by which we can effectuate a partial remedy, this case remains a live controversy." *In re Sec. Life Ins. Co. of Am.*, 228 F.3d 865, 870 (8th Cir. 2000). The records have been produced and reviewed by the receiver and there is no

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<sup>2</sup> We stayed the closing on sales resulting from an auction of domain names. Our ruling means no closing may occur, and the stay is made permanent.



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relief that this court can provide. Baron's challenge to the subpoena of his attorney's IOLTA account is moot.

*B. Section 144 Affidavit*

On April 27, 2011, Baron filed a motion for leave to file a motion for recusal under 28 U.S.C. § 144. Baron attached to the motion an affidavit detailing his allegations of bias. At the hearing on Baron's motion, the court instructed Baron to file a second affidavit with appropriate record citations to statements by the court that Baron believed evidenced bias. Baron's attorney assured the court that providing record cites would be "no problem" because "everything in the affidavit is directly cut and pasted from the record."

The court then entered an order granting Baron's motion for leave to file a second affidavit, but only under the condition that Baron submit an affidavit with record citations. On May 6, 2011, Baron's attorney informed the district court that a new affidavit was ready, but that it did not comply with the court's record cites requirement. In his supplemental affidavit, Baron alleged that the district court had "a personal bias against giving credence to allegations of poor conduct by attorneys" and that his personal bias had allowed Baron to be victimized by his opponents – many of whom were attorneys. The district court struck the new affidavit, but it allowed Baron to file another affidavit provided that it complied with the court's original order. Baron never submitted a compliant affidavit and did not re-urge his motion to disqualify.

Baron contended that the district court erred in refusing to rule on the legal sufficiency of the affidavits. The receiver argued that Baron waived this issue by failing to file an affidavit that complied with the court's order.

"A judge is to recuse himself if a party to the proceeding makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party." *Patterson v. Mobil Oil Corp.*, 335 F.3d 476, 483 (5th Cir. 2003)

No. 10-11202

(internal quotation marks omitted). A district court's ruling with respect to a Section 144 affidavit is appealable under 28 U.S.C. § 1292(b). *Davis v. Bd. of Sch. Comm'rs of Mobile Cnty.*, 517 F.2d 1044, 1047 (5th Cir. 1975).

When a motion is filed under Section 144, the district court "must pass on the legal sufficiency of the affidavit" without passing on the truth of the matter asserted. *Davis*, 517 F.2d at 1051. "A legally sufficient affidavit must: (1) state material facts with particularity; (2) state facts that, if true, would convince a reasonable person that a bias exists; and (3) state facts that show the bias is personal, as opposed to judicial, in nature." *Patterson*, 335 F.3d at 483.

Based on our reading of the record, the district court considered Baron's original affidavit, determined that it was insufficient, and ordered Baron to correct the deficiency by including citations to the record. Baron filed a second affidavit and admitted that it did not comply with the court's order. The district court struck the affidavit, but left Baron the option of filing another affidavit provided it had record cites. Baron never filed a compliant affidavit; therefore, he has waived the issue on appeal.

### C. *Outstanding Motions & Mandamus*

In light of our holding that the receivership order was improper, we need not address the outstanding motions that were carried with the case. Similarly, we do not find it necessary to address Novo Point's petition for a writ of mandamus, which challenged the bankruptcy court's decision to strike various notices of appeal filed by Novo Point. The bankruptcy court struck these notices based on its finding that they violated the terms of the receivership order – which we have now set aside.

The judgment appointing the receiver is REVERSED with directions to vacate the receivership and discharge the receiver, his attorneys and employees, and to charge against the cash in the receivership fund the remaining receivership fees in accordance with this opinion.

No. 10-11202

Carrington, Coleman, Sloman and Blumenthal, LLP's appeal of the district court's disbursement order is DISMISSED.

Baron's challenge to the subpoena of his attorney's IOLTA account is DENIED as moot.

Baron's challenge to the denial of his Section 144 affidavit was waived.

Should we not have addressed a motion that a party believes still needs a ruling, that claimed oversight should be suggested on rehearing.

United States Court of Appeals  
Fifth Circuit

**UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

**FILED**

December 18, 2012

Lyle W. Cayce  
Clerk

No. 10-11202

D.C. Docket No. 3:09-CV-988

NETSPHERE, INC., ET AL

Plaintiffs

v.

JEFFREY BARON,

Defendant - Appellant

v.

ONDOVA LIMITED COMPANY,

Defendant - Appellee

Appeal from the United States District Court for the  
Northern District of Texas, Dallas

Before DeMOSS, SOUTHWICK, and HIGGINSON, Circuit Judges.

**J U D G M E N T**

This cause was considered on the record on appeal and was argued by counsel.

It is ordered and adjudged that the judgment of the District Court is reversed, and the cause is remanded to the District Court for further proceedings in accordance with the opinion of this Court.

IT IS FURTHER ORDERED that defendant-appellee pay to defendant-appellant the costs on appeal to be taxed by the Clerk of this Court.

ISSUED AS MANDATE: APR 19 2013

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Clerk, U.S. Court of Appeals, Fifth Circuit

By: Mary Stewart  
Deputy

APR 19 2013

13-10696.27967

New Orleans, Louisiana

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United States Court of Appeals  
Fifth Circuit

**UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

**FILED**  
December 18, 2012

Lyle W. Cayce  
Clerk

\_\_\_\_\_  
No. 11-10113

\_\_\_\_\_  
D.C. Docket No. 3:09-CV-988

NETSPHERE INC., Et Al

Plaintiffs

v.

JEFFREY BARON, Et Al

Defendants

v.

QUANTEC L.L.C.; NOVO POINT L.L.C.,

Movants - Appellants

v.

PETER S. VOGEL

Appellee

Appeal from the United States District Court for the  
Northern District of Texas, Dallas

Before DeMOSS, SOUTHWICK, and HIGGINSON, Circuit Judges.

**J U D G M E N T**

This cause was considered on the record on appeal and was argued by counsel.

It is ordered and adjudged that the judgment of the District Court is reversed, and the cause is remanded to the District Court for further

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proceedings in accordance with the opinion of this Court.

IT IS FURTHER ORDERED that appellee pay to movants-appellants the costs on appeal to be taxed by the Clerk of this Court.

ISSUED AS MANDATE: APR 19 2013

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Clerk, U.S. Court of Appeals, Fifth Circuit

By: Mary Stewart  
Deputy APR 19 2013

New Orleans, Louisiana

United States Court of Appeals  
Fifth Circuit

**UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

**FILED**  
December 18, 2012

Lyle W. Cayce  
Clerk

No. 11-10289

D.C. Docket No. 3:09-CV-988

NETSPHERE, INC., ET AL

v.

Plaintiffs

JEFFREY BARON,

Defendant - Appellant

v.

DANIEL J. SHERMAN,

Appellee

Appeal from the United States District Court for the  
Northern District of Texas, Dallas

Before DeMOSS, SOUTHWICK, and HIGGINSON, Circuit Judges.

**J U D G M E N T**

This cause was considered on the record on appeal and was argued by counsel.

It is ordered and adjudged that the judgment of the District Court is reversed, and the cause is remanded to the District Court for further proceedings in accordance with the opinion of this Court.

IT IS FURTHER ORDERED that appellee pay to defendant-appellant the costs on appeal to be taxed by the Clerk of this Court.

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By: Mary Stewart  
Deputy APR 19 2013

New Orleans, Louisiana

13-10696.27970

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NORTHERN DISTRICT OF TX

United States Court of Appeals  
Fifth Circuit

**UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

**FILED**

December 18, 2012

Lyle W. Cayce  
Clerk

No. 11-10290

D.C. Docket No. 3:09-CV-988

NETSPHERE, INC., ET AL,

Plaintiffs

v.

JEFFREY BARON, ET AL

Defendants

v.

QUANTEC L.L.C.; NOVO POINT L.L.C.,

Movants - Appellants

v.

PETER S. VOGEL,

Appellee

Appeal from the United States District Court for the  
Northern District of Texas, Dallas

Before DeMOSS, SOUTHWICK, and HIGGINSON, Circuit Judges.

**J U D G M E N T**

This cause was considered on the record on appeal and was argued by counsel.

It is ordered and adjudged that the judgment of the District Court is

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reversed, and the cause is remanded to the District Court for further proceedings in accordance with the opinion of this Court.

IT IS FURTHER ORDERED that appellee pay to movants-appellants the costs on appeal to be taxed by the Clerk of this Court.

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Clerk, U.S. Court of Appeals, Fifth Circuit

By: May Stewart  
Deputy APR 19 2013

New Orleans, Louisiana

United States Court of Appeals  
Fifth Circuit

**UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

**FILED**  
December 18, 2012

Lyle W. Cayce  
Clerk

\_\_\_\_\_  
No. 11-10390

\_\_\_\_\_  
D.C. Docket No. 3:09-CV-988

NETSPHERE, INC., ET AL

Plaintiffs

v.

JEFFREY BARON,

Defendant - Appellant

QUANTEC, L.L.C.; NOVO POINT, L.L.C.,

Movants - Appellants

v.

ONDOVA LIMITED COMPANY,

Defendant - Appellee

PETER S. VOGEL

Appellee

Appeal from the United States District Court for the  
Northern District of Texas, Dallas

Before DeMOSS, SOUTHWICK, and HIGGINSON, Circuit Judges.

**J U D G M E N T**

This cause was considered on the record on appeal and was argued by

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NORTHERN DISTRICT OF TX  
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counsel.

It is ordered and adjudged that the judgment of the District Court is reversed, and the cause is remanded to the District Court for further proceedings in accordance with the opinion of this Court.

IT IS FURTHER ORDERED that appellees pay to movants-appellants the costs on appeal to be taxed by the Clerk of this Court.

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By: Mary Stewart  
Deputy APR 19 2013

New Orleans, Louisiana

United States Court of Appeals  
Fifth Circuit

**UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

**FILED**  
December 18, 2012

Lyle W. Cayce  
Clerk

No. 11-10501

D.C. Docket No. 3:09-CV-988

NETSPHERE, INCORPORATED, ET AL

Plaintiffs

v.

JEFFREY BARON,

Defendant - Appellant

QUANTEC L.L.C.; NOVO POINT L.L.C.,

Movants - Appellants

CARRINGTON, COLEMAN, SLOMAN & BLUMENTHAL, L.L.P.,

Appellant

v.

PETER S. VOGEL; DANIEL J. SHERMAN,

Appellees

Appeal from the United States District Court for the  
Northern District of Texas, Dallas

Before DeMOSS, SOUTHWICK, and HIGGINSON, Circuit Judges.

**J U D G M E N T**

This cause was considered on the record on appeal and was argued by  
counsel.

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NORTHERN DIST. OF TX  
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It is ordered and adjudged that the appeal is dismissed.

IT IS FURTHER ORDERED that appellees pay to appellants the costs on appeal to be taxed by the Clerk of this Court.

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Clerk, U.S. Court of Appeals, Fifth Circuit

By: Mary Stewart  
Deputy APR 19 2013

New Orleans, Louisiana

United States Court of Appeals  
Fifth Circuit

**UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

**FILED**  
December 18, 2012

Lyle W. Cayce  
Clerk

No. 12-10003

D.C. Docket No. 3:09-CV-988

NETSPHERE, INC, ET AL

Plaintiffs

v.

JEFFREY BARON,

Defendant-Appellant

QUANTEC, L.L.C. NOVO POINT, L.L.C.

Movants-Appellants

GARY SCHEPPS,

Appellant

v.

PETER S. VOGEL

Appellee.

Appeal from the United States District Court for the  
Northern District of Texas, Dallas

Before DeMOSS, SOUTHWICK, and HIGGINSON, Circuit Judges.

**J U D G M E N T**

This cause was considered on the record on appeal and was argued by  
counsel.

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NORTHERN DIST. OF TX  
FILED

It is ordered and adjudged that the judgment of the District Court is reversed, and the cause is remanded to the District Court for further proceedings in accordance with the opinion of this Court.

IT IS FURTHER ORDERED that appellee pay to appellants the costs on appeal to be taxed by the Clerk of this Court.

ISSUED AS MANDATE: APR 19 2013

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Clerk, U.S. Court of Appeals, Fifth Circuit

By: Mary Stewart  
Deputy APR 19 2013

New Orleans, Louisiana

United States Court of Appeals  
Fifth Circuit

**UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

**FILED**  
December 18, 2012

Lyle W. Cayce  
Clerk

Nos. 12-10489, 12-10657 & 12-10804

D.C. Docket No. 3:09-CV-988

NETSPHERE, INCORPORATED, ET AL

Plaintiffs

v.

JEFFREY BARON,

Defendant - Appellant

CLERK OF DISTRICT COURT  
NORTHERN DISTRICT OF TX  
FILED  
2013 APR 24 AM 11:16  
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NOVO POINT L.L.C.; QUANTEC L.L.C.,

Movants - Appellants

v.

PETER S. VOGEL; DANIEL J. SHERMAN,

Appellees

Appeals from the United States District Court for the  
Northern District of Texas, Dallas

Before DeMOSS, SOUTHWICK, and HIGGINSON, Circuit Judges.

**J U D G M E N T**

This cause was considered on the record on appeal and was argued by counsel.

It is ordered and adjudged that the judgment of the District Court is reversed, and the cause is remanded to the District Court for further



proceedings in accordance with the opinion of this Court.

IT IS FURTHER ORDERED that appellees pay to appellants the costs on appeal to be taxed by the Clerk of this Court.

ISSUED AS MANDATE: APR 19 2013

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Clerk, U.S. Court of Appeals, Fifth Circuit

By: Mary Stewart  
Deputy APR 19 2013

New Orleans, Louisiana

United States Court of Appeals  
Fifth Circuit

**UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

**FILED**  
December 18, 2012

Lyle W. Cayce  
Clerk

No. 12-11082

D.C. Docket No. 3:09-CV-988

NETSPHERE, INCORPORATED, ET AL

Plaintiffs

v.

JEFFREY BARON,

Defendant - Appellant

QUANTEC L.L.C.; NOVO POINT, L.L.C.,

Movants - Appellants

v.

PETER S. VOGEL,

Appellee

Appeal from the United States District Court for the  
Northern District of Texas, Dallas

Before DeMOSS, SOUTHWICK, and HIGGINSON, Circuit Judges.

**J U D G M E N T**

This cause was considered on the record on appeal and was argued by counsel.

It is ordered and adjudged that the judgment of the District Court is reversed, and the cause is remanded to the District Court for further proceedings in accordance with the opinion of this Court.

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IT IS FURTHER ORDERED that appellee pay to appellants the costs on appeal to be taxed by the Clerk of this Court.

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Clerk, U.S. Court of Appeals, Fifth Circuit

By: Mary Stewart  
Deputy APR 19 2013

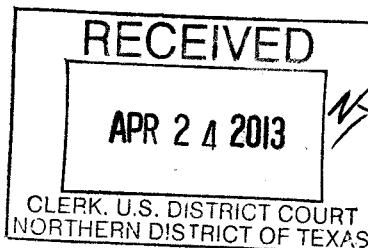
New Orleans, Louisiana

**United States Court of Appeals**  
FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

TEL. 504-310-7700  
600 S. MAESTRI PLACE  
NEW ORLEANS, LA 70130

April 19, 2013



Ms. Karen S. Mitchell  
Northern District of Texas, Dallas  
United States District Court  
1100 Commerce Street  
Earle Cabell Federal Building  
Room 1452  
Dallas, TX 75242

No. 10-11202, 11-10113, 11-10289, 11-10290, 11-10390,  
11-10501, 12-10003, 12-10489, 12-10657, 12-10804,  
12-11082 Netsphere, Inc. v. Jeffrey Baron  
USDC No. 3:09-CV-988

Enclosed, for the district court only, is a copy of the judgment issued as the mandate and a copy of the court's opinion.

Sincerely,

LYLE W. CAYCE, Clerk

*Mary Stewart*  
By: \_\_\_\_\_  
Mary C. Stewart, Deputy Clerk  
504-310-7694

cc: (letter only)  
Mr. Thomas Fenton Allen Jr.  
Mr. Craig Alan Capua  
Mr. Stephen Rudolph Cochell  
Mr. Curt M. Covington  
Honorable W. Royal Furgeson Jr.  
Mr. Richard M. Hunt  
Honorable Stacey G. C. Jernigan  
Mr. Edwin Paul Keiffer  
Mr. Christopher D. Kratovil  
Mr. Gary Gene Lyon  
Mr. Christopher Anthony Payne  
Mr. David John Schenck  
Mr. Gary N. Schepps  
Mr. Michael John Stanley  
Mr. Jeffrey Michael Sutherland  
Mr. Raymond James Urbanik  
Mr. Peter S. Vogel

P.S. to Judge Furgeson: A copy of the opinion was sent to your office via email the day it was filed.

13-10696.27983

Gerrit M. Pronske  
State Bar No. 16351640  
Rakhee V. Patel  
State Bar No. 00797213  
Melanie P. Goolsby  
State Bar No. 24059841  
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Email: mgoolsby@pronskepatel.com

**COUNSEL FOR THE PETITIONING CREDITORS**

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

<b>NETSPHERE, INC., MANILA</b>	§	
<b>INDUSTRIES, INC., AND MUNISH</b>	§	
<b>KRISHAN,</b>	§	
	§	
<b>Plaintiffs</b>	§	<b>CIVIL ACTION NO. 3:09-cv-0988-F</b>
	§	
<b>v.</b>	§	
	§	
<b>JEFFREY BARON AND ONDOVA</b>	§	
<b>LIMITED COMPANY,</b>	§	
	§	
<b>Defendants.</b>	§	

**PETITIONING CREDITORS’ OMNIBUS COMMENT TO  
RECEIVERSHIP PROFESSIONALS’ FEE APPLICATIONS**

Pronske & Patel, P.C., Shurig Jetel Beckett Tackett, Gary G. Lyon, Robert Garrey, Powers Taylor, LLP, Jeffrey Hall, and David Pacione (together, the “Petitioning Creditors”) file this Omnibus Comment to Receivership Professionals’ Fee Applications (the “Comment”) in response to (i) Chapter 11 Trustee’s Application for Reimbursement of Fees and Expenses from the Receivership Estate [Docket No. 1229], (ii) Final Fee Application for Gardere for Allowance of Fees and Expenses and Brief in Support [Docket No. 1232], (iii) Fee Application for Receiver and Receivership Professionals [Docket No. 1233], and (iv) Final Application for

Allowance and Subsequent Payment of Compensation for Services and Reimbursement of Expenses to Dykema Gossett PLLC, as Attorneys for Peter S. Vogel, Receiver [Docket No. 1234] (together, the “Fee Applications”), and in support thereof would respectfully show the Court as follows:

**I. PROCEDURAL POSTURE**

1. On December 18, 2012, the United States Courts of Appeals for the Fifth Circuit entered its panel opinion (the “Opinion”) reversing this Court’s Order Appointing Receiver (the “Receivership Order”) [Docket No. 130]. In conjunction with its opinion reversing the appointment of the Receiver, the Fifth Circuit instructed this Court to pay the remaining receivership professional fees from the cash in the receivership fund after consideration of the fees according to the reasonableness standard set forth in the Opinion. (Opinion, p.30)

2. Also on December 18, 2012 (the “Petition Date”), the Petitioning Creditors filed an involuntary bankruptcy petition against Jeffrey Baron (“Baron”) under Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”). The Bankruptcy Court has set the involuntary trial for May 22, 2013.

3. On January 2, 2013, in anticipation of reconsidering the total amount of professionals’ fees to be paid from the receivership according to the instruction of the Fifth Circuit, this Court entered its Advisory on Past and Pending Receivership Disbursements (the “Advisory”) [Docket No. 1138]. Specifically, the Court proposed to pay: (i) the total fees incurred by the Receiver and the Gardere law firm in representing the Receiver at fifty percent (50%); (ii) the total fees incurred by the Dykema law firm in representing the receiver at ninety-five percent (95%); (iii) the total fees incurred by the Ondova Trustee and his counsel at

zero percent (0%); and (iv) the fees incurred by miscellaneous other professionals on an individual basis. (Advisory, p.2)

4. As indicated on the record at the joint status conference before this Court and the Bankruptcy Court on April 4, 2013, the fee amounts of the various receivership professionals approved by this Court will be treated as allowed claims in the Baron bankruptcy, in the event that the Bankruptcy Court enters an order for relief after concluding the Baron involuntary trial.

5. On April 17, 2013, pursuant to this Court's Scheduling Order [Docket No. 1220] entered on April 5, 2013, Daniel J. Sherman, Chapter 11 Trustee for Ondova Limited Company (the "Trustee"), Peter S. Vogel, Receiver over Jeffrey Baron (the "Receiver"), Dykema Gossett PLLC ("Dykema"), and Gardere Wynne Sewell, LLP ("Gardere") each filed motions to approve attorneys fees incurred in the receivership matter (together, the "Applicants").

## II. BACKGROUND

6. The Petitioning Creditors represent the majority of attorney fee claimants whose claims against Baron pre-date the appointment of the Receiver. The Petitioning Creditors estimate that the total claims of pre-receivership attorneys are approximately \$1,400,000.

7. Upon the appointment of the Receiver on November 24, 2010, the Petitioning Creditors and all other similarly situated creditors were "stayed by the Receivership Order from taking any action to establish or enforce any claim, right, or interest" against Baron or the receivership assets. (Receivership Order, p.12)

8. On May 18, 2011, this Court entered its Findings of Fact, Conclusions of Law, and Order on Assessment and Disbursement of Former Attorney Claims (the "Attorneys' Fee Order") [Docket No. 575]. The Attorneys' Fee Order allowed the claims of the Petitioning

Creditors and other Baron attorney claimants in the aggregate amount of \$870,237.19 after application of an hourly fee cap and disallowing claimants who also held claims against the Ondova estate. (Attorneys' Fee Order, p.21)

9. On June 18, 2012, this Court entered its Order Regarding Motion to Clarify Instruction to Receiver on Payments to Former Baron Attorneys (the "Clarification Order") [Docket No. 987]. While acknowledging that the payment of the Baron attorney claimants was one of the primary goals of the receivership, the Clarification Order mandated that no funds be distributed to the former Baron attorneys until the completion of the appeal of the Receivership Order before the Fifth Circuit. The Clarification Order also required the Receiver to *segregate and set aside the funds then available* to pay the attorney claims until the Fifth Circuit made its decision. Notwithstanding the clear language of the Clarification Order, the funds to pay the attorney claims were not segregated and set aside from the other receivership assets despite explicit instruction from this Court to do so. The Petitioning Creditors have not received any distribution from the receivership on account of their claims against Baron during the more than two years since the appointment of the Receiver.

10. As of the date of this Comment, the Receiver projects that there will be approximately \$1,700,000 cash in the receivership estate as of May 1, 2013, including \$737,000 held in Dykema's trust account but not including approximately \$1,300,000 in various IRA accounts that are purportedly exempt assets.<sup>1</sup> From this pool of available receivership cash, the Applicants seek payment of fees as set forth in the chart below:

<b>Applicant</b>	<b>Total Fee Request</b>	<b>Previously Paid</b>	<b>Outstanding Fee Request</b>
Dykema	\$1,550,716.78	\$398,893.91	\$1,151,822.87
Receiver	\$1,250,680.00	\$708,926.00	\$541,754.00

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<sup>1</sup> The Petitioning Creditors do not now take any position as to the exempt status of the IRA accounts and reserve any and all objections to their exempt status.



<b>Applicant</b>	<b>Total Fee Request</b>	<b>Previously Paid</b>	<b>Outstanding Fee Request</b>
Gardere	\$2,010,862.42	\$1,479,571.95	\$531,290.47
Trustee	\$1,219,775.68	\$379,761.18	\$840,014.50
Other Professionals <sup>2</sup>	\$96,844.65		\$96,844.65
<b>Total</b>	<b>\$6,128,879.53</b>	<b>\$2,967,153.04</b>	<b>\$3,161,726.49</b>

### III. COMMENT

11. The Fifth Circuit dedicated a considerable portion of its Opinion to the issue of professional fees incurred in the receivership. On this issue, the Fifth Circuit concluded that, notwithstanding that the appointment of the Receiver was ultimately improper, it would be equitable to charge the current receivership fund for the payment of reasonable receivership expenses, without allowing additional assets to be sold, since the Receiver was not appointed in malice or wrongful purpose but rather out of a concern to preserve assets and control the growth of unpaid attorney fees. (Opinion, p.27) Furthermore, the Fifth Circuit reasoned that Baron's own actions contributed to the significant amount of professional fees incurred in the receivership. (Opinion, p.27) Yet the Fifth Circuit also acknowledged that "equity may well require the fees to be *discounted meaningfully* from what would have been reasonable under a proper receivership," instructing the Court to reconsider the total amount of fees and expenses incurred, not just outstanding fees and expenses on the date of the Opinion. (Opinion, p.27) (emphasis added)

12. The Petitioning Creditors do not dispute that the Applicants provided valuable services to the receivership under the most challenging of circumstances for a lengthy period of time. It is also true, however, that this improper receivership has incurred a significant amount of attorneys' fees, the unpaid portion of which far exceeds the total cash remaining in

<sup>2</sup> This category includes the additional professionals included in the Receiver's fee application: Matt Morris, Damon Nelson, James Eckles, Joshua Cox, and Grant Thornton.

the receivership, while failing to distribute any payments to the receivership creditors to pay even a portion of their claims. If the Applicants' outstanding fees are approved such that all of the remaining receivership assets are consumed by their payment, there will not be any remaining non-exempt assets from which the pre-receivership creditors may hope to collect against on account of their claims, either through the administration of a Chapter 7 bankruptcy case or through state court collection remedies. Such a result will be inequitable for the pre-receivership claimants who were prohibited by the Receivership Order for more than two years from seeking any collection of their claims and have also been deprived of the benefit of this Court's orders instructing the Receiver to segregate funds to pay their claims. This measure of reasonableness is relevant to the Fifth Circuit's instruction to approve and pay only reasonable receivership professional fees. For these reasons, the Petitioning Creditors respectfully request that this Court approve the Applicants' fees such that there is a remaining *res* of receivership assets for payment of pre-receivership claims.

#### IV. CONCLUSION

WHEREFORE, PREMISES CONSIDERED, the Petitioning Creditors respectfully request that the Court enter orders approving the Applicants' Fee Applications as modified herein and grant the Petitioning Creditors such other and further relief to which they may show themselves justly entitled.

Dated: May 6, 2013.

Respectfully submitted,

/s/ Gerrit M. Pronske

Gerrit M. Pronske

State Bar No. 16351640

Rakhee V. Patel

State Bar No. 00797213

Melanie P. Goolsby

State Bar No. 24059841

PRONSKE & PATEL, P.C.

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Email: mgoolsby@pronskepatel.com

**COUNSEL FOR THE PETITIONING  
CREDITORS**

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that, on May 6, 2013, a true and correct copy of the above and foregoing pleading was served via ECF email upon all parties accepting such service.

/s/ Melanie P. Goolsby

Melanie P. Goolsby

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

<b>NETSPHERE, INC.,</b>	§	
<b>MANILA INDUSTRIES, INC.,</b>	§	
<b>AND MUNISH KRISHAN</b>	§	
	§	
<b>PLAINTIFFS,</b>	§	
	§	
<b>V.</b>	§	<b>CIVIL ACTION NO. 3:09-CV-0988-F</b>
	§	
<b>JEFFREY BARON AND</b>	§	
<b>ONDOVA LIMITED COMPANY,</b>	§	
	§	
<b>DEFENDANTS.</b>	§	

**JEFFREY BARON’S PRELIMINARY OBJECTIONS TO TRUSTEE, TRUSTEE’S  
COUNSEL, RECEIVER, AND RECEIVER’S COUNSEL FEE CLAIMS**

TO THE HONORABLE JUDGE of said Court;

Now Comes Jeffrey Baron, and files this, his Preliminary Objections to Trustee, Trustee’s Counsel, Receiver, and Receiver’s Counsel Fee Claims and shows the Courts as follows:

**A. FACTUAL BACKGROUND**

1. On December 18, 2012, the Fifth Circuit Court of Appeals issued an opinion vacating the Receivership Order in this case. Thereafter, the receiver sought rehearing before the panel, and both sides sought rehearing *en banc*. The Fifth Circuit denied all petitions for rehearing on April 4, 2013, and the Mandate issued on April 19, 2013. Accordingly, the Court is left with the task of winding down the receivership and returning the assets to their rightful owners. As part of this task the Court the Fifth Circuit instructed the Court to reconsider all payment of fees as well as other payments from the receivership fund:

In light of our ruling that the receivership was improper, equity  
may well require the fees to be discounted meaningfully from

what would have been reasonable under a proper receivership. Fees already paid were calculated on the basis that the receivership was proper. Therefore, the amount of all fees and expenses must be reconsidered by the district court. Any other payments made from the receivership fund may also be reconsidered as appropriate. (Opinion at P.27)

2. The Fifth Circuit also concluded that:

... everything subject to the receivership other than cash currently in the receivership, which Baron asserts in a November 26, 2012 motion amounts to \$1.6 million, should be expeditiously released to Baron under a schedule to be determined by the district court for winding up the receivership. The new determination by the district court of reasonable fees and expenses to be paid to the receiver, should the amount be set at more than has already been paid, may be paid from the \$1.6 million. To the extent the cash on hand is insufficient to satisfy fully what is determined to be the reasonable charges by the receiver and his attorneys, those charges will go unpaid. No further sales of domain names or other assets are authorized (*Ibid.*)

### **B. STANDARD OF REVIEW**

3. Except where the court appointing the receiver is entirely wanting in jurisdiction as a court (*Lion Bonding Co. v. Karatz*, 262 U. S. 640, 43 S. Ct. 641, 67 L. Ed. 1151) the costs, expenses, and disbursements incurred by a receiver whose appointment was improvidently made, or who has taken wrongful possession of property, will, upon equitable principles, be charged by the court of jurisdiction against the property to the extent that they have inured to its benefit. *Speakman v. Bryan*, 61 F.2d 430, 431 (5th Cir. 1932) citing *State of Missouri v. Angle* (C. C. A.) 236 F. 644; *Palmer v. State of Texas*, 212 U. S. 118, 29 S. Ct. 230, 53 L. Ed. 435; *Burnrite Coal Co. v. Riggs*, 274 U. S. 208, 47 S. Ct. 578, 71 L. Ed. 1002; *In Re Zier & Co.* (D. C.) 127 F. 399; *Id.* (C. C. A.) 142 F. 102; *W. F. Potts Son & Co. v. Cochrane* (C. C. A.) 59 F.(2d) 375.

4. Accordingly, in order to merit receipt of any fee, the Trustee, his counsel, the Receiver and his counsel must demonstrate that the services for which they seek payment brought some benefit to the receivership estate. (*Speakman* at 432.)

### C. BARON'S OBJECTIONS

5. Baron objects to the past payment of fees, and the application for any additional fees to the Trustee or his counsel. As the Court noted in its January 2, 2013 Advisory on Past and Pending Receivership Disbursements:

Finally, the Court reads the Fifth Circuit opinion to preclude payment of the Trustee's fees. Although the Fifth Circuit placed no blame on the Trustee in moving for the Receivership, recognizing that he did so on the recommendation of the bankruptcy court, the Fifth Circuit did acknowledge that "[w]hen a receivership is improper or the court lacks equitable authority to appoint a receiver, the party that sought the receivership at times has been held accountable for the receivership fees and expenses." *Id.* at 24. In light of the Trustee's role in pursuing the Receivership and the Fifth Circuit's opinion which only authorizes payment of fees to the Receiver and his counsel, this Court believes that it was not and is not authorized to pay any of the Trustee's expenses from Receivership funds. Accordingly, the Trustee will be instructed to return all previously paid amounts back to the Receiver. The Court will not require the Trustee to pay the Receivership fees and expenses. (Doc. 1138 p.3)

Not only does the Trustee fail to meet the necessary showing that his services benefitted the receivership estate, but he wholly ignores the Court's advisory order(s) and seeks to not only retain the funds previously paid to him, but seeks to receive additional funds. The Court should be mindful of the true facts in this case -- at the time that the Trustee requested that the Court impose the receivership, the Trustee <sup>1</sup>had approximately \$2.1 million in cash plus \$330,000 of Village Trust funds that Judge Jernigan demanded be placed in escrow, and less than

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<sup>1</sup> In its motion for fees, the Trustee still perpetuates this serious misrepresentation that Ondova did not have funds to pay creditors at the time that it requested the receivership.

\$900,000.00 in claims against the Ondova Bankruptcy estate. SR.v10 p4229, SR.v18 p181, Bkr. Doc 535 at 66:21-22. As of August 2010, with the almost \$1.7 million dollars provided to Ondova through the Global Settlement, Ondova was solvent, and the estate should have been closed. On 10-18-2010, the Trustee reported to Judge Jernigan that the:

*“parties are all complying with settlement agreement provisions in terms of payments and other activities, so there has been no problem ... we’re working to wind down Ondova’s affairs”*

Instead of paying the alleged creditors as promised, the Trustee sought and obtained a receivership in the name of creditors that he failed to pay. Instead of paying creditors, the Trustee has paid only himself and Munsch Hardt. Given these facts all fees previously paid to the Trustee and/or his counsel should be disgorged and any new fee applications should be denied.

6. Baron further objects to the payment of any fees to the Trustee as such fees are not proper receivership fees or costs. Moreover, the Trustee’s fees and those of his counsel are objectionable because even *assuming* that they were proper receivership expenses (which they were not), they are excessive, duplicative, unreasonable and were unnecessary.

7. Baron objects to all fees previously paid and/or now sought by the Receiver, the Receiver’s counsel, the Trustee and/or the Trustee’s counsel because, as raised on prior pleadings before this Court and the Fifth Circuit, fees and expenses incurred by the Receiver, his counsel, the Trustee and/or his counsel should not be charged in a receivership that was found to be improper. The issues were thoroughly briefed and argued before the district and appellate court. For the record, Mr. Baron reasserts his objections to payment of any fees or expenses to the Receiver, the Receiver’s counsel, the Trustee and/or the Trustee’s counsel in their entirety.

8. Baron objects to all fees previously paid to and/or now sought by the Receiver, his counsel, The Trustee and/or the Trustee's counsel because all such applications fail to properly distinguish and/or segregate the services rendered between specific entities of the receivership estate as required under Fifth Circuit case law. *Bank of Commerce & Trust Co. v. Hood*, 65 F.2d 281 (5th Cir. 1933) (fees must be charged against each fund held by receiver as if separate receivers had been appointed for each) citing *Gugel v. New Orleans Bank* (C. C. A.) 239 F. 676; *In re Williams' Estate* (C. C. A.) 156 F. 934; *Seaboard National Bank v. Rogers Milk Products Co.* (C. C. A.) 21 F.(2d) 414.

9. Baron objects to all fees previously paid and/or now sought by the Receiver, the Receiver's counsel, the Trustee and the Trustee's counsel which were incurred by any such parties in the defense of the Order appointing a Receiver or the defense of any legal fees sought by the Receiver or his counsel. Costs and expenses incurred in the defense of either the receivership or the defense of fees sought are not properly chargeable against the receivership estate. *US v. Larchwood Gardens, Inc.*, 420 F.2d 531, 535 (3rd Cir. 1970) [...the receiver's expenses and costs in defending their allowances on appeal are not proper charges against the receivership estate (at 535)]; See also, *In re Marcuse & Co.*, 11 F.2d 513, 516 (7th Cir.1926).

10. Baron objects to all fees previously paid to and/or now sought by the Receiver, his counsel, the Trustee and/or the Trustee's counsel which seek reimbursement for non-legal work as an attorney may not be compensated for tasks which are properly the responsibility of the trustee or receiver, and may not be compensated at a rate applicable to legal work for tasks which properly could have been performed by less costly non-legal employees. *Matter of US Golf Corp.*, 639 F.2d 1197 at 1202 (5th Cir. 1981)

11. Baron objects to all fees previously paid and/or now sought through the fee applications of the Receiver, the Receiver's counsel, the Trustee, and the Trustee's counsel as



such applications fail to meet the necessary proof required to permit the award of such fees as required by the applicable standards set forth by the Fifth Circuit Court of Appeals. (Need Cite for Johnson case)

12. Baron objects to all fees previously paid and/or now sought through the fee applications of the Receiver, the Receiver's counsel, the Trustee and the Trustee's counsel because:

- a. they are vague, non-specific and do not provide specific information about an individual lawyer or paralegal's activities.
- b. They reveal that three or four people attended a phone conference or a meeting, but do not demonstrate that it was necessary or reasonable for that many individuals to attend and bill for such meeting.
- c. The Receiver's billings appear to be substantially a repetitive copy/paste for many days. There does not appear to be correlation between what Peter Vogel submitted on his bill to the work he actually performed. This is fatal to his fee claims.
- d. There is duplicative billing by the Trustee and the Receiver on phone calls, review of memoranda by numerous lawyers and overstaffing on meetings and projects. In many instances the Trustee, the Receiver and their professionals bill ten or more lawyers for the same matters. For example, there are numerous entries where Jeff Fine, Chris Kratovil, David Schenck and Peter Vogel are meeting. Mr. Vogel has David Schenck, who is an appellate counsel and not a bankruptcy lawyer or litigator, and Jeff Fine appearing to be "chief advisors". No necessity for such counsel is demonstrated. In addition, many

meetings and discussions include Joshua Cox, James Eckols and other receiver professionals. The bills should be discounted to adjust for this overstaffing and duplication of efforts.

e. Many of the Gardere billings appear to be heavily weighted in favor of the senior partner's fees instead of driving down the costs to a lower level partner or senior associate. Gardere lawyers also participated in numerous meetings with other lawyers that billed the receivership such as James Eckols, Joshua Cox, and Thomas Jackson.

f. Gardere spent receivership funds filing actions around the country, including an action in Houston to prevent Mr. Baron from exercising his right to free speech. No benefit was conferred upon any property of the estate by such action.

g. Gardere lawyers filed motions, advisories, responses and reports in this Court and the Bankruptcy court, many of which contained extremely inflammatory statements about Mr. Baron.<sup>2</sup> These attacks against Mr. Baron constitute breaches of their duty of loyalty to Mr. Baron.<sup>3</sup> Very little of such work benefitted any assets of the estate.

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<sup>2</sup> For example, when this Court ordered Vogel to report when Vogel mailed a monthly check to Baron for food and local transportation, Vogel used the opportunity to bill for his firm's filing a nine page notice including five drafted sections stating, in so many words, that "On May 1, 2012, the Receiver sent Mr. Baron his living expenses for May 2012 directly via U.S. regular mail." SR. v15 p1901. The inflated billing served no legitimate purpose and is obviously unnecessary. Mr. Vogel didn't need to hire expensive lawyers (at his own firm) and pay hundreds of dollars per hour for filing a five section document about sending a check via regular mail. He could have simply provided, *in one sentence*, notice that he had mailed the check.

<sup>3</sup> In another example of unnecessary billing, Gardere (and Dykema) billed what appears to be tens of thousands of dollars, attempting to prevent Mr. Baron from obtaining an automobile, improperly chastising Mr. Baron for requesting \$35,000 for what it venomously deemed an amount for a "luxury vehicle" asserting that Mr. Baron was unreasonable. Gardere also appears to have billed over \$50,000 assisting the prosecution of a former news blogger in retaliation for Mr. Dauben publishing an article highly critical of Mr. Vogel. Moreover, Gardere billed large JEFFREY BARON'S PRELIMINARY OBJECTIONS TO TRUSTEE AND TRUSTEE'S COUNSEL , RECEIVER AND RECEIVER'S COUNSEL FEE CLAIMS

h. Gardere billed for generating *hypothetical* objections and objecting vigorously to both sides of the same issue. For example, just prior to oral argument in this appeal, the District Court entered an order that Baron could retain trial counsel for a limited purpose. SR. v15 p1954.

1. Gardere immediately billed for filing a six section objection to Baron's hypothetical future failure to obtain trial counsel, accusing Baron on May 15, 2012 (based on hypothetical, future non-compliance) of refusing to comply with the order because "retaining new counsel would be a step towards ending the Receivership in an orderly fashion". SR. v15 p2907, *et. seq.*

2. Less than a month later when Baron sought approval to hire trial counsel as ordered, the Receiver billed again on June 14, 2012, taking the opposite position in a seven page objection that accused Baron of threatening to "cause chaos by extending the length and increasing the costs of the Receivership" by retaining counsel. SR. v16 p1159, *et.seq.*

13. Baron objects to all fees previously paid to and/or now sought by the Receiver, his counsel, The Trustee and/or the Trustee's counsel as there are serious questions about the quality of the work that was performed and for which fees are now being sought including but not limited to the following:

a. A receiver is charged with maintaining and preserving the receivership--- essentially returning the property in the same condition in which he found it. The Receiver has not only failed to maintain the assets of the receivership he has created potentially catastrophic liability against the assets of the receivership, particularly against assets which

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amounts for attempting to impugn the blogger's highly charged, controversial statements Mr. Baron, who should not have to pay for Mr. Vogel's personal litigation.

the Fifth Circuit has stated should never have been taken into the receivership to begin with. Specifically, the Receiver has allowed 710 UDRP claims to accrue which must be dealt with by Baron and the LLCs upon the wind down of the receivership. A default or negative finding in one UDRP proceeding constitutes evidence in subsequent proceedings that there is a pattern of conduct. Settlements would have avoided such findings. It appears that little, if anything was done to prepare for any UDRP claims. In fact, it appears that the Receiver defaulted on virtually all of the UDRP claims. Moreover, the Receiver sought and received approval for the payment of attorneys' fees to Mr. Cox, Mr. Eckels and Mr. Jackson, yet not a single such Receiver professional did anything to address any of the UDRP claims, instead they appear to have been routinely paid from reviewing documents and attending meetings with other counsel. These fees to the "Receiver Professionals" amount to hundreds of thousands of dollars and do not appear to have benefitted any asset of the receivership estate. The Receiver should not be permitted to simply walk away from such defaults and leave the estate to pay for the damages caused.

b. Virtually the only significant payments made by the Receiver were his fees, fees to his counsel, and fees to the Trustee and his counsel. Not a single intended beneficiary of the receivership (i.e the lawyers with claims for unpaid legal fees owed by Jeff Baron) received a dime. None of this benefitted the property of the estate in any way.

c. There was no need to bill anywhere from two to three hundred thousand dollars to arrange an auction to dispose of receivership property when, the appellate court made it clear that its ruling that would determine the rights in these assets, and that their decision would be rendered expeditiously. The decision to proceed with an auction/sale was not in the best interest of the estate and actually had to be stayed by the Fifth Circuit when,

during oral argument, the Trustee (purporting to act on behalf of the Receiver) refused one of the Fifth Circuit judges' request to voluntarily delay the auction.

d. There was no need to seek a panel rehearing when the panel articulated clear precedent accompanying their view of the record. Indeed, when viewed objectively, the Receiver's position was unsupported by any law that a receivership could be imposed to obtain a settlement of non-diverse state law claims.

e. The Receiver's counsel should not be paid for undertaking a sale of assets without first obtaining a valuation of the assets and selling the assets in a commercially reasonable fashion. The Receiver ignored the protocol presented as a reliable methodology for valuing domain names, and which this Court followed and accepted over a two year period. It is reckless to accept a valuation from a self-interested buyer as the value of a portfolio. This conduct breaches the Receiver's fiduciary duty to the Court and to the Receivership estate.

f. The Receiver created, what appears to be a sham marketing campaign. The website that the receiver created and advertised to ostensibly create a fair market sale was a dead-drop. The contact email address on the site was not even registered to the Receiver. Persons who attempted to contact the receiver through the website were diverted to a black hole and never received responses from the receiver. The Receiver breached his fiduciary duty by not setting up a reliable system for handling calls and emails, and should not be rewarded for this breach of conduct.

g. The Receiver and his counsel refused to comply with the bankruptcy court's order to produce documents relating to prior sales and information about negotiations and prior negotiations regarding the valuation, offers to buy, and negotiations to buy various domain names. Refusal to produce court-ordered documents

ordinarily results in a presumption that the documents are damaging to the recalcitrant party. Indeed, any refusal by Baron or his attorneys to promptly comply with a court order has been met by severe criticism, or a show cause order.

h. The Receiver sold assets for less than fair value and under circumstances that are still shrouded in secrecy. While the Receiver submitted information and requests to sell domain names under seal, the documents could have been, but were never provided to Baron's counsel to evaluate the fairness of the sales price. Until Friday, April 23, 2013, the Receiver never provided Baron with information about the sales price of the domain names or the identity of the purchasers. There is no information and no opportunity for Baron to assess whether the names were sold at arm's length, or were the product of collusion. Due process requires more than mere allegations that a sale was conducted properly and in a manner that is consistent with principles of commercial reasonableness. Defendant was denied discovery of information on this issue.

i. The Receiver through his counsel Dykema, participated in a plan to transfer assets to pay the Trustee's legal bills in the Ondova case. On the surface, the Receiver and the Trustee alleged there was a dispute as to fees. Despite the absence of any *legal reason* to enter into a settlement with the Receiver over "disputed" fees, the Receiver and his counsel decided that the Trustee should be paid by selling all of Jeff Baron's assets.<sup>4</sup> Receivers and their attorneys have a duty to preserve and maintain the assets—not give them away, or to manufacture non-existent controversies to "settle" a claim and use the bankruptcy code to justify a transfer of assets into a liquidating trust to

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<sup>4</sup> Mr. Sherman and Mr. Vogel's testimony before the Bankruptcy Court, as well as Mr. Vogel's representations to this Court about the dispute, support this argument.

pay a trustee and his lawyers. Lawyers should be paid for their services, but only *if* there is a *legal obligation* to pay. The Court should not pay the Receiver or his counsel fees for participating in a plan to pay the Trustee's fees where, as here, such payment: (a) was not supported by any legal duty to pay an alleged "creditor" of the receivership estate; and (b) the Receiver intended to pay the Trustee 100% of fees that had no legal basis. Participating in this plan violated the Receiver's duty of loyalty to Jeff Baron.

j. The Receiver breached his duty to preserve and maintain the receivership by failing to take action to preserve the receivership upon filing of the involuntary bankruptcy by Gerrit Pronske *et al.* This failure also constituted a breach of the duty of loyalty to Jeff Baron, the Estate and the Court. The Receiver had a duty to protect Jeff Baron and his personal assets, as well as assets in which he has an interest such as Novo Point, LLC and Quantec, LLC. On the one hand, the Receiver, points out in various pleadings that he has obtained show cause orders against individuals whose actions threaten the receivership, or undermine the jurisdiction of the Court. On the other hand the Receiver entirely abdicated his responsibilities in spite of the Fifth Circuit's opinion by failing to pursue a show cause against the Petitioning Creditors. The Receiver raised objections for the record, but failed to take any action to hold the petitioning creditors in contempt, or even have them explain why they violated the receivership injunction by filing a bankruptcy action that interfered with this Court's ability to wind down the receivership. When a Receiver says one thing but does another, the Court must question the Receiver's motives. Breach of this fiduciary duty deprives Jeff Baron of the benefits of the Fifth Circuit ruling and should result in a significant reduction of fees paid to the Receiver.

k. The Receiver failed to settle this case when it could have been settled earlier and before millions were spent. It does not require detailed review of billing records and reports to recognize that the Receiver, his counsel, the Trustee and his counsel have invoiced for fees of over five million on claims that could have been settled for less than \$800,000. The reasons are pretextual. Once the freight train left the station, the Trustee and the Receiver's lawyers could not stop billing, and came up with flimsy excuses to perpetuate the receivership. Jeff Baron should not be held responsible to pay fees for the Receiver's failure to get the alleged creditors paid and the receivership closed.

l. Dykema, the Receiver's counsel failed to structure the intended auction to allow qualified buyers sufficient information to make informed judgments regarding the value of the portfolios, failed to communicate with qualified buyers who wanted to bid on the assets, proposed to sell to unidentified buyers from offshore islands who refused to disclose ownership of the companies, and who misled the Court as to their common ownership and falsely represented that they were competitors when, in fact, the individuals listed as bidders for Trans and Special Jewel were, in fact, both managers for Despin Trust—which owned both companies.

m. While paying Mr. Martin Thomas \$5,000 per month during the Ondova case, the Receiver never questioned whether Mr. Baron was actually receiving representation from Mr. Thomas, and did not question or apparently even find it odd that Mr. Thomas was not speaking at any hearings or filing pleadings on behalf of Mr. Baron. As the Court will recall, upon learning these facts from Mr. Baron's counsel, not the Receiver or Mr. Thomas, the Court told Mr. Thomas that he had not been paying him \$5,000 a month to

be "a potted plant." Mr. Thomas was paid approximately \$100,000 by the receivership.



Payment of these funds appears to have been an absolute waste of receivership money and deprived Mr. Baron of representation at the trial level. Moreover, according to Mr. Thomas, it appears that someone instructed him to refrain from representing Mr. Baron and to allow the receiver and trustee to act in quid pro quo fashion to ensure that each of their inflated bills were awarded unchallenged. Unless Mr. Thomas was making this story up, he has been paid \$100,000 to breach his duty as an advocate for his client by failing to file appropriate pleadings, objections on behalf of his client or provide any meaningful representation. Either the Receiver should be held accountable for the loss of these funds, or Mr. Thomas should be ordered to disgorge the funds.

14. Baron reserves the right to amend or revise these preliminary objections and to file such additional or amended objections as he deems necessary and in compliance with the Court's previous Orders

WHEREFORE, as previously stated above, Jeffrey Baron requests the Court to decline payment of all legal fees and expenses to the Receiver as the receivership was improperly imposed on Baron. Alternatively, Mr. Baron requests that the Court decline to award fees that are or were the product of misinformation or misrepresentations provided to the Court, in addition to excessive, duplicative, unreasonable or unnecessary, and to disapprove any application of fees.

Respectfully submitted,

/s/ Edwin E. Wright, III

Edwin E. Wright, III

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**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic on May 8, 2013.

Edwin E. Wright, III

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

<b>NETSPHERE, INC.,</b>	§	
<b>MANILA INDUSTRIES, INC.,</b>	§	
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	§	
<b>JEFFREY BARON AND</b>	§	
<b>ONDOVA LIMITED COMPANY,</b>	§	
	§	
<b>DEFENDANTS.</b>	§	

**JEFFREY BARON’S MOTION FOR LEAVE TO AMEND, ALTERNATIVE MOTION TO ABATE, and ALTERNATIVE MOTION FOR DECLARATION REGARDING FEE APPLICATIONS AND SUBSEQUENT ORDERS GRANTING OR AWARDING FEES**

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes Jeffrey Baron and files this his Motion for Leave to Amend, Alternative Motion to Abate and Alternative Motion for Declaration Regarding Fee Applications and Subsequent Orders Granting or Awarding Fees, and in support thereof would show this Court as follows:

**A. FACTUAL BACKGROUND**

1. The Court has set a trial on the fee applications of the Receiver, his counsel, the Trustee, and the Trustee’s counsel for May 8, 2013 beginning at 2:00 PM. Objections to such fee applications are due on or before May 9, 2013.
2. There are various issues raised by the fee applications and documents submitted in support of such applications which merit discovery by Jeff Baron to determine whether

some or all of such fees sought comply with applicable case law. These include but are not limited to the following:

- a. The Receiver has not only failed to maintain the assets of the receivership he has created potentially catastrophic liability against the assets of the receivership, particularly against assets which the Fifth Circuit has stated should never have been taken into the receivership to begin with. Specifically, the Receiver has allowed 710 UDRP claims to accrue which must be dealt with by Baron and the LLCs upon the wind down of the receivership. A default or negative finding in one UDRP proceeding constitutes evidence in subsequent proceedings that there is a pattern of conduct. Settlements would have avoided such findings. It appears that little, if anything, was done to prepare for any UDRP claims. In fact, it appears that the Receiver defaulted on virtually all of the UDRP claims. Moreover, the Receiver sought and received approval for the payment of attorneys' fees to Mr. Cox, Mr. Eckels and Mr. Jackson, yet not a single such Receiver professional did anything to address any of the UDRP claims; instead, they appear to have been routinely paid from reviewing documents and attending meetings with other counsel. These fees to the "Receiver Professionals" amount to hundreds of thousands of dollars and do not appear to have benefitted any asset of the receivership estate. The Receiver should not be permitted to simply walk away from such defaults and leave the estate to pay for the damages caused.
- b. The Receiver's counsel should not be paid for undertaking a sale of assets without first obtaining a valuation of the assets and selling the assets in a commercially reasonable fashion. The Receiver ignored the protocol presented as a reliable methodology for valuing domain names, and which this Court followed and accepted

over a two year period. It is reckless to accept a valuation from a self-interested buyer as the value of a portfolio. This conduct breaches the Receiver's fiduciary duty to the Court and to the Receivership estate.

- c. The Receiver created, what appears to be a sham marketing campaign. The website that the receiver created and advertised to ostensibly create a fair market sale was a dead-drop. The contact email address on the site was not even registered to the Receiver. Persons who attempted to contact the receiver through the website were diverted to a black hole and never received responses from the receiver. The Receiver breached his fiduciary duty by not setting up a reliable system for handling calls and emails, and should not be rewarded for this breach of conduct.
- d. The Receiver and his counsel refused to comply with the bankruptcy court's order to produce documents relating to prior sales and information about negotiations and prior negotiations regarding the valuation, offers to buy, and negotiations to buy various domain names. Refusal to produce court-ordered documents ordinarily results in a presumption that the documents are damaging to the recalcitrant party. Indeed, any refusal by Baron or his attorneys to promptly comply with a court order has been met by severe criticism, or a show cause order.
- e. Dykema, the Receiver's counsel failed to structure the intended auction to allow qualified buyers sufficient information to make informed judgments regarding the value of the portfolios, failed to communicate with qualified buyers who wanted to bid on the assets, proposed to sell to unidentified buyers from offshore islands who refused to disclose ownership of the companies, and who misled the Court as to their

common ownership and falsely represented that they were competitors when, in fact, the individuals listed as bidders for Trans and Special Jewel were, in fact, both managers for Despin Trust—which owned both companies.

- f. The Receiver through his counsel Dykema, participated in a plan to transfer assets to pay the Trustee’s legal bills in the Ondova case. On the surface, the Receiver and the Trustee alleged there was a dispute as to fees. Despite the absence of any *legal reason* to enter into a settlement with the Receiver over “disputed” fees, the Receiver and his counsel decided that the Trustee should be paid by selling all of Jeff Baron’s assets.<sup>1</sup> Receivers and their attorneys have a duty to preserve and maintain the assets—not give them away, or to manufacture non-existent controversies to “settle” a claim and use the bankruptcy code to justify a transfer of assets into a liquidating trust to pay a trustee and his lawyers. Lawyers should be paid for their services, but only *if* there is a *legal obligation* to pay. The Court should not pay the Receiver or his counsel fees for participating in a plan to pay the Trustee’s fees where, as here, such payment: (a) was not supported by any legal duty to pay an alleged “creditor” of the receivership estate; and (b) the Receiver intended to pay the Trustee 100% of fees that had no legal basis. Participating in this plan violated the Receiver’s duty of loyalty to Jeff Baron.
- g. While paying Mr. Martin Thomas \$5,000 per month during the Ondova case, the Receiver never questioned whether Mr. Baron was actually receiving representation from Mr. Thomas, and did not question or apparently even find it

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<sup>1</sup> Mr. Sherman and Mr. Vogel’s testimony before the Bankruptcy Court, as well as Mr. Vogel’s representations to this Court about the dispute, support this argument.

odd that Mr. Thomas was not speaking at any hearings or filing pleadings on behalf of Mr. Baron. As the Court will recall, upon learning these facts from Mr. Baron's counsel, not the Receiver or Mr. Thomas, the Court told Mr. Thomas that he had not been paying him \$5,000 a month to be "a potted plant." Mr. Thomas was paid approximately \$100,000 by the receivership. Payment of these funds appears to have been an absolute waste of receivership money and deprived Mr. Baron of representation at the trial level. Moreover, according to Mr. Thomas, it appears that someone instructed him to refrain from representing Mr. Baron and to allow the receiver and trustee to act in quid pro quo fashion to ensure that each of their inflated bills were awarded unchallenged. Unless Mr. Thomas was making this story up, he has been paid \$100,000 to breach his duty as an advocate for his client by failing to file appropriate pleadings, objections on behalf of his client or provide any meaningful representation. Either the Receiver should be held accountable for the loss of these funds, or Mr. Thomas should be ordered to disgorge the funds.

3. Each of these matters raise issues which may indicate, breaches of fiduciary duties, malpractice, negligence, gross negligence, fraud and other causes of action, which Jeffrey Baron may have against either the Receiver, the Receiver's counsel, the Trustee, or the Trustee's counsel. Baron recognizes the need to base claims, counterclaims and cross claims upon reasonable factual information, but needs to obtain discovery concerning these and similar matters in order to determine the validity and/or viability of such potential claims.

4. Baron has not been afforded a reasonable opportunity to obtain discovery regarding such matters, and was instructed as recently as the last two weeks not to seek such discovery by the Court appointed mediator.
5. Baron now finds himself in the position of having complied with the instructions of the mediator and being unable to obtain necessary discovery to properly determine the validity and viability of such claims and having to object and defend against fee applications which may be determinative of any such potential claims under applicable Fifth Circuit case law.
6. Accordingly, Baron seeks leave to file a Motion to Amend in the underlying case so as to assert such claims, and to obtain discovery regarding same.
7. Alternatively, Baron requests that the Court abate the fee application hearing and permit Baron to pursue such claims of malpractice through adjudication by trial.
8. In the further alternative Baron requests that the Court enter a specific finding that the Court has not considered any issues with respect to the existence or non-existence of possible negligence, gross negligence, malpractice, breaches of fiduciary duty, fraud or other causes of action in making its fee determinations and awarding any such fees, and all parties rights to proceed with any such claims or causes of action are preserved and unaffected by any such fee determinations and/or awards.

WHEREFORE, premises considered, Jeffrey Baron requests that the Court enter an Order granting his Motion for Leave to Amend his pleadings, or alternatively, that the Court enter an Order abating the fee application trial/hearing in order to allow Baron to pursue potential claims against the Receiver, the Receiver's counsel, the Trustee, and the Trustee's counsel, or in the further alternative the Court enter an Order that it is not making a finding of



any kind with respect to the existence or non-existence of any act or omission constituting negligence, gross negligence, malpractice, breaches of fiduciary duty, fraud or other causes of action in making its fee determinations and awarding any such fees, and all parties rights to proceed with any such claims or causes of action are preserved and unaffected by any such fee determinations and/or awards; and for such other and further relief which the Court may deem appropriate.

Respectfully submitted,

/S/ Edwin E. Wright, III

Edwin E. Wright, III

State Bar No. 2269500

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**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic on May 8, 2013.

Edwin E. Wright, III

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

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

**ORDER GRANTING LEAVE TO AMEND, ABATE AND FOR DECLARATION**

The Court, having reviewed Jeffrey Baron's Motion for Leave to Amend, Alternative Motion to Abate, and Alternative Motion for Declaration Regarding Fee Applications and Subsequent Orders Granting or Awarding Fees and being otherwise fully advised in the premises;

**IT IS HEREBY ORDERED** that the Motions are **GRANTED** in all respects.

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**HON. ROYAL FURGESON  
SENIOR DISTRICT COURT JUDGE**



Chapter 11 Trustee had to show (1) he rendered valuable services or furnished materials; (2) for the Receiver and not someone else; (3) which services and materials the Receiver accepted, used, and enjoyed; (4) under such circumstances as reasonably notified the Receiver that the Chapter 11 Trustee, in performing such services, was expecting the Receiver to pay him. *See Wohlfahrt v. Holloway*, 172 S.W.3d 630, 634 (Tex. App.- Houston [14th Dist.] 2005, pet. denied). Here, the evidence clearly shows that the legal services that Munch Hardt provided in connection with the appeals was done **for the Chapter 11 Trustee**, who was the appellee in many of the appeals. The fact that that work also benefited the Receivership does not change the fact that the work was done for the Chapter 11 Trustee. The evidence also establishes that the services were not provided in a situation where it was clear to the Receiver that it would have to pay for Munch Hardt's services. The Receiver clearly objected to the requests of the Chapter 11 Trustee for payment for their cooperation on the appeal.

Lastly, it is well established that a plaintiff may not recover under quantum meruit when the services for which payment is sought is covered by a contract with another party. "Generally, a party may recover under quantum meruit only when no express contract covering the services or materials furnished exists." *Truly v. Austin*, 744 S.W.2d 934, 936 (Tex.1988). Mr. Urbanik's testimony clearly established that the services for which Munch Hardt seeks recovery were provided to the Chapter 11 Trustee under a written contract between the Chapter 11 Trustee and Munch Hardt. Accordingly, as a matter of law, there can be no recovery from the Receiver under a theory of quantum meruit. An analogous situation would be where a person entered into an express contract to have both his lawn and his neighbor's lawn cut for \$20. Subsequently, the lawn service could not seek to recover under quantum meruit from the neighbor for cutting their lawn, even though the neighbor received a benefit from having their lawn cut. Similarly, here the Chapter 11 Trustee hired Munch Hardt to work on the appeals under a written contract, accordingly, Munch Hardt cannot seek recovery from the Receiver for those services under quantum meruit.

## **2. Gardere's Fees Should Be Reduced To Account For Its Responsibility For Increasing Netsphere's Claim Against The Receivership Estate**

Upon the appointment of Peter Vogel as the Receiver, Gardere was hired to serve as the Receiver's counsel. The Receivership was approved by this Court for the purpose of protecting the Global Settlement Agreement. At the time the Receivership was initiated, Baron and his related entities were in breach of the Global Settlement Agreement and had already received multiple notices and demands for performance from Netsphere.<sup>1</sup>

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<sup>1</sup> The Court of Appeals' Opinion noted that **on the record provided** by the Receiver and the Chapter 11 Trustee there was no evidence that Baron had breached the Global Settlement Agreement. The Receiver's new appellate counsel, Dykema, did not cooperate with Netsphere's counsel in connection with the appeal and inexplicably did not provide the Fifth Circuit with citations to the record related to Netsphere's breach of contract claims. In any event,

Immediately following the appointment of the Receiver, Netsphere's counsel met with counsel for the Receiver and requested that the Receiver cure the breaches of the Global Settlement Agreement. Netsphere explained the nature of the three breaches and the remedies that it sought to Receiver's counsel. Netsphere further explained that there was an attorney's fee provision in the Global Settlement Agreement and that the fees associated with the case after the breaches would continue to accrue against the Receivership Entities. Despite the explanation of the importance of timely resolving the breaches so as to minimize the damages and attorney's fees, counsel for the Receiver never actually addressed or resolved the outstanding breaches. Such failure continued throughout the time that Gardere served as counsel to the Receiver. During that time, counsel for Netsphere had to continue to participate in this case and incur substantial attorney's fees that would otherwise have been unnecessary. At the time that the issue was first raised with Receiver's counsel, the breaches and attorney's fees associated therewith could have been resolved for less than \$25,000. In the more than two years since that time, Netsphere has incurred hundreds of thousands of dollars in attorney's fees in this case; which now form a substantial part of the damages from the breaches of the Global Settlement Agreement. Such additional attorney's fee damages could have been completely avoided if the Receiver and his counsel had simply and expeditiously addressed the breach issues which were, in part, the basis for the Receivership in the first place. Accordingly, this Court should reduce Gardere's fee award to account for the additional liability that they created for the Receivership Entities by failing to earlier resolve the breach issues.

**3. Peter Vogel's Fees Should Be Reduced To Account For His Acting As Lead Litigation Counsel Instead of Client Representative of The Receivership Entities**

A review of Mr. Vogel's time entries reveals that he spent significant time managing the day-to-day litigation activities with respect to the Receivership. His time entries reflect many days with eight (8) or more hours of billed time. This is perhaps not surprising in light of Mr. Vogel's fine reputation as an experienced lead trial attorney. His normal role is managing litigation as lead counsel. However, in this situation, as the Receiver, he was appointed to serve as the client representative of the Receivership Entities and not as lead litigation counsel. In fact, as Receiver/client representative, he hired a lead litigation counsel in the person of Barry Golden of Gardere. Gardere's billing records reflect the substantial time that Mr. Golden spent as lead counsel managing the litigation. After Gardere was replaced by Dykema, Mr. Schenck served as lead litigation counsel. Accordingly, it was not necessary for Mr. Vogel to actively manage the litigation and it resulted in the Receivership being charged more attorneys' fees than necessary. In a typical situation involving in-house counsel/client representatives, the client

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this comment is not binding on Netsphere and does not have preclusive effect on Netsphere because Netsphere was not a party to the appeal.

representative does not spend substantial time managing the litigation, rather the in-house client representative simply gives overall strategic direction and allows their outside counsel to manage the tactical implementation of the strategy. An ordinary client would have balked at the idea of having two lead counsel of the experience and rates of Mr. Vogel and Mr. Golden at the same time. The Receivership Entities should not have to be so burdened.

**4. Dykema's Fees Should Be Reduced Because Fees Incurred In Connection With The Involuntary Bankruptcy Were Incurred To Defend Dykema's Potential Fee Award And Not To Benefit The Receivership**

Dykema has incurred substantial fees in connection with the Involuntary Bankruptcy case. However, following the Fifth Circuit ruling in December 2012, the Receiver ceased to have any interest in the Receivership assets other than to preserve them during the wind-up process. The Receiver had no "dog in the fight" over whether the Receivership assets went to the Involuntary Bankruptcy trustee or back to Mr. Baron and his related entities. Accordingly, there was no reason for the Receiver to have participated in the Involuntary Bankruptcy proceedings. By contrast, the Receiver's attorneys did have an interest in where those assets went because they want to ensure that there will be assets from which their fees would be paid. That was completely appropriate, but should be done at Dykema's expense not at the Receivership's expense because the Receivership has no interest in where the assets go after dissolution of the Receivership.

**5. The Assets of The Receivership Entities Should Be Returned To The Receivership Entities And Not Transferred to The Involuntary Bankruptcy Trustee Because They Are Not Assets Of Mr. Baron Personally**

The clarification order from the Fifth Circuit clearly stated that the assets of the Receivership Entities were to be returned to the entities that they were seized from and not be returned to Mr. Baron as provided in the original opinion. That clarification order precludes the transfer of those Receivership assets seized from parties other than Mr. Baron from being transferred to the Involuntary Bankruptcy trustee because those other Receivership Entities are not defendants or otherwise subject to the Involuntary Bankruptcy against Mr. Baron personally. Those entities have not been put into Involuntary Bankruptcy at this point and there are not the requisite creditors to put them into an Involuntary Bankruptcy. Accordingly, their assets should be returned to them and not directed to the Involuntary Bankruptcy Trustee.

Dated: 9 May 2013

Respectfully submitted,

\_\_\_\_\_/s/ **John W. MacPete** \_\_\_\_\_  
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ATTORNEYS FOR PLAINTIFFS  
MANILA INDUSTRIES, INC., NETSPHERE,  
INC. and MUNISH KRISHAN

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

**NETSPHERE, INC.,  
MANILA INDUSTRIES, INC., AND  
MUNISH KRISHAN**

**PLAINTIFFS,**

**V.**

**JEFFREY BARON AND ONDOVA  
LIMITED COMPANY,**

**DEFENDANTS.**

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**CIVIL ACTION NO. 3:09-CV-0988-F**

**THE RECEIVER AND DYKEMA’S CONSOLIDATED POST-HEARING BRIEF**

During the course of the evidentiary hearing and argument conducted between May 8-10, 2013, the Court posed several questions and invited short submissions addressing a variety of open issues. In hopes that a very brief submission on these matters may be of assistance to the Court, the Receiver and his counsel, Dykema, observe the following:

- 1. The status of the Court’s earlier orders following the release of the Fifth Circuit’s mandate in the various consolidated appeals.**

The Fifth Circuit’s individual orders and mandates have reversed the particular orders involved but all directed the District Court back to its opinion, which recites no reversible error as to any individual order and leaves the District Court considerable discretion in addressing the reconsideration of fees and wind-down called for in the Fifth Circuit’s opinion and mandate. The Court has stated its view on this issue clearly during the hearing. We agree with that view.



**2. The status of the Receivership, the Fifth Circuit’s mandate, the injunction and stay relative to the parties before the Bankruptcy Court pursuant to the recently filed involuntary proceeding.**

As noted at the close of the recent hearing, the Receiver currently has in his control all assets of the “Receivership Parties” as described in the District Court’s November 24, 2010 (“Receivership Order”), including assets of Jeffery Baron and certain trust entities, including Novo, Quantec and the Village Trust. While these latter entities have collectively benefitted from the abating effect of the injunction contained in the Receivership Order, which has prevented the initiation or continuation of many domain name (“UDRP”) and trademark disputes, they are not, as yet, clearly or explicitly included or addressed in the pending involuntary bankruptcy filed against Mr. Baron. Stated simply, Novo and Quantec are included in the Receivership but not, as of yet, in the involuntary Bankruptcy filed against Mr. Baron. Meanwhile, the Fifth Circuit’s recently issued mandate calls for a discharge of the Receiver and an orderly wind-down of the Receivership as to not only Baron, but to all Receivership Parties, complicating the Receiver’s position relative to both third parties asserting UDRP and other claims and the trust entities themselves, who are currently represented by Gary Schepps. The current state of affairs leaves the discharge and wind-down in limbo and raises questions about the current reach of the involuntary Chapter 7 bankruptcy against Mr. Baron and the continuing effect of the injunction as it relates to assets in the hands of the Receiver but, perhaps, not in the bankruptcy court.

In order to avoid any dispute over the implementation of the Fifth Circuit’s mandate, on the one hand, or the applicability of the automatic stay, on the other, and to facilitate an orderly wind-down process, the Court may wish to enter an Order indicating its present intention to wind-down and discharge and release the Receiver and his professionals pending a determination

of the scope of the current involuntary bankruptcy, though the Order can take final effect thereafter.

To that end, the Receiver respectfully requests to be discharged and released from further obligation, liability or claims on behalf of himself and his professionals, including Dykema. In order to promote an orderly wind down and to signal compliance with the mandate of the Fifth Circuit in the interim, the Court should consider withdrawing the reference and discharging the Receiver, his employees and counsel per the above—to be effective upon a resolution in the bankruptcy court of the status of the trust entities involved (i.e. Novo and Quantec) relative to the existing Chapter 7 bankruptcy against Mr. Baron individually—perhaps by a date certain in order to avoid any direct challenge by those entities as to lack of implementation of the mandate in the interim. If the Bankruptcy Court finds these entities to be part of the Chapter 7 bankruptcy against Mr. Baron on alter ego, sham at inception per Texas law, or other grounds in the interim, the Receiver should be directed to transfer the assets to the bankruptcy Trustee (i.e., in the involuntary bankruptcy proceeding) with an appropriate Order entered confirming the effect of the stay in bankruptcy as against third-party UDRP actions. Barring such a conclusion, the assets should be returned to the owner—the Village Trust of the Cook Islands and the Receivership terminated in order to comply with and implement the mandate of the Fifth Circuit.

In either case, the injunction can and should remain pending discharge of the Receiver pursuant to the Fifth Circuit mandate, which should also be completed upon the Bankruptcy Court's timely decision on the reach of the bankruptcy relative to assets currently in the hands of the Receiver.

### **3. Ondova's claimed entitlement to fees from the Receivership.**

The Fifth Circuit erects two barriers to Ondova's claim for fees from the Receivership: one legal and one equitable.

The legal question is whether the Ondova Trustee's bills from his counsel, Munsch Hardt, constitute a "receivership fee" or "an expense of the receivership" within the meaning of the panel opinion. They do not. The Ondova Trustee presented these bills and was paid substantially out of the Ondova trust account. The Trustee is presenting *quantum meruit* and substantial contribution claims here that necessarily presuppose the absence of an employment relationship. All concede that there is no contract. Moreover, the claimed entitlement was disputed from long ago by the Receiver, which dispute was cited by the Trustee in support of the settlement and liquidation under the Confirmation Plan approved by the Bankruptcy Court in November, 2012 was terminated as a result of the Fifth Circuit opinion.

The equities also disfavor the Trustee's claim for fees from the Receivership. The Trustee had his own reason for doing the work he did in the Fifth Circuit. He was obliged by his Appellee status to file some response to the appeals where he was listed as Appellee, all attempts to realign the parties having failed. Likewise, having moved for the creation of the Receivership, the Ondova Trustee faced the grave prospect of being held liable for *all* of the expenses of the Receivership should the Receivership be vacated, giving him substantial unilateral motivation to fund legal work in the Fifth Circuit. While the Trustee cites contradictory understandings with certain of Gardere's lawyers about whether Gardere wanted the Trustee to file certain pleadings in the Fifth Circuit, no such evidence was presented *relative to the Receiver*, as distinguished from his prior counsel.

Finally, and most significantly, the Trustee has already recovered from the Ondova estate far more for the Fifth Circuit work than Dykema charged for both learning about the events in the trial courts and then drafting Appellee's Fifth Circuit briefs that covered all of the same

issues—i.e. Dykema’s bills for July and early August 2012, which were well under \$300,000 exclusive of work in the bankruptcy during the same period.

**4. The Petitioning Creditors’ argument put forward by Mr. Pronske concerning the Receiver’s prior obligation to set aside and earmark.**

To the extent the issue survived later rulings in the District Court staying any payment to the Petitioning Creditors, it has been vacated on appeal as discussed above and is now part of the court’s broad remand discretion. The Petitioning Creditors were quick to jump the Receivership when they filed their involuntary bankruptcy well in advance of the issuance of the Fifth Circuit mandate and continued it despite the prospect of its confounding the defense of it in the en banc, creating substantial work and confusion in the process. In all events, having decided to present in the Bankruptcy Court even before the ink was dry on the Receivership, they should be contented to pursue them there.

**5. Mr. Baron’s block billing and past auction procedures objections.**

To be clear, the Receiver is performing as a receiver and expert in the internet and domain monetization. Mr. Cochell’s invocation of a Middle District of Florida decision as authority for his argument that Mr. Vogel’s billing is somehow deficient in this regard has no traction at all as to him. The Receiver functioned as a Receiver, not as an attorney. Second, the Receiver has been performing and billing in accordance with past practices already repeatedly approved by this Court. Thus, the objection is not only frivolous, but untimely as well. Indeed, Mr. Cochell has been serving as counsel for Baron since July. If he or any prior counsel wished to lodge this objection, they should have done so long ago.

Likewise, Dykema’s bills were all filed *after* Cochell arrived and have all already been approved by the Court without any timely objection from him or any other Baron counsel. The pending Dykema bills pretermitted the issue by breaking down the entries.

Mr. Cochell has also revived arguments made to the Fifth Circuit and rejected, concerning the procedures used to conduct the terminated auction sale of Receivership assets in order to bring these proceedings to a close. In late November 2012, Baron filed a “Post Argument Emergency Motion for Stay” (the “Motion to Stay”) in the Fifth Circuit supported only by hearsay evidence that was misleading and omission-plagued. Indeed, the Fifth Circuit denied the Motion to Stay on November 28, 2012.

Remarkably, although evidentiary in nature, Baron’s Motion to Stay in the Fifth Circuit failed to disclose that the Bankruptcy Court dedicated over four full days to an evidentiary Plan Confirmation Hearing focused on, *inter alia*, evaluating the fairness, propriety and commercial reasonability of the auction of the domain names that Baron is again attacking as improper. In other words, the Plan Confirmation was a multi-day bench trial on the same issues presented in Baron’s Motion to Stay in the Fifth Circuit and again presented to this Court. At the Plan Confirmation Hearing before the Bankruptcy Court on November 13, 14, 16, 19 and 20, Baron did not seek or obtain the admission of much of the purported “evidence” that accompanied his Motion to Stay in the Fifth Circuit. Similarly, Baron’s Motion to Stay relied heavily on a purported \$65 million valuation of the domain names, notwithstanding that the Bankruptcy Court granted the Receiver’s *Daubert*<sup>1</sup> challenge to Baron’s expert’s secret valuation methodology, and therefore excluded this \$65 million valuation from evidence. *See* Findings of Fact and Conclusions of Law of November 21, 2012 at ¶ 31, Bankruptcy Case No. 09-34784, D.E. 944.

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<sup>1</sup> *See Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993); FED. R. EVID. 702. The Bankruptcy Court refused to allow Baron’s valuation expert to testify, as follows: “After a *Daubert*-objection was lodged by the Receiver’s counsel, ***the court did not let Dr. Lindenthal testify as to his opinion on the value of the Domain Names***, because he could not share the methodology he used—it is proprietary information of [his employer] Sedo, LLC.” Findings of Fact and Conclusions of Law of November at ¶ 31 (emphasis added).

Indeed, as he did in the Fifth Circuit, Baron also entirely failed to inform this Court that on November 21, 2012, the Bankruptcy Court issued 35-pages of findings of fact and conclusions of law that, *inter alia*, held “that the marketing, auction and sale process **were fair and reasonable and the product of reasonable business judgment, an arms-length, good faith and fair process**, there was a business justification therefore, and the result was a fair price and winning bid and back up bid that are reasonably equivalent to the best evidence of market value of the Domain Names.” *See* Findings of Fact and Conclusions of Law of November at ¶ 33 (emphasis added). Notably, and in sharp contrast to the core contention in Baron’s Motion to Stay (at pp. 10-16), the Bankruptcy Court expressly found that the \$5.2 million high-bid achieved via the November 9 auction of the domain names was fair and commercially reasonable:

First, the question of value of these names has been hotly disputed at the Confirmation Hearing. Mr. Baron has objected vehemently to the sale of the Domain Names. He believes they are worth \$60+ million, which is far less than the \$5.2 million Winning Bid for the Domain Names. But the credible evidence from the Confirmation Hearing (from the Receiver; the Chapter 11 Trustee; Mr. Baron; Matthew Morris (the Receiver’s expert); Thies Lindenthal (Mr. Baron’s expert); and Steve Lieberman, (a lawyer representative for the Winning Bidder, by telephone) **just does not support such a conclusion.**

Findings of Fact and Conclusions of Law of November at ¶ 13 (emphasis in original). Contrary to the hyperbolic allegations made in Baron’s Motion to Stay and again in this Court, the Bankruptcy Court further found that “The Receiver’s expert (Matthew Morris) credibly testified that he believed the Domain Names were worth from \$3-5 million” (*id.* at ¶ 21) and that

“the Winning Bidder and Back-up Bidder (if the latter is ultimately the purchaser), were good faith purchasers for value.” *Id.* at ¶ 34.

Counsel’s insinuation that there were improper bidding procedures or irregularities by the Bankruptcy Judge and the Receiver’s counsel, were also presented to the Bankruptcy Court, reviewed by the U.S. Trustee, and were found to involve a bidder who both before the auction and afterwards, refused to bid on the domain names even when offered by the U.S. Trustee the opportunity to do so.

Stated simply, counsel’s comments to this Court improperly pretends that the four-day Plan Confirmation Hearing in the Bankruptcy Court did not take place, and were based on evidence that the Bankruptcy Court excluded or found not to be credible.

## **6. Netsphere’s arguments**

Netsphere claims Mr. Vogel was acting as lead trial counsel. He was not, as reflected in the Court’s approval of the bills and the lauding of the Receiver’s efforts as such in those Orders. Certainly there was no evidence of this at the hearing.

Netshpere’s objections to Dykema’s fees after the December 18, 2012 Panel Opinion on the theory of some vague, unasserted conflict or on the theory that the firm was advancing only its firm’s interest in seeking fees ignores: (1) that the Fifth Circuit mandate had not issued, and that the Receiver (and his counsel) was still defending the estate and its ability to implement the finality-seeking liquidation plan in the Fifth Circuit until mid-April and, more importantly, (2) that Dykema, under the mandate issued by the Fifth Circuit and the engagement approved by the District Court, was going to be paid regardless of where the case proceeded.

**7. The Court should, at a minimum, confirm that Dykema's fees currently in trust were earmarked for payment and serve as security for same.**

Regardless of the Court's disposition in this matter, it should make clear the status of the its January 7 Order allowing Dykema approximately \$737,000. At the time the Court gave interested parties 30 days to pursue appellate relief. Should this matter continue it would be useful for the record to confirm that the Court's intention in ordering these funds to be held in trust was to earmark them and to have them serve as security for payment of Dykema's then outstanding fees. In addition, to further clarify the record, the Court may want to confirm that all of its post December 18 orders were entered with knowledge of the pending Baron involuntary bankruptcy and that the stay was implicitly lifted to allow entry of same.



Respectfully submitted,

DYKEMA GOSSETT PLLC

By: /s/ David J. Schenck

David J. Schenck

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ATTORNEYS FOR THE RECEIVER, PETER S.  
VOGEL

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served via the Court's ECF system on all counsel of record on May 14, 2013.

By: /s/ David J. Schenck

David J. Schenck

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

NETSPHERE, INC., MANILA INDUSTRIES,	§	
INC., AND MUNISH KRISHAN	§	
	§	
PLAINTIFFS,	§	
	§	
v.	§	CIVIL ACTION NO. 3:09-CV-0988-F
	§	
JEFFREY BARON AND ONDOVA LIMITED	§	
COMPANY,	§	
	§	
DEFENDANTS.	§	

**DYKEMA’S SUPPLEMENTAL APPLICATION**

Peter S. Vogel, Receiver over Jeffrey Baron and the Receivership Parties (the “Receiver”), files this Dykema’s Supplemental Application for Reimbursement of Fees and Expenses Incurred (“Dykema Supplemental Application”) by Dykema Gossett PLLC (“Dykema”) for the period of April 1, through April 30, 2013 (the “Application Period”). In support of the Dykema Supplemental Application, the Receiver states as follows:

**I. SUMMARY OF REQUEST**

**Name of Applicant:** Peter S. Vogel on behalf of Dykema Gossett PLLC

**Role in Case:** Counsel to Peter S. Vogel, Receiver

**Application Period:** April 1 – April 30, 2013

**Summary of Request (April 1 to April 30)**

	<u>Fees</u>	<u>Expenses</u>		<u>Total</u>
Amounts Requested	\$82,095	\$685.52		\$82,780.52
Less: Amounts Previously Paid	<u>\$0.00</u>	<u>\$0.00</u>		<u>\$0.00</u>
<b>Total Compensation Due</b>	<b>\$82,095</b>	<b>\$685.52</b>		<b>\$82,780.52</b>
	<u>100%</u>	<u>100%</u>		
<b>Total Req. Paid By This Appl.</b>	<b>\$82,095</b>	<b>\$685.52</b>	=	<b>\$82,780.52</b>

## II. PRELIMINARY STATEMENT

In this Dykema Supplemental Application, the Receiver asks this Court for approval and allowance of all (100%) fees earned and expenses incurred by Dykema during the Application Period. As shown by the record before this Court and the exhibits attached hereto, throughout the Application Period, Dykema has worked diligently on a daily basis to assist the Receiver in carrying out his duties under this Court's Order Appointing Receiver (the "Receivership Order") and other related orders. Reflecting the complex status of this matter, Dykema has reduced its fees substantially from the amount \$125,000 initially reflected on the bill, reducing the claim as to certain professionals and eliminating any claim for compensation for work done on behalf of the firm in pursuing recovery of its fees, though such time would typically be regarded as compensable.<sup>1</sup>

As shown on the record before this Court, the Receiver believes that Dykema's work has resulted in identifiable, tangible, and material progress in carrying out and defending the Receivership Order and winding-up the Receivership in accordance with the Fifth Circuit decision. Dykema notes that the period in question, included, inter alia, the following major case events, which required extensive work. In the first two weeks of April Dykema predominantly (a) pursued and conducted the joint hearing to present the receiver's position regarding preserving the estate pending the Fifth Circuit's decision and any eventual mandate; (b) pursued Netsphere for contempt as a result of its failure to comply with the Court's Order concerning its obligations under its settlement agreement with Mr. Baron; (c) negotiated and conferred with ICAAN's counsel regarding WIPO's refusal to abide by injunction after the Fifth Circuit panel's decision and ultimately filed a Motion for an Order to Show Cause (which remains pending); and

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<sup>1</sup> We have also removed all charges for those not directly involved in presenting the receiver's position with respect to wind-down and related fee matters.

(d) conferred on and ultimately opposed unilateral discovery request from the Trustee's counsel. After failing to reach an agreement regarding a two-way disclosure with the Trustee, Dykema filed a Motion to Quash regarding the trustee's discovery request of the Receiver. In the second half of April Dykema (a) confronted an increasing volume of UDRP claims with Cox, Nelson and Eckels; (b) represented itself and the Receiver in court-ordered mediation (the time for which is halved to reflect Dykema's interest in the mediation); (b) received, conferred and complied with numerous informal information requests from Baron's counsel, in addition to another formal discovery motion; and (c) drafted and filed its fee application covering the first three months of 2012, though this application excludes such time in the request for reimbursement. While that time has been excised from this current bill, that effort resulted in a further reduction of the bills for that period of approximately \$50,000.

Accordingly, the Dykema Supplemental Application should be approved.

### **III. SUPPORT**

In support of the Dykema Supplemental Application, the Receiver has attached as Exhibit A hereto, a true and correct redacted<sup>2</sup> copy of Dykema's Invoice for Legal Services Rendered on Behalf of the Receiver during the Application Period, detailing all fees requested for payment by Dykema and including narratives of the work performed by Dykema on behalf of the Receiver.

### **IV. REQUEST**

Based upon the foregoing work product, the Receiver respectfully requests that this Court enter an order (a) allowing and authorizing compensation to Dykema in the amount of **\$82,780.52**, for the period from November 1, 2012, through November 30, 2012; (b) directing the Receiver, and his agents or representatives, to immediately pay **\$82,780.52** to Dykema from

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<sup>2</sup> The Dykema fee statement has been redacted to preserve attorney client privilege and confidentiality.

the Receivership Assets to which the Receiver has obtained access to date, and to the extent that the Receiver controls available cash funds. Given the limited cash position of the Receivership estate, the retention Application calls for the prioritization of payment to Dykema for fees as they are incurred. Therefore, the Receiver asks for authority to prioritize payment to Dykema and to immediately pay Dykema from the Receivership cash on hand.

Respectfully submitted,

DYKEMA GOSSETT PLLC

By: /s/ David J. Schenck

David J. Schenck

State Bar No. 17736870

Jeffrey R. Fine

State Bar No. 07008410

Christopher D. Kratovil

State Bar No. 24027427

1717 Main Street, Suite 4000

Dallas, Texas 75201

(214) 462-6455

(214) 462-6401849 (Telecopier)

**ATTORNEYS FOR THE RECEIVER, PETER  
S. VOGEL**

#### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served via the Court's ECF system on all counsel of record on May 14, 2013.

By: /s/ David J. Schenck

David J. Schenck

# **EXHIBIT A**



400 Renaissance Center • Detroit, MI 48243 • EIN# 38-1446628

DUE UPON RECEIPT

PETER S. VOGEL, RECEIVER  
THANKSGIVE TOWER, SUITE 3000  
1601 ELM STREET  
DALLAS, TX 75201

MAY 10, 2013  
CLIENT-MATTER NO. 108946-0001  
INVOICE NO. 1513620

*FOR PROFESSIONAL SERVICES RENDERED*

**RE: BARON RECEIVERSHIP MATTERS**

FEEs .....	\$	82,095.00
DISBURSEMENTS .....		685.52
<b>TOTAL AMOUNT DUE.....</b>	<b>\$</b>	<b><u>82,780.52</u></b>



PETER S. VOGEL, RECEIVER  
MAY 10, 2013

CLIENT-MATTER NO. 108946-0001  
INVOICE NO. 1513620  
PAGE NO. 2

**RE: BARON RECEIVERSHIP MATTERS**

DATE	ID	DESCRIPTION	HOURS
04/01/13	CDKR	DRAFTING, EDITING AND REVISION OF RECEIVER'S [REDACTED] (1.8 HOURS). E-MAIL TO [REDACTED] CONCERNING SAME (.2 HOURS).	2.00
04/01/13	DJSCH	REVIEW NETSPHERE'S RESPONSE TO SHOW CAUSE MOTION (.5); OUTLINE REPLY WITH MR. KRATOVIL (1.0), REVISIONS TO [REDACTED] MOTION (1.0).	2.50
04/01/13	JRF	EMAIL TRAFFIC (0.3).	NC
04/02/13	CDKR	DRAFTING, EDITING AND REVISION OF RECEIVER'S REPLY IN SUPPORT OF ITS MOTION TO COMPEL PAYMENT OF SETTLEMENT FROM NETSPHERE, INCLUDING LEGAL RESEARCH IN SUPPORT OF SAME (5.5 HOURS); PREPARATION FOR JOINT HEARING BEFORE JUDGES FURGESON AND JERNIGAN (1.5).	7.00
04/02/13	DJSCH	REVIEW [REDACTED] EDITS TO MOTION RE: [REDACTED] (.5), NEW BARON NOTICE OF APPEAL (.5), CANCELLATION OF HEARING BEFORE JUDGE JERNIGAN AND CALL/EMAIL RE: [REDACTED] (.3), REVISIONS TO REPLY TO SHOW CAUSE (1.2), REVIEW PAST [REDACTED] FILINGS AND DRAFT EMAIL TO JONES DAY RE: [REDACTED] (1.5).	4.00
04/02/13	JRF	EMAIL TRAFFIC RE LATEST BARON COURT FILINGS (0.3).	NC
04/03/13	ALP	SEVERAL TELEPHONE CALLS WITH COURT REPORTER REGARDING 12/14/12 USDC HEARING TRANSCRIPT; OFFICE CONFERENCES WITH MR. SCHENCK REGARDING SAME IN PREPARATION OF 4/4/13 HEARING.	0.50
04/03/13	CDKR	PREPARATION FOR JOINT HEARING BEFORE JUDGE FURGESON AND JUDGE JERNIGAN, INCLUDING OUTLINING OF KEY ARGUMENTS AND PREPARATION OF HEARING NOTEBOOKS (3.5); DRAFTING, EDITING AND REVISION OF REPLY IN SUPPORT OF MOTION FOR ORDER TO SHOW CAUSE WHY NETSPHERE SHOULD NOT BE HELD IN CONTEMPT, AND FILING AND SERVICE OF SAME (4.0).	7.50
04/03/13	DJSCH	FURTHER REVISIONS TO SHOW CAUSE FILING (1.0), FILE SAME (.3), CIRCULATE [REDACTED] DRAFT CORRESPONDENCE (.2), PREPARE FOR HEARING TOMORROW (2.5); FURTHER CORRESPONDENCE FROM [REDACTED] RE: [REDACTED] (.5).	4.50
04/03/13	JRF	RESEARCH AND ANALYSIS RE NETSPHERE SHOW CAUSE MOTION REPLY (2.0). REVIEW AND PROPOSED CHANGES TO [REDACTED] RESPONSES (.5). REVIEW AND REVISE PRESENTATION TO COURT FOR 4/4 HEARING AND TRIAL PREPARATION (2.8).	5.30
04/04/13	CDKR	PREPARATION FOR JOINT HEARING BEFORE JUDGE FURGESON AND JUDGE JERNIGAN, INCLUDING OUTLINING OF KEY ARGUMENTS AND PREPARATION OF HEARING NOTEBOOKS (4.0); ATTENDED AND PARTICIPATED IN HEARING BEFORE JUDGE FURGESON AND JUDGE JERNIGAN (3.0); POST-HEARING ANALYSIS AND CONFERENCE WITH CO-COUNSEL AND CLIENT (.5).	7.50





PETER S. VOGEL, RECEIVER  
MAY 10, 2013

CLIENT-MATTER NO. 108946-0001  
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DATE	ID	DESCRIPTION	HOURS
04/04/13	DJSCH	REVISE OUTLINE (.5), PREPARE FOR HEARING (1.0), ATTEND SAME, ORDER FROM FIFTH CIRCUIT (3.5), MEETING WITH [REDACTED] RE: SAME AND POSSIBLE MEDIATION AND MEDIATORS (.5), CONFIRM [REDACTED] (.5).	6.00
04/04/13	JRF	TRIAL PREPARATION (2.5) AND ATTEND JOINT STATUS CONFERENCE WITH DISTRICT AND BANKRUPTCY COURTS (WITH POST COURT ANALYSIS) (4.0).	6.50
04/04/13	WBF	4.0 HOURS -- ASSIST TEAM RE: UPCOMING JOINT HEARING AND STRATEGY, ANALYSIS OF INVOLUNTARY CHAPTER FILING, COURT ORDER TO TRANSFER FUNDS, SECURED STATUS, EQUITABLE LIEN, "LAW OF CASE" IN LIGHT OF CIRCUIT DENIAL OF MOTION FOR REHEARING; POST-HEARING ANALYSIS, NEED TO DRAFT CLAIMS, IMPACT OF RULING BY CIRCUIT ON DIRECTIVE, ETC.	NC
04/05/13	ALP	DRAFTED AND RESPONDED TO E-MAILS WITH DAVID SCHENCK REGARDING 1/16/13 USBC HEARING TRANSCRIPT; RESEARCHED SAME.	0.40
04/05/13	DJSCH	FINALIZE AND SEND CORRESPONDENCE TO JONES DAY RE: [REDACTED] MATTER (.5); MEDIATOR SELECTION AND CALLS TO AND FROM MR. VOGEL RE: SAME (1.5); [REDACTED] CORRESPONDENCE RE: [REDACTED] NOTICE OF INTENTION TO PROCEED WITH [REDACTED] (.5); ORDER FROM BK COURT RE: PAYING NELSON, ETC. (.3)., ORDER RE: HEARING FEE MATTERS (.2).	4.00
04/05/13	JRF	VERY EXTENDED SETTLEMENT TELEPHONE CONFERENCE WITH [REDACTED] [REDACTED] ALSO TOUCHING ON DOCUMENT PRODUCTION ISSUES (1.1). EMAILS TO CLIENT WITH VARIOUS ORDERS ENTERED BY COURT AND ANALYSIS OF SAME (.4). INTERNAL CONFERENCE RE NOTICE TO CLIENT AND REVISIONS TO SAME (NC @ .8). WORK ON WIND-DOWN ISSUES (.8).	2.30
04/07/13	JRF	FORWARD MATERIALS TO [REDACTED] AND TO CLIENT RE DOCUMENT REQUESTS FROM BARON.	0.50
04/08/13	DJSCH	ORDER RE: LIFTING STAY (.2), ORDER FROM BANKRUPTCY COURT (.2), ORDERS RE: HEARING AND INVENTORY (.3), CALLS AND EMAILS RE: MEDIATOR WITH [REDACTED] (1.0); NUMEROUS UDRP COMPLAINTS FORWARDED FROM [REDACTED] (.5); AND MEETING WITH MR. FINE RE: STRATEGY (.5).	2.70
04/08/13	WBF	0.5 HOURS - WORK SESSION RE: FEE APPLICATION AND HEARING.	NC
04/09/13	CDKR	WORK ON FEE APPLICATION ORDERED BY JUDGE FURGESON, INCLUDING REVIEW OF BILLS PREPARATION OF EXHIBITS (4.0/NC); CONFERENCE WITH MR. SCHENCK AND MR. FINE REGARDING RECEIVERSHIP WIND-DOWN AND BENCH TRIAL BEFORE JUDGE FURGESON (.4/NC); REVIEW OF ORDERS ISSUED BY THE BANKRUPTCY COURT (.5); REVIEW OF NUMEROUS E-MAILS REGARDING MEDIATION AND POTENTIAL SETTLEMENT (.4); REVIEW OF [REDACTED] RELATED E-MAILS (.2).	1.10
04/09/13	DJSCH	NUMEROUS CALLS AND EMAILS RE: MEDIATION AND MEDIATOR (1.5); MEDIATION ORDER FROM JUDGE JERNIGAN (.5); MEETING WITH MR. FINE RE: FEE APPLICATIONS (NC-0.5).	2.00



PETER S. VOGEL, RECEIVER  
MAY 10, 2013

CLIENT-MATTER NO. 108946-0001  
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DATE	ID	DESCRIPTION	HOURS
04/09/13	JRF	VERY EXTENDED TELEPHONE CONFERENCE FROM UST LISA LAMBERT RE PLAN STRUCTURE REQUIRED FOR ANY SETTLEMENT, AND OTHER SETTLEMENT ISSUES (.9); MEETING WITH MR. SCHENCK RE: FEE APPLICATION AND DRAFTING SAME (.5/NC).	0.90
04/10/13	ALP	RESEARCHED FOR COURT TRANSCRIPTS DATED 2/12/13 AND 2/20/13 IN THE USBC, JEFFREY BARON MATTER (.3); DRAFTED AND RESPONDED TO E-MAILS WITH MR. FINE REGARDING SAME (.2); TELEPHONE CONFERENCE WITH MR. FINE REGARDING NOVEMBER, 2012 CONFIRMATION HEARING TRANSCRIPTS AS WELL AS 9/27/12 HEARING TRANSCRIPT IN US DISTRICT COURT CASE (.2); RESEARCHED NUMEROUS COURT TRANSCRIPTS REGARDING SAME (.8).	1.50
04/10/13	ARA	DRAFT MOTION TO QUASH PUNITIVE DEPOSITION NOTICE AND PROPOSED ORDER GRANTING SAME (.8); DRAFT MOTION TO SHOW CAUSE WHY [REDACTED] SHOULD NOT BE HELD IN CONTEMPT (1.2).	2.00
04/10/13	CDKR	REVIEW OF NUMEROUS E-MAILS REGARDING MEDIATION AND SETTLEMENT ISSUES, AS WELL AS [REDACTED] (.8).	0.80
04/10/13	DJSCH	REQUESTS FOR TRANSCRIPTS AND OTHER INFORMATION FROM [REDACTED] GATHERED AND FORWARDED SAME (2.0); CALL WITH MR. URBANIK RE: [REDACTED] (.5); DEPOSITION NOTICE FROM MR. URBANILK AND FORWARDED AND DISCUSSED WITH CLIENT (1.0).	3.50
04/10/13	JRF	EXTENDED TELEPHONE CONFERENCE FROM [REDACTED] RE [REDACTED] AND [REDACTED] (.4); EXTENDED TELEPHONE CONFERENCE WITH [REDACTED] AND DAVID SCHENCK RE THE SAME [REDACTED], DISCOVERY REQUESTS FROM ONDOVA AND BARON, AND SETTLEMENT STATUS (.6). TELEPHONE CONFERENCE WITH [REDACTED] RE DISCOVERY MATERIALS [REDACTED] (.3). RESPOND TO VARIOUS DISCOVERY REQUESTS FROM BARON COUNSEL AND ONDOVA COUNSEL (.4). CONFERENCE CALL WITH [REDACTED] RE [REDACTED] (.5). CALL WITH [REDACTED] AND DAVID SCHENCK REGARDING APPARENT [REDACTED] (.2). ANALYSIS OF VOGEL TESTIMONY FOR [REDACTED] (.5). CONFERENCE WITH [REDACTED] REGARDING [REDACTED] (.3). DRAFT APPLICATION FOR DYKEMA FEES (3.0/NC)	3.20
04/11/13	ALP	RESEARCHED COURT ORDER REGARDING INVENTORY OF RECEIVERSHIP DUE BY 4/23/13 (.1); DRAFTED AND RESPONDED TO E-MAILS WITH MR. SCHENCK REGARDING SAME (.1); DRAFTED E-MAIL TO [REDACTED] REGARDING SAME (.1).	0.30
04/11/13	ARA	DRAFT PROPOSED ORDER GRANTING MOTION TO [REDACTED]	0.30
04/11/13	CDKR	MEETING WITH MR. SCHENCK AND MR. FINE REGARDING NEXT STEPS AND WIND-DOWN OF RECEIVERSHIP (.5); REVIEW OF E-MAILS FROM VARIOUS PARTIES (.3/NC); REVIEW OF E-MAILS FROM [REDACTED] (.2/NC).	.50



PETER S. VOGEL, RECEIVER  
MAY 10, 2013

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DATE	ID	DESCRIPTION	HOURS
04/11/13	DJSCH	REVIEW DRAFT MOTIONS AND REVISE SAME AND FORWARD TO [REDACTED] FOR APPROVAL (RE: MOTION TO [REDACTED] [REDACTED]) (3.0); CALL WITH [REDACTED] RE: PAST ORDER; MOTIONS TO STAY FROM COHELL (.5)	3.50
04/11/13	JRF	CONFERENCE CALL WITH [REDACTED] AND DAVID SCHENCK REGARDING ISSUES OF WHAT IS CURRENTLY [REDACTED] (.5). ANALYSIS OF ACTIONS THAT RECEIVER SHOULD OR MUST TAKE REGARDING [REDACTED] (.4). VERY EXTENDED TELEPHONE CONFERENCE WITH [REDACTED] COUNSEL TO [REDACTED] RE ISSUES REGARDING [REDACTED] (.5). MEMO EMAIL TO CLIENT RE [REDACTED] PHONE CALL AND ISSUES TO BE ADDRESSED RE [REDACTED] (.3). WORK ON DYKEMA FEE APPLICATION AND EXHIBITS (3.0)(NC); CONFER WITH RECEIVER REGARDING DISCOVERY REQUESTS [REDACTED] AND RELATED ISSUES (.3).	2.00
04/12/13	DJSCH	CONTEMPT MOTION REVISED AND FILED, CONFERENCES RE: SAME WITH OPPOSING COUNSEL, EMAIL TO [REDACTED] SERVED MANUALLY BY EMAIL (2.5); CALLS TO [REDACTED] RE: DEPOSITION AND EMAIL TO [REDACTED] RE: SAME (1.0); EMAILS AND CALL WITH [REDACTED] RE: [REDACTED] AND RELATED MATTERS; MEET WITH MR. FINE RE: FEE APPLICATIONS (.5/NC).	3.50
04/12/13	JRF	MEETING WITH DAVID SCHENCK RE FEE APPLICATION ISSUES (.4)(NC); EXTENDED CALL FROM [REDACTED] REQUESTING STATUS OF CASES AND DISCUSSING VARIOUS [REDACTED] (.4). WORK ON DYKEMA FEE APPLICATION (1.3/NC). ATTENTION TO DISCOVERY REQUEST OF MR. VOGEL BY ONDOVA COUNSEL (.2).	1.6
04/14/13	JRF	DRAFT DYKEMA FEE APPLICATION (5.0) (NC).	NC
04/15/13	CDKR	WORK ON FEE APPLICATION REQUIRED BY JUDGE FURGESON, INCLUDING REVIEW OF RELATED E-MAILS (.8).	NC
04/15/13	DJSCH	DVDS RECEIVED AND FORWARDED AND [REDACTED] FORWARD TO [REDACTED] (.5); MOTION TO QUASH TRUSTEE'S DISCOVERY REQUEST AND CONFERENCES ON SAME (1.3); SCHEPPS SUBSTITUTION MOTION AND COMMUNICATIONS RE: SAME (.3); MEDIATION CORRESPONDENCE RE: PAYMENT (.2); CORRESPONDENCE RE: RECEIVER PROFESSIONALS AND CONFIRMING [REDACTED] (.5); MEETING WITH MR. FINE RE: FEE APPLICATION (.7); NUMEROUS CORRESPONDENCE FROM [REDACTED] (.3).	3.80
04/15/13	JRF	RECONCILE ALL AMOUNTS DUE DYKEMA AT REQUEST OF RECEIVER (.8). ATTENTION TO PAYMENT OF MEDIATION FEE TO [REDACTED] (.3). DRAFT DYKEMA FEE APPLICATION (8.5). RESEARCH [REDACTED] (1.3).	.30
04/16/13	DJSCH	FEE APPLICATION (5.0/NC), MEDIATION ORDERS RE: PAYING JUDGE CLARK (.5); MULTIPLE [REDACTED] (1).	1.50



PETER S. VOGEL, RECEIVER  
MAY 10, 2013

CLIENT-MATTER NO. 108946-0001  
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DATE	ID	DESCRIPTION	HOURS
04/16/13	WBF	3.0 HOURS - WORK ON FEE APPLICATION ISSUE WITH MR. SCHENCK; REVIEW BILLS; WORK ON STRATEGY RE: [REDACTED], PRESENTATION, BANKRUPTCY COURT JURISDICTION [REDACTED].	NC
04/17/13	ALP	OFFICE CONFERENCES WITH MR. SCHENCK REGARDING REDACTION OF CLIENT INVOICES (JANUARY - MARCH, 2013) FOR PRIVILEGE (.3); REVIEWED AND MADE EXTENSIVE REDACTIONS OF SAME IN PREPARATION FOR FILING WITH THE COURT (2.2).	2.50
04/17/13	DJSCH	FEE APPLICATIONS FILED AND REVIEWED. CALLS WITH [REDACTED] RE: SAME (4.5/NC).	NC
04/17/13	JRF	REVIEW LATEST REVISED DYKEMA FEE APPLICATION (.3/NC).	NC
04/17/13	WBF	3.5 HOURS - WORK ON FEE APPLICATION; OFFICE CONFERENCE WITH MR. SCHENCK; REVIEW FEE APPLICATION.	NC
04/18/13	DJSCH	MEETINGS WITH TEAM AND REVIEW OF FILINGS AND NEW ORDERS.	NC
04/18/13	JRF	TELEPHONE CONFERENCE WITH MARK STROMBERG RE LATEST SETTLEMENT DISCUSSIONS (.3); TELEPHONE CALL WITH JUDGE CLARK RE MEDIATION (.1); TELEPHONE CONFERENCES WITH [REDACTED] RE VARIOUS MEDIATION RELATED ISSUES (.4); PREPARE FOR MEDIATION (2.4); BEGIN OBJECTIONS TO OTHER RECEIVERSHIP FEE APPLICATIONS (.5);	3.70
04/19/13	CDKR	REVIEW AND REVISION OF CONFIDENTIAL MEDIATION STATEMENT.	1.00
04/19/13	DJSCH	CALLS WITH MEDIATOR (1.2); CALL WITH [REDACTED] RE: WRITING RECEIVER'S MEDIATION STATEMENT AND DRAFT AND FORWARD SAME (3.0).	4.00
04/19/13	JRF	TELEPHONE CONFERENCES WITH MEDIATOR CLARK (1.2); TELEPHONE CONFERENCE WITH [REDACTED] RE ADVISING THAT [REDACTED] (4); PREPARE (REVISIONS TO) CONFIDENTIAL MEDIATION STATEMENT FOR JUDGE CLARK (.2); PREPARE FOR MEDIATION (1.3);	3.10
04/22/13	CDKR	LIMITED PARTICIPATION IN THE COURT-ORDERED MEDIATION WITH JUDGE LEIF CLARK. REVIEW OF ORDERS ISSUED BY DISTRICT COURT. PROVIDED MR. SCHENCK AND MR. FINE WITH DOCUMENTS THEY REQUESTED (1.0) (NC).	NC
04/22/13	JRF	ATTEND FIRST DAY OF ALL HANDS MEDIATION FROM 9 AM UNTIL RELEASED BY MEDIATOR AT 8:15 PM. EMAIL TO MEDIATOR REQUESTED INFORMATION ABOUT PORTFOLIO PERFORMANCE.	11.50
04/22/13	DJSCH	ATTEND FIRST DAY OF COURT-ORDERED MEDIATION FROM 9 AM UNTIL RELEASED (NC).	NC
04/23/13	CDKR	AT THE REQUEST OF DAVID SCHENCK, DRAFTED AND PREPARED A COMPREHENSIVE [REDACTED] EDITING, REVISION AND DISTRIBUTION OF SAME. ATTENDED A PORTION OF THE COURT-ORDERED MEDIATION WITH JUDGE LEIF CLARK.	5.20



PETER S. VOGEL, RECEIVER  
MAY 10, 2013

CLIENT-MATTER NO. 108946-0001  
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DATE	ID	DESCRIPTION	HOURS
04/23/13	JRF	ATTEND AND PARTICIPATE IN DAY TWO OF COURT ORDERED MEDIATION FROM 8 AM TO 8:30 PM (12.3) (NC).	NC
04/23/13	DJSCH	ATTEND FULL DAY AND EVENING MEDIATION DAY TWO.	12.0
04/24/13	DJSCH	MEDIATOR PROPOSAL RECEIVED (.5) INTERNAL DATA REQUESTS FOR SAME (.5), CALLS WITH FIRM MANAGEMENT RE; SAME (1.0/NC), CALL TO [REDACTED] (.5), DRAFTING [REDACTED] (3.0)	3.50
04/24/13	JRF	REVIEW, CONSIDERATION OF, AND REVIEW WITH DYKEMA MANAGEMENT, MEDIATOR'S PROPOSAL OF 4/24/13 (2.0). TELEPHONE CONFERENCE WITH MEDIATOR CLARK RE: CLARIFICATION MATTERS RE MEDIATOR'S PROPOSAL RE; FUTURE ROLE OF RECEIVER (.5). TELEPHONE CONFERENCE WITH LISA LAMBERT (.5).	1.00
04/24/13	WBF	1.5 HOURS - WORK SESSION WITH REGARD TO MEDIATION, MEDIATOR'S PROPOSAL, ETC.	NC
04/25/13	DJSCH	MEDIATION PROPOSALS (.5)(NC), READ PETER'S FILING VIZ TRUSTEE (.5), CALL WITH [REDACTED] (.5) AND FILE SUPPLEMENTAL RESPONSE (2.5)	3.50
04/25/13	JRF	CLARIFICATIONS TO MEDIATOR OF HIS PROPOSAL (.6) (NC).	NC
04/26/13	DJSCH	CALLS AND EMAILS WITH MEDIATOR AND TEAM RE: STATUS AND EXTENSIONS (1.0)(NC)	NC
04/26/13	JRF	FURTHER CONSIDERATION OF SETTLEMENT PROPOSALS (1.0). RESPOND TO INFORMATION REQUESTS FROM BARON RE RECEIVERSHIP DOMAIN NAME REVENUES AND EXPENSES (1.0).	1.00
04/29/13	DJSCH	NUMEROUS EMAILS, CALLS AND OTHER COMMUNICATIONS RE: MEDIATION PROPOSALS (1.5) (NC), CHANGES TO SAME AND POSITIONS OF THE PARTIES (1.0) (NC).	NC
04/29/13	JRF	EXTENDED TELEPHONE CONFERENCES WITH [REDACTED] (.5); [REDACTED] (.6); JUDGE CLARK (.4); REVIEW OF LATEST COHELL MEDIATION PROPOSAL AND DISCUSSION INTERNALLY RE SAME (.8); EMAIL RESPONSES (.2); LATER CALLS WITH JUDGE CLARK (.2);	2.70
04/30/13	DJSCH	MEETING WITH MR. FINKELSTEIN AND MR. FINE RE: SETTLEMENT (.5)(NC).	NC
04/30/13	JRF	EXTENDED TELEPHONE CONFERENCES WITH [REDACTED] (.8); [REDACTED] (.4); [REDACTED] (.4); [REDACTED] (.6); AND JUDGE CLARK (.3); RE MEDIATION, RECEIVER'S CONTINUING ROLE AND NEED FOR WIND-DOWN AND RELATED ISSUES.	2.50

**TOTAL ATTORNEY & PARALEGAL TIME ..... 165.20**  
**TOTAL LEGAL FEES .....\$ 82,095.00**



PETER S. VOGEL, RECEIVER  
MAY 10, 2013

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<b>DISBURSEMENTS</b>	
PHOTOCOPY EXPENSES	22.80
SCANNING EXPENSES	196.20
PRINTING EXPENSES	465.20
CONFERENCE CALLS	1.32
<b>TOTAL DISBURSEMENTS.....</b>	<b>\$ 685.52</b>

***NOTE: INCURRED DISBURSEMENTS NOT APPEARING  
ON THIS INVOICE WILL BE BILLED LATER.***



PETER S. VOGEL, RECEIVER  
MAY 10, 2013

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**BILLING SUMMARY**

<b>ID</b>	<b>TIMEKEEPER</b>	<b>HOURS</b>	<b>RATE</b>	<b>AMOUNT</b>
JRF	JEFFREY R. FINE	48.1	560.00	26,936.00
CDKR	CHRISTOPHER D. KRATOVIL	32.60	505.00	16,436.00
DJSCH	DAVID J. SCHENCK	64.50	570.00	36,765.00
WBF	WILLIAM B. FINKELSTEIN	12.50	620.00	(NC)
ARA	ALISON R. ASHMORE	2.30	320.00	736.00
ALP	ALEXA L. PARNELL	5.20	235.00	1,222.00
<b>TOTAL</b>		<b>165.20</b>		<b>82,095.00</b>



PETER S. VOGEL, RECEIVER

MAY 10, 2013

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BARON RECEIVERSHIP MATTERS  
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FEEES .....	\$	82,095.00
DISBURSEMENTS .....		685.52
<b>TOTAL AMOUNT DUE.....</b>	<b>\$</b>	<b><u>82,780.52</u></b>

DYKEMA GOSSETT PLLC

DYKEMA GOSSETT PLLC  
DEPT CH 16382  
PALATINE, IL 60055-6382

CLIENT CHECK INFORMATION  
PLEASE COMPLETE:

THIS INVOICE IS PAYABLE UPON RECEIPT.

CHECK #: \_\_\_\_\_ DATE: \_\_\_\_\_ AMOUNT: \_\_\_\_\_  
PLEASE RETURN THIS PAGE WITH YOUR REMITTANCE.

FOR FIRM USE:

RECEIVED DATE: \_\_\_\_\_



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

**NETSPHERE, INC.,  
MANILA INDUSTRIES, INC., and  
MUNISH KRISHAN,  
Plaintiffs.**

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

v.

**Civil Action No. 3-09CV0988-F**

**JEFFREY BARON, and  
ONDOVA LIMITED COMPANY,  
Defendants.**

**MOTION FOR ATTORNEY’S FEES OF  
EDWIN E. WRIGHT, III, COUNSEL FOR DEFENDANT JEFFREY BARON**

COMES NOW, Defendant Jeffrey Baron, by and through counsel, moves for an order directing the Receiver to pay Edwin E. Wright, III fees and expenses incurred in the representation of Defendant Jeffrey Baron in the above-entitled and numbered cause. A copy of Mr. Wright’s (Redacted) fee bill is attached hereto and made a part hereof for all pertinent purposes.

In support of this motion, movant states that this is a complex receivership case with related bankruptcy matters and competing claims by various attorneys. Representation of Mr. Baron required Mr. Wright “to come up to speed” on a broad range of issues involved in the case. Additionally, there was a need for Mr. Wright to consult and coordinate with other attorneys on the case to assist him in refining his understanding of the history and legal issues in this case. Mr. Wright’s time included assisting in the wind-down of the

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**MOTION FOR ATTORNEY’S FEES OF EDWIN E. WRIGHT, III  
COUNSEL FOR DEFENDANT JEFFREY BARON**

receivership and the trial on the fee applications.

In light of the Fifth Circuit's decision, Defendant Baron respectfully submits that this Honorable Court should take into consideration the fact that Mr. Baron should now be allowed to have greater access to his funds for purposes of representation.

WHEREFORE, Jeffrey Baron requests this Honorable Court enter an order directing that the Receiver issue a check for the payment of Edwin E. Wright, III's fees and expenses incurred in the defense of Mr. Baron in this case.

Respectfully submitted,

/s/ Edwin E. Wright, III

Edwin E. Wright, III

State Bar No. 2269500

Law Offices of Ed Wright

Abrams Centre

9330 LBJ Freeway, Suite 1400

Dallas, Texas 75243

Tel: 972.499.3405

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E-Mail: [wright@edwright.com](mailto:wright@edwright.com)

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic on May 15, 2013.

*Edwin E. Wright, III*

**Law Offices of Ed Wright**  
 9330 LBJ Freeway, Ste 1400  
 Dallas, TX 75243  
 Telephone: 972-499-3405  
 Fax: 972-231-9150

Jeff Baron  
 P. O. Box 111501  
 Carrollton, TX 75011

5/13/2013  
 Invoice No. 58

Client Number: BARAA0006I Jeff Baron  
 Matter Number: 1028-799 Netsphere, Inc., et al v. Jeffrey Baron, et al  
**For Services Rendered Through 5/13/2013.**

**Fees**

<u>Date</u>	<u>Timekeeper</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
3/1/2013	EEW	Receipt and review of court opinions and orders	4.20	\$1,680.00
3/5/2013	EEW	Completed review of written documents furnished to me	3.00	\$1,200.00
3/5/2013	EEW	Telephone conference regarding case	0.50	\$200.00
3/5/2013	EEW	Receipt and review of draft of motion and brief	1.00	\$400.00
3/6/2013	EEW	In depth meeting regarding case matters	2.00	\$800.00
3/7/2013	EEW	Telephone conference case tactics and 3.19.13 hearing	0.30	\$120.00
3/7/2013	EEW	Receipt and review of conformed copy of Order Clarifying Application of Automatic Stay to Certain Appeals from Bankruptcy Court	0.10	\$40.00
3/7/2013	EEW	Email requesting conformed copy of Order appointing Ed Wright as local counsel	0.10	\$40.00

Continued On Next Page

Client Number: BARAA00061  
 Matter Number: 1028-799

5/13/2013  
 Page: 2

3/7/2013	EEW	Receipt and review of ema.. with attached Circuit Order Opinion regarding the receivership, nullifying the appointment of the Receiver, 5th Circuit Clarifying Order, and Status Report and Wind Down Recommendations filed by Peter S. Vogel	0.30	\$120.00
3/7/2013	EEW	Receipt and review of email	0.10	\$40.00
3/7/2013	EEW	Email regarding meeting time; email regarding meeting	0.10	\$40.00
3/7/2013	EEW	Receipt and review of email regarding meeting	0.10	\$40.00
3/7/2013	EEW	Email regarding meeting	0.10	\$40.00
3/7/2013	EEW	Receipt and review of email confirming meeting	0.10	\$40.00
3/7/2013	EEW	Receipt and review of email with attached Order Designating Ed Wright as Local Counsel	0.10	\$40.00
3/8/2013	EEW	In depth conference regarding case matters as well as receipt and review and discussed latest order from the Bankruptcy Court	2.10	\$840.00
3/8/2013	EEW	Began review of documents from notebook	6.20	\$2,480.00
3/8/2013	EEW	Receipt and review of email with attached Clarification Order from the Bankruptcy Court of Appeals	0.20	\$80.00
3/12/2013	EEW	Completed review of documents (In notebook); completed review of documents previously forwarded; receipt and review of Notes in Drop box forwarded to me; receipt and review status and receipt and review of email with attached Order receipt and review of email with attachments receipt and review of email email to all concerned.	9.20	\$3,680.00
3/12/2013	EEW	Email requesting documents in Dropbox	0.10	\$40.00
3/12/2013	EEW	Email regarding latest case developments	0.10	\$40.00

Continued On Next Page

Client Number: BARAA00061

5/13/2013

Matter Number: 1028-799

Page: 3

3/12/2013	EEW	Email . . . . . regarding status conference before Judge Furgeson;	0.10	\$40.00
3/13/2013	EEW	Continued review of additional documents	6.30	\$2,520.00
3/13/2013	EEW	Receipt and review of email . . . . . advising . . . . . hearing on Monday	0.10	\$40.00
3/13/2013	EEW	Email . . . . . confirming meeting	0.10	\$40.00
3/13/2013	EEW	Receipt and review of Notice of 3/19/12 Hearing	0.10	\$40.00
3/13/2013	EEW	Email . . . . . forwarding copy of Notice of Hearing	0.10	\$40.00
3/13/2013	EEW	Email . . . . . regarding preparation for upcoming hearing	0.10	\$40.00
3/13/2013	EEW	Receipt and review of email . . . . . regarding settlement discussions	0.10	\$40.00
3/13/2013	EEW	Receipt and review of email . . . . . requesting we confirm with court that Wind Down Motion will be heard at status conference	0.10	\$40.00
3/13/2013	EEW	Email . . . . . advising we would call Court	0.10	\$40.00
3/13/2013	EEW	Email . . . . . advising Judge Furgeson was not scheduled to hear the wind-down motion at the status conference hearing	0.10	\$40.00
3/13/2013	EEW	Receipt and review of email . . . . . advising wind down had been discussed in our response	0.10	\$40.00
3/13/2013	EEW	Receipt and review of email . . . . . regarding final details/logistics of meeting;	0.10	\$40.00
3/14/2013	EEW	Continued review of documents . . . . .	7.20	\$2,880.00
3/14/2013	EEW	Receipt and review of email . . . . . regarding receiver's position and enclosing copy of Receiver's Status Report and Wind Down Recommendations by Peter Vogel as well as Order Abating Sec 303 Trial in Bankruptcy Court	0.40	\$160.00
3/14/2013	EEW	Email to . . . . . regarding upcoming meeting	0.10	\$40.00
3/14/2013	EEW	Receipt and review of email . . . . . confirming meeting date and time	0.10	\$40.00
3/14/2013	EEW	Receipt and review of email . . . . . regarding getting reach for hearing	0.10	\$40.00

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13-10696.28049

Client Number: BARAA00061

5/13/2013

Matter Number: 1028-799

Page: 4

3/14/2013	EEW	Receipt and review of email confirming he would be attending meeting	0.10	\$40.00
3/14/2013	EEW	Email regarding upcoming meeting	0.10	\$40.00
3/14/2013	EEW	Receipt and review of email regarding upcoming meeting;	0.10	\$40.00
3/15/2013	EEW	Meeting	1.00	\$400.00
3/15/2013	EEW	Completed review of documents	6.20	\$2,480.00
3/15/2013	EEW	Conference regarding Defense strategy	1.00	\$400.00
3/15/2013	EEW	Receipt and review of telephone message regarding case	0.10	\$40.00
3/16/2013	EEW	Receipt and review of lengthy email	0.30	\$120.00
3/16/2013	EEW	Receipt and review of second email regarding	0.10	\$40.00
3/16/2013	EEW	Receipt and review of email regarding	0.20	\$80.00
3/16/2013	EEW	Email regarding	0.10	\$40.00
3/16/2013	EEW	Receipt and review of email with attached hearing transcript from December 2009 Status Conference, Friedman's Motion to Withdraw and Friedman letter regarding trust account monies	0.70	\$280.00
3/16/2013	EEW	Email to all concerned forwarding copies of documents	0.10	\$40.00
3/17/2013	EEW	Receipt and review of email regarding scheduled conference with Judge Jernigan	0.10	\$40.00
3/17/2013	EEW	Receipt and review of email in the bankruptcy court	0.10	\$40.00
3/18/2013	EEW	Reviewed and received email regarding case matters	0.10	\$40.00
3/18/2013	EEW	Email to all concerned advising of hearing cancellation and reset date	0.10	\$40.00

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13-10696.28050

Client Number: BARAA00061

5/13/2013

Matter Number: 1028-799

Page: 5

3/18/2013	EEW	Receipt and review of Baron's Motion for Leave with attachments	0.50	\$200.00
3/18/2013	EEW	Reviewed and received receivers response to Baron's motion	0.50	\$200.00
3/18/2013	EEW	Reviewed and received Receivers Response to Wind-down motion and Baron's reply with all attachments	1.00	\$400.00
3/18/2013	EEW	Reviewed and received email regarding meeting	0.10	\$40.00
3/18/2013	EEW	Reviewed and received email	0.10	\$40.00
3/18/2013	EEW	Reviewed and received email	0.10	\$40.00
3/18/2013	EEW	Email t	0.10	\$40.00
3/18/2013	EEW	Reviewed and received email regarding meeting	0.10	\$40.00
3/18/2013	EEW	Reviewed and received email with voluminous attachments	1.00	\$400.00
3/18/2013	EEW	Conference regarding case developments and strategy	2.50	\$1,000.00
3/18/2013	EEW	Receipt and review of Peter Vogel's Response / Objection to Wind Down Motion with Exhibits	0.50	\$200.00
3/18/2013	EEW	Receipt and review of email with attached proposed Motion	0.30	\$120.00
3/18/2013	EEW	Email t advising of change in scheduled	0.10	\$40.00
3/18/2013	EEW	Receipt and review of Peter Vogle's Reply to Motion to Wind Down Receivership	0.30	\$120.00
3/18/2013	EEW	Email to requesting time of new hearing	0.10	\$40.00
3/18/2013	EEW	Email regarding retainer fee	0.10	\$40.00
3/18/2013	EEW	Email forwarding copy of same	0.10	\$40.00
3/18/2013	EEW	Email requesting they go forward with meeting	0.10	\$40.00
3/18/2013	EEW	Email meeting	0.10	\$40.00
3/18/2013	EEW	Receipt and review of email advising he would participate by telephone in meeting;	0.10	\$40.00

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13-10696.28051



Client Number: BARAA00061

5/13/2013

Matter Number: 1028-799

Page: 6

3/19/2013	EEW	Reviewed and received email	0.10	\$40.00
3/19/2013	EEW	Reviewed and received Baron's Motion to Release Funds	0.70	\$280.00
3/19/2013	EEW	Telephone conversation regarding case status	0.30	\$120.00
3/19/2013	EEW	Email	0.10	\$40.00
3/19/2013	EEW	Email regarding proposed Motion	0.10	\$40.00
3/19/2013	EEW	Reviewed and received email	0.10	\$40.00
3/19/2013	EEW	Email	0.10	\$40.00
3/19/2013	EEW	Reviewed and received second email	0.10	\$40.00
3/19/2013	EEW	Receipt and review of email with attached Reply to Receiver's Response, copy of Receiver's Response and advising of factual inaccuracies contained within Receiver's Response; email to all concerned forwarding copies of same;	0.60	\$240.00
3/20/2013	EEW	Receipt and review of email regarding	0.10	\$40.00
3/21/2013	EEW	Email requesting time and place of meeting nearing	0.10	\$40.00
3/22/2013	EEW	Receipt and review of email regarding Bankruptcy Court order	0.10	\$40.00
3/22/2013	EEW	Telephone conference regarding Netsphere lawsuit	0.30	\$120.00
3/22/2013	EEW	Receipt and review of email advising of latest settlement negotiations and attaching proposed Order Denying Motion to Dismiss;	0.30	\$120.00
3/22/2013	EEW	Email regarding lawsuit	0.10	\$40.00
3/22/2013	EEW	Receipt and review Email responding to my email regarding the litigation	0.10	\$40.00
3/22/2013	EEW	Email regarding the litigation	0.10	\$40.00
3/22/2013	EEW	Email response to litigation	0.10	\$40.00

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Client Number: BARAA00061

5/13/2013

Matter Number: 1028-799

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3/22/2013	EEW	Email regarding my email	0.10	\$40.00
3/25/2013	EEW	Telephone conference regarding Motion	0.30	\$120.00
3/25/2013	EEW	Receipt and review of copy of email to	0.10	\$40.00
3/25/2013	EEW	Receipt and review of email attached proposed Motion to Determine Compensation and Retainer	0.30	\$120.00
3/25/2013	EEW	Email advising of hearing time	0.10	\$40.00
3/26/2013	EEW	Revised Motion to Determine Compensation and Retainer for Ed Wright	0.30	\$120.00
3/26/2013	EEW	Email forwarding copy of proposed revised Motion to Determine Compensation	0.10	\$40.00
3/26/2013	EEW	Receipt and review of email with attached corrections and redline suggestions	0.20	\$80.00
3/26/2013	EEW	Receipt and review of email with comments on Motion	0.10	\$40.00
3/26/2013	EEW	Email advising we would file Motion in both the District Court and Bankruptcy Court	0.10	\$40.00
3/26/2013	EEW	Receipt and review of email regarding participation in wind-down plan and regarding bankruptcy court order (96).	0.10	\$40.00
3/27/2013	EEW	Receipt and review of email from ECF Northern District confirming filing of Motion to Determine Compensation	0.10	\$40.00
3/27/2013	EEW	Receipt and review of Jeffrey Baron's Motion to Release Funds for Retention and Payment of Counsel with proposed order	0.30	\$120.00
3/27/2013	EEW	Email forwarding file-marked Motion to Determine Compensation	0.10	\$40.00
3/27/2013	EEW	Email forwarding copy of Motion to Determine Compensation filed in U.S. District Court	0.10	\$40.00
3/27/2013	EEW	Email regarding case	0.10	\$40.00

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13-10696.28053

Client Number: BARAA00061

5/13/2013

Matter Number: 1028-799

Page: 8

3/28/2013	EEW	Telephone conference regarding Motion for Fees	0.40	\$160.00
3/28/2013	EEW	Telephone conference regarding	0.20	\$80.00
3/28/2013	EEW	Receipt and review of Response and Objection filed by Netsphere to Motion to Compel Payment of Settlement and Order to Show Cause	0.30	\$120.00
3/28/2013	EEW	Email forwarding copy of Response and Objection filed by Netsphere;	0.10	\$40.00
3/28/2013	EEW	Receipt and review of email regarding Netsphere Response and Objection	0.10	\$40.00
4/1/2013	EEW	Email regarding case	0.10	\$40.00
4/2/2013	EEW	Email forwarding copy of Motion to Determine Compensation and Retainer filed in US District Court and advising same Motion was being filed in Bankruptcy Court	0.10	\$40.00
4/2/2013	EEW	Receipt and review of email regarding filing Motion in Bankruptcy Court	0.10	\$40.00
4/2/2013	EEW	Email regarding hearing	0.10	\$40.00
4/2/2013	EEW	Receipt and review of email with attached Order Notifying Parties and Counsel of Agenda for Status Conference and Hearing April 4, 2013 at 2:30 p.m. Before District Judge Furgeson and Bankruptcy Judge Jernigan	0.20	\$80.00
4/3/2013	EEW	Telephone conversation regarding Bankruptcy court	0.20	\$80.00
4/3/2013	EEW	Telephone conversation regarding April 4th hearing agenda and argument	0.40	\$160.00
4/3/2013	EEW	Reviewed and received email with 3 attachments	0.60	\$240.00
4/3/2013	EEW	Telephone conversation regarding strategy and other matters	0.40	\$160.00
4/3/2013	EEW	Reviewed and received different documents from receiver's attorney and others pertaining to various motions and orders	1.20	\$480.00

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13-10696.28054

Client Number: BARAA00061

5/13/2013

Matter Number: 1028-799

Page: 9

4/3/2013	EEW	Receipt and review of Notice of Advisory Regarding Court Ordered Settlement Conference	0.10	\$40.00
4/3/2013	EEW	Receipt and review of Reply filed by Peter S. Vogel RE: Motion to Compel Payment of Settlement and Order to Show Cause	0.20	\$80.00
4/3/2013	EEW	Email to [redacted] advising Motion had been filed in Bankruptcy Court	0.10	\$40.00
4/4/2013	EEW	Reviewed and received email with three attachments	0.40	\$160.00
4/4/2013	EEW	Prepared for status conference hearing	0.50	\$200.00
4/4/2013	EEW	Telephone conversation regarding status conference	0.30	\$120.00
4/4/2013	EEW	Attended status conference	3.50	\$1,400.00
4/4/2013	EEW	Telephone conversation answering his questions about status conference	0.30	\$120.00
4/4/2013	EEW	Receipt and review of electronic minute entry for proceedings before Judge Furgeson on status conference held on 4/4/13	0.10	\$40.00
4/5/2013	EEW	Receipt and review of Scheduling Order from Judge Royal Furgeson	0.10	\$40.00
4/5/2013	EEW	Conference and then conference call regarding all case developments	1.00	\$400.00
4/5/2013	EEW	Telephone conversation requesting meeting	0.30	\$120.00
4/5/2013	EEW	Receipt and review of email	0.10	\$40.00
4/5/2013	EEW	Email to [redacted]	0.10	\$40.00
4/5/2013	EEW	Receipt and review of letter from 5th Circuit Court of Appeals regarding transcripts	0.10	\$40.00
4/5/2013	EEW	Email to [redacted] forwarding copy of USCA5 regarding transcripts	0.10	\$40.00
4/5/2013	EEW	Receipt and review of conformed copy of Scheduling Order from U.S. District Court	0.10	\$40.00
4/5/2013	EEW	Email to [redacted] forwarding Scheduling Order	0.10	\$40.00

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13-10696.28055

Client Number: BARAA00061  
 Matter Number: 1028-799

5/13/2013  
 Page: 10

4/5/2013	EEW	Receipt and review of Designation of Mediator filed by Daniel Sherman	0.10	\$40.00
4/5/2013	EEW	Email forwarding Designation of Mediator	0.10	\$40.00
4/8/2013	EEW	Telephone conversation with regarding meeting	0.20	\$80.00
4/8/2013	EEW	Telephone conversation with regarding	0.20	\$80.00
4/8/2013	EEW	Receipt and review of Electronic Order Ordering Receiver Accounting of Receivership Assets	0.10	\$40.00
4/8/2013	EEW	Email forwarding copy of Electronic order	0.10	\$40.00
4/8/2013	EEW	Receipt and review of Electronic Order resetting trial on fee application	0.10	\$40.00
4/8/2013	EEW	Email to forwarding Order Adopting and Accepting Bankruptcy Court Order	0.10	\$40.00
4/8/2013	EEW	Email forwarding Electronic Order on Fee Application Trial	0.10	\$40.00
4/8/2013	EEW	Receipt and review of Order Adopting and Accepting Bankruptcy Court Order	0.10	\$40.00
4/8/2013	EEW	Email requesting meeting	0.10	\$40.00
4/8/2013	EEW	Receipt and review of email regarding meeting requested	0.10	\$40.00
4/9/2013	EEW	Telephone conference advising mediator had been chosen and mediation set by court	0.20	\$80.00
4/9/2013	EEW	Email regarding mediation	0.10	\$40.00
4/9/2013	EEW	Receipt and review of email with attached order entered in Bankruptcy Court directing mediation	0.20	\$80.00
4/9/2013	EEW	Receipt and review of email regarding	0.10	\$40.00

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13-10696.28056

Client Number: BARAA00061  
 Matter Number: 1028-799

5/13/2013  
 Page: 11

4/10/2013	EEW	Reviewed and received order regarding mediation	0.20	\$80.00
4/10/2013	EEW	Telephone conference call regarding mediation	0.40	\$160.00
4/10/2013	EEW	Telephone conversation regarding Mediator and Bankruptcy Judge	0.30	\$120.00
4/10/2013	EEW	Receipt and review of email regarding Mandamus Question	0.10	\$40.00
4/10/2013	EEW	Receipt and review of email regarding receivership issues	0.10	\$40.00
4/12/2013	EEW	Receipt and review of email with attached Exhibits to Motion for Stay Before 5th Circuit Court of Appeals	2.00	\$800.00
4/15/2013	EEW	Telephone conference regarding latest 5th Circuit filing and mediation	0.40	\$160.00
4/15/2013	EEW	Receipt and review of Receiver's Motion to Quash Punitive Notice of Deposition of Peter S. Vogel with attached Exhibits	0.30	\$120.00
4/15/2013	EEW	Receipt and review of email regarding organizing fee issues before Judge Furgeson	0.10	\$40.00
4/15/2013	EEW	Receipt and review of email regarding issues for fee litigation	0.20	\$80.00
4/15/2013	EEW	Receipt and review of list regarding document review and issues for fee litigation	0.10	\$40.00
4/15/2013	EEW	Receipt and review of email regarding latest case developments	0.10	\$40.00
4/15/2013	EEW	Receipt and review of email regarding fee litigation	0.10	\$40.00
4/16/2013	EEW	Receipt and review of email regarding update	0.10	\$40.00
4/16/2013	EEW	Receipt and review of email regarding latest case developments	0.10	\$40.00
4/16/2013	EEW	Receipt and review of email regarding Motion seeking discovery of the Reciever, Trustee and their lawyers	0.10	\$40.00
4/17/2013	EEW	Receipt and review of email regarding Mediation in Netsphere & Ondova with attached additional documents	0.50	\$200.00
4/17/2013	EEW	Receipt and review of email with attached proposed Motion to Set Deadline for Fee Applications	0.20	\$80.00

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13-10696.28057

Client Number: BARAA00061

5/13/2013

Matter Number: 1028-799

Page: 12

4/18/2013	EEW	Receipt and review of Certificate of Conference re Motion to Quash Punitive Notice of Deposition of Peter S. Vogel by David J Schenck on behalf of Peter S Vogel filed by Schenck, David	0.10	\$40.00
4/18/2013	EEW	Email forwarding copy of Certificate of Conference re Motion to Quash Punitive Notice of Deposition of Peter S. Vogel by David J Schenck on behalf of Peter S Vogel	0.10	\$40.00
4/18/2013	EEW	Email regarding discovery matters and upcoming mediation	0.10	\$40.00
4/18/2013	EEW	Receipt and review of email with attached notes	0.20	\$80.00
4/18/2013	EEW	Receipt and review of Order Denying Motion to Set Aside Dates for Submission of Fee Applications for Jeffrey Baron	0.10	\$40.00
4/18/2013	EEW	Receipt and review of email regarding	0.10	\$40.00
4/18/2013	EEW	Email forwarding Order Denying Motion to Set Aside Dates for Submission of Fee Applications for Jeffrey Baron	0.10	\$40.00
4/18/2013	EEW	Email forwarding draft of Request for Production to Trustee and requesting additional information for discovery requests	0.10	\$40.00
4/18/2013	EEW	Receipt and review of email regarding documents from the district court and bankruptcy court	0.10	\$40.00
4/18/2013	EEW	Receipt and review of email regarding Fee Application material available in Dropbox	0.10	\$40.00
4/18/2013	EEW	Reviewed recent filings and most of the Fee Application material forwarded through Dropbox	1.00	\$400.00
4/19/2013	EEW	Receipt and review of Notice of Receiver's Inventory filed by Peter S Vogel	0.30	\$120.00
4/19/2013	EEW	Receipt and review of email with attached updated version of Motion for Continuance and Discovery	0.10	\$40.00
4/19/2013	EEW	Email forwarding Receiver's Inventory	0.10	\$40.00
4/19/2013	EEW	Receipt and review of Response filed by Daniel J. Sherman re: [1226] Motion to Quash Punitive Notice of Deposition of Peter S. Vogel	0.30	\$120.00

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13-10696.28058

Client Number: BARAA00061

5/13/2013

Matter Number: 1028-799

Page: 13

4/19/2013	EEW	Email forwarding Response filed by Daniel J. Sherman re: [1226] Motion to Quash Punitive Notice of Deposition of Peter S. Vogel	0.10	\$40.00
4/19/2013	EEW	Receipt and review of Electronic Order finding as moot [1226] Motion to Quash per Doc. No. [1238], withdrawing notice of deposition	0.10	\$40.00
4/19/2013	EEW	Email forwarding Electronic Order finding Motion to Quash Moot	0.10	\$40.00
4/19/2013	EEW	Receipt and review of email with attached Baron Discovery Request to Trustee and Baron Discovery Request to Receiver	0.30	\$120.00
4/19/2013	EEW	Finalized Discovery Requests to Trustee	0.30	\$120.00
4/19/2013	EEW	Finalized Discovery Requests to Receiver	0.30	\$120.00
4/19/2013	EEW	Receipt and review of email with attached revised Requests for Production to Trustee and Receiver with message to add additional request to Trustee	0.30	\$120.00
4/19/2013	EEW	Receipt and review of email advising Mandate had issued	0.10	\$40.00
4/19/2013	EEW	Receipt and review of file-marked Motion to Continue, Motion for Discovery	0.10	\$40.00
4/19/2013	EEW	Email forwarding Motion for Continuance and Motion for Discovery	0.10	\$40.00
4/19/2013	EEW	Email requesting specific information Motion	0.10	\$40.00
4/19/2013	EEW	Receipt and review of email regarding outline for documents	0.10	\$40.00
4/19/2013	EEW	Receipt and review of email regarding discovery requests	0.10	\$40.00
4/19/2013	EEW	Receipt and review of email requesting statement in motion	0.10	\$40.00
4/20/2013	EEW	Receipt and review of email to Judge Clark with attached Mediation Position Paper with Exhibits	0.50	\$200.00
4/21/2013	EEW	Receipt and review of email regarding Truee's Fee Application Motion	0.10	\$40.00

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13-10696.28059



Client Number: BARAA0006I

5/13/2013

Matter Number: 1028-799

Page: 14

4/22/2013	EEW	Prepared for mediation	0.50	\$200.00
4/22/2013	EEW	Attended mediation	12.50	\$5,000.00
4/22/2013	EEW	Receipt and review of Declaration Designating Settlement Authority by Pronske & Patel PC. (Doc No. 1241)	0.10	\$40.00
4/22/2013	EEW	Receipt and review of Declaration Designating Settlement Authority by Pronske & Patel PC. (Doc #1242)	0.10	\$40.00
4/22/2013	EEW	Receipt and review of Declaration Designating Settlement Authority by Pronske & Patel PC. (Doc #1243)	0.10	\$40.00
4/22/2013	EEW	Receipt and review of Declaration Designating Settlement Authority by Pronske & Patel PC. (Doc #1244)	0.10	\$40.00
4/22/2013	EEW	Email forwarding Declaration Doc No. 1243	0.10	\$40.00
4/22/2013	EEW	Email forwarding Declaration Doc #1241	0.10	\$40.00
4/22/2013	EEW	Email forwarding Declaration Doc #1242	0.10	\$40.00
4/22/2013	EEW	Receipt and review of Order Denying without Prejudice [1240] Motion for Discovery, And Denying [1240] Motion for Continuance and to Re-Consider Funding for Jeffrey Baron's Counsel.	0.10	\$40.00
4/22/2013	EEW	Email forwarding order Denying Without Prejudice Motion for Discovery, Continuance and to Reconsider Funding for Baron Attorneys	0.10	\$40.00
4/23/2013	EEW	Attended mediation	12.50	\$5,000.00
4/23/2013	EEW	Telephone conversation regarding resolving fee dispute	0.30	\$120.00
4/23/2013	EEW	Receipt and review of Order of USCA: IT IS ORDERED that the opposed emergency motion of Jeffrey Baron for stay pending appeal is DENIED. IT IS FURTHER ORDERED that the opposed emergency motion to stay the issuance of the mandate is DENIED	0.10	\$40.00
4/23/2013	EEW	Email forwarding Order of USCA	0.10	\$40.00
4/23/2013	EEW	Receipt and review of Declaration Designating Settlement Authority by Pronske & Patel PC. (Doc #1247)	0.10	\$40.00
4/23/2013	EEW	Email forwarding Declaration Doc #1247	0.10	\$40.00
4/23/2013	EEW	Email Munsch and Gardere's fee applications	0.10	\$40.00

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4/24/2013	EEW	Telephone conversation	0.40	\$160.00
4/24/2013	EEW	Reviewed and received email regarding conference call	0.10	\$40.00
4/24/2013	EEW	Telephone conversation	0.20	\$80.00
4/24/2013	EEW	Conference call	0.30	\$120.00
4/24/2013	EEW	Telephone conversation regarding the ultimate resolution	0.40	\$160.00
4/24/2013	EEW	Receipt and review of email with attached Confidential Mediator's Proposal	0.20	\$80.00
4/24/2013	EEW	Email forwarding Confidential Mediator's Proposal	0.10	\$40.00
4/24/2013	EEW	Email regarding results of mediation	0.10	\$40.00
4/24/2013	EEW	Receipt and review of email	0.10	\$40.00
4/24/2013	EEW	Email forwarding	0.10	\$40.00
4/24/2013	EEW	Email regarding	0.10	\$40.00
4/24/2013	EEW	Receipt and review of email regarding	0.10	\$40.00
4/25/2013	EEW	Telephone conversation with current case matters regarding	0.30	\$120.00
4/25/2013	EEW	Telephone conversation regarding case developments,	0.50	\$200.00
4/25/2013	EEW	Telephone conversation regarding case developments	0.30	\$120.00
4/25/2013	EEW	Telephone conversation regarding mediation settlement proposal	0.50	\$200.00
4/25/2013	EEW	Reviewed 5th Circuit opinion	0.70	\$280.00
4/25/2013	EEW	Reviewed Judge Ferguson's January, 2013 order	0.30	\$120.00
4/25/2013	EEW	Legal research	3.00	\$1,200.00

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Client Number: BARAA0006I

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4/25/2013	EEW	Prepared first draft of objections in response to Gardere law firms request for fees	1.00	\$400.00
4/25/2013	EEW	Prepared first draft of the objections and response to trustees request for fees	1.00	\$400.00
4/25/2013	EEW	Reviewed and received two drafts objections and responses to the requests	0.50	\$200.00
4/25/2013	EEW	Revised two drafts of objections and responses to the requests	0.30	\$120.00
4/25/2013	EEW	Reviewed and received email regarding changes to objections and response to trustees request for fees	0.10	\$40.00
4/25/2013	EEW	Revised objections in response to Gardere law firms request for fees; revised two drafts objections and responses to the requests	0.60	\$240.00
4/25/2013	EEW	Telephone conversation regarding mediation	0.30	\$120.00
4/25/2013	EEW	Telephone conversation regarding extensions and other mediation and settlement	0.50	\$200.00
4/25/2013	EEW	Receipt and review of Response and Objection filed by Peter S Vogel re: [1229] MOTION for Attorney Fees Chapter 11 Trustee's Application for Reimbursement of Fees and Expenses from the Receivership Estate	0.30	\$120.00
4/25/2013	EEW	Email forwarding Receiver's Response to Trustee's Fee Application	0.10	\$40.00
4/25/2013	EEW	Email forwarding:	0.10	\$40.00
4/25/2013	EEW	Email forwarding:	0.10	\$40.00
4/25/2013	EEW	Email forwarding:	0.10	\$40.00
4/25/2013	EEW	Email forwarding:	0.10	\$40.00
4/25/2013	EEW	Receipt and review of Response and Objection filed by Peter S Vogel re: [1229] Motion for Attorney Fees Chapter 11 Trustee's Application for Reimbursement of Fees and Expenses from the Receivership Estate	0.30	\$120.00

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4/25/2013	EEW	Email forwarding Receiver's Response to Trustee's Fee App for Reimbursement of Fees and Expenses from the Receivership Estate	0.10	\$40.00
4/25/2013	EEW	Email forwarding	0.10	\$40.00
4/25/2013	EEW	Receipt and review of email with attached Confidential Amended Mediator's Proposal and Redlined Amended Mediator's Proposal	0.50	\$200.00
4/25/2013	EEW	Email forwarding Amended Mediator Proposal and Redlined Mediator Proposal	0.10	\$40.00
4/25/2013	EEW	Email forwarding	0.10	\$40.00
4/25/2013	EEW	Receipt and review of email advising of possible extension on Responses to Fee Applications and forwarding latest draft of Objections to Fees	0.30	\$120.00
4/25/2013	EEW	Email advising of possible extension on Objections to Fee Applications and forwarding latest version of Objections to Fee Applications	0.10	\$40.00
4/25/2013	EEW	Receipt and review of Order: It is hereby ORDERED that the deadline for objections to fee applications set Thursday, April 25, 2013 is hereby Vacated until further order of the court.	0.10	\$40.00
4/25/2013	EEW	Email forwarding Electronic Order extending deadline to file objections to fee applications	0.10	\$40.00
4/25/2013	EEW	Receipt and review of Electronic Order: It is ORDERED that the pre-trial hearing set on Monday, April 29, 2013 at 9:00 a.m is hereby Vacated until further order of the court.	0.10	\$40.00
4/25/2013	EEW	Email forwarding Order on PT hearing	0.10	\$40.00
4/25/2013	EEW	Receipt and review of Electronic Order: It is hereby Ordered that the deadline to file objections to fee applications is reset to Thursday, May 2, 2013. The pre-trial hearing is reset for Wednesday, May 8, 2013 at 2:00 p.m. with the trial to follow	0.10	\$40.00
4/25/2013	EEW	Receipt and review of email regarding Netsphere claims	0.10	\$40.00
4/25/2013	EEW	Email to regarding Netsphere claims	0.10	\$40.00

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4/25/2013	EEW	Receipt and review of email regarding new deadline on objections to fee application and new pretrial hearing	0.10	\$40.00
4/25/2013	EEW	Email regarding new deadline to file objections and new pretrial hearing	0.10	\$40.00
4/25/2013	EEW	Receipt and review of email confirming fee requests	0.10	\$40.00
4/25/2013	EEW	Receipt and review of email Gardere's fee request	0.10	\$40.00
4/25/2013	EEW	Email requesting additional information	0.10	\$40.00
4/26/2013	EEW	Telephone conversation regarding case and mediator's proposal	0.40	\$160.00
4/26/2013	EEW	Follow up conversation regarding	0.20	\$80.00
4/26/2013	EEW	Email regarding Netsphere	0.10	\$40.00
4/26/2013	EEW	Receipt and review of Deadline Modification: Response Deadlines terminated per [1250] Electronic Order.	0.10	\$40.00
4/26/2013	EEW	Receipt and review of Hearing Modification: Hearing terminated	0.10	\$40.00
4/26/2013	EEW	Receipt and review of Hearing/ Deadline Modification: Deadlines/hearings set per [1252] Electronic Order. Responses due by 5/2/2013. Pretrial Conference set for 5/8/2013 at 02:00 PM before Judge Royal Furgeson.	0.10	\$40.00
4/26/2013	EEW	Email forwarding Hearing/Deadline Modification	0.10	\$40.00
4/26/2013	EEW	Email forwarding Hearing/Deadline Modification	0.10	\$40.00
4/26/2013	EEW	Receipt and review of email	0.10	\$40.00
4/26/2013	EEW	Email regarding Netsphere	0.10	\$40.00
4/26/2013	EEW	Receipt and review of Declaration Designating Settlement Authority by Pronske & Patel PC (Doc #1253)	0.10	\$40.00
4/26/2013	EEW	Email forwarding Declaration Doc #1253	0.10	\$40.00
4/26/2013	EEW	Receipt and review of email advising of latest possible settlement negotiations	0.10	\$40.00

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4/27/2013	EEW	Email . . . . . Mediator's proposal . . . . .	0.10	\$40.00
4/27/2013	EEW	Receipt and review of email . . . . . regarding settlement negotiations	0.10	\$40.00
4/27/2013	EEW	Receipt and review of email . . . . . regarding settlement negotiations	0.10	\$40.00
4/27/2013	EEW	Receipt and review of email . . . . . regarding	0.10	\$40.00
4/27/2013	EEW	Receipt and review of email . . . . . requesting status . . . . .	0.10	\$40.00
4/27/2013	EEW	Receipt and review of email . . . . . advising Judge Clark had advised of latest settlement negotiations	0.10	\$40.00
4/28/2013	EEW	Email . . . . . regarding . . . . .	0.10	\$40.00
4/28/2013	EEW	Receipt and review of email . . . . . regarding status . . . . .	0.10	\$40.00
4/28/2013	EEW	Receipt and review of email . . . . . advising of latest . . . . . developments	0.10	\$40.00
4/28/2013	EEW	Receipt and review of copy of email . . . . . to Judge Clark	0.10	\$40.00
4/29/2013	EEW	Receipt and review of Opinion of USCA (certified copy) in accordance with USCA judgment regarding Notice of appeal filed by Novo Point LLC, Quantec LLC, [814] Notice of Appeal, filed by Novo Point LLC, Jeffrey Baron, Gary Schepps, Quantec LLC, [759] Notice of Appeal,, filed by Novo Point LLC, Jeffrey Baron, Gary Schepps, Quantec LLC, [136] Notice of Appeal, filed by Jeffrey Baron, [449] Notice of Appeal,,,, filed by Novo Point LLC, Jeffrey Baron, Quantec LLC, [1034] Notice of Appeal,, filed by Novo Point LLC, Jeffrey Baron, Quantec LLC, [982] Notice of Appeal, filed by Novo Point LLC, Jeffrey Baron, Quantec LLC, [908] Notice of Appeal,, filed by Novo Point LLC, Jeffrey Baron, Quantec LLC, [340] Notice of Appeal,,,, filed by Jeffrey Baron, [1181] Notice of Appeal,, filed by Novo Point LLC, Jeffrey Baron, Quantec LLC, [614] Notice of Appeal, filed by Carrington Coleman Sloman & Blumenthal, LLP, [1080] Notice of Appeal,, filed by Novo Point LLC, Jeffrey Baron, Quantec LLC, [576] Notice of Appeal,,,,, filed by Novo Point LLC, Jeffrey Baron, Quantec LLC, [341] Notice of Appeal,,,, filed by Novo Point LLC, Quantec LLC.	0.50	\$200.00

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4/29/2013	EEW	Receipt and review of Judgment/Mandate of USCA as to [136] Notice of Appeal, filed by Jeffrey Baron. Judgment of the District Court is reversed and remanded for further proceedings. Issued as Mandate: 4/19/13. (Doc #1255)	0.10	\$40.00
4/29/2013	EEW	Receipt and review of Judgment/Mandate of USCA as to [227] Notice of Appeal, filed by Novo Point LLC, Quantec LLC. Judgment of the District Court is reversed and remanded for further proceedings. Issued as Mandate: 4/19/13. (Doc #1256)	0.10	\$40.00
4/29/2013	EEW	Receipt and review of Judgment/Mandate of USCA as to [340] Notice of Appeal,,,, filed by Jeffrey Baron. Judgment of the District Court is reversed and remanded for further proceedings. Issued as Mandate: 4/19/13. (Doc. #1257)	0.10	\$40.00
4/29/2013	EEW	Receipt and review of Judgment/Mandate of USCA as to [341] Notice of Appeal,,,, filed by Novo Point LLC, Quantec LLC. Judgment of the District Court is reversed and remanded for further proceedings. Issued as Mandate: 4/19/13.(Doc. #1258)	0.10	\$40.00
4/29/2013	EEW	Receipt and review of Judgment/Mandate of USCA as to [341] Notice of Appeal,,,, filed by Novo Point LLC, Quantec LLC. Judgment of the District Court is reversed and remanded for further proceedings. Issued as Mandate: 4/19/13. (Doc. #1259)	0.10	\$40.00
4/29/2013	EEW	Receipt and review of Judgment/Mandate of USCA as to [449] Notice of Appeal,,,, filed by Novo Point LLC, Jeffrey Baron, Quantec LLC. Judgment of the District Court is reversed and remanded for further proceedings. Issued as Mandate: 4/19/13. (Doc #1260)	0.10	\$40.00
4/29/2013	EEW	Email forwarding Opinion of USCA	0.10	\$40.00
4/29/2013	EEW	Email forwarding Docket Text: Judgment/Mandate of USCA (1255)	0.10	\$40.00
4/29/2013	EEW	Email forwarding Judgment Mandate 1255	0.10	\$40.00
4/29/2013	EEW	Receipt and review of Judgment/Mandate of USCA as to [759] Notice of Appeal,, filed by Novo Point LLC, Jeffrey Baron, Gary Schepps, Quantec LLC. Judgment of the District Court is reversed and remanded for further proceedings. Issued as Mandate: 4/19/13. Doc #1261)	0.10	\$40.00
4/29/2013	EEW	Email forwarding Judgment Mandate 1261	0.10	\$40.00
4/29/2013	EEW	Email forwarding Judgment Mandate 1260	0.10	\$40.00
4/29/2013	EEW	Email forwarding Judgment Mandate 1259	0.10	\$40.00

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4/29/2013	EEW	Email forwarding Judgment Mandate 1258	0.10	\$40.00
4/29/2013	EEW	Email forwarding Judgment Mandate 1257	0.10	\$40.00
4/29/2013	EEW	Email forwarding Judgment Mandate 1256	0.10	\$40.00
4/29/2013	EEW	Receipt and review of Judgment/Mandate of USCA as to [982] Notice of Appeal, filed by Novo Point LLC, Jeffrey Baron, Quantec LLC, [908] Notice of Appeal,, filed by Novo Point LLC, Jeffrey Baron, Quantec LLC. Judgment of the District Court is reversed and remanded for further proceedings. Issued as Mandate: 4/19/13. (Doc. 1262)	0.10	\$40.00
4/29/2013	EEW	Receipt and review of Judgment/Mandate of USCA as to [1080] Notice of Appeal,, filed by Novo Point LLC, Jeffrey Baron, Quantec LLC. Judgment of the District Court is reversed and remanded for further proceedings. Issued as Mandate: 4/19/13 (Doc. 1263)	0.10	\$40.00
4/29/2013	EEW	Email forwarding Judgment//Mandate 1263	0.10	\$40.00
4/29/2013	EEW	Email forwarding judgment mandate 1262	0.10	\$40.00
4/29/2013	EEW	Receipt and review of Electronic Order finding as moot [1013] Motion for Reconsideration per issuance of the mandate by the Fifth Circuit.	0.10	\$40.00
4/29/2013	EEW	Email forwarding Electronic Order 1264	0.10	\$40.00
4/29/2013	EEW	Receipt and review of email regarding Judge Clark proposal	0.10	\$40.00
4/29/2013	EEW	Receipt and review of email with attached Confidential Proposal in Mediation from Judge Clark	0.30	\$120.00
4/29/2013	EEW	Receipt and review of email regarding	0.10	\$40.00
4/29/2013	EEW	Receipt and review of email with attachment	0.10	\$40.00
4/30/2013	EEW	Email advising of deadline to file objections to fees	0.10	\$40.00
4/30/2013	EEW	Receipt and review of email regarding email from Judge Clark	0.10	\$40.00
4/30/2013	EEW	Receipt and review of email regarding proposal	0.10	\$40.00
4/30/2013	EEW	Receipt and review of email requesting status on settlement negotiations	0.10	\$40.00

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5/1/2013	EEW	Receipt and review of Electronic Order: It is hereby ORDERED that the deadline to file objections to fee applications is reset to Monday, May 6, 2013.	0.10	\$40.00
5/1/2013	EEW	Receipt and review of email [redacted] advising of latest settlement developments	0.30	\$120.00
5/1/2013	EEW	Receipt and review of email [redacted] advising of latest settlement negotiations	0.10	\$40.00
5/1/2013	EEW	Receipt and review of email [redacted]	0.10	\$40.00
5/1/2013	EEW	Email [redacted] forwarding [redacted]	0.10	\$40.00
5/2/2013	EEW	Receipt and review of email from [redacted] with attached revised outline of settlement	0.30	\$120.00
5/2/2013	EEW	Email [redacted] forwarding [redacted] settlement outline	0.10	\$40.00
5/2/2013	EEW	Email [redacted] regarding discovery	0.10	\$40.00
5/2/2013	EEW	Receipt and review of email [redacted] regarding second mediation with Judge Clark at Munsch Hardt	0.10	\$40.00
5/2/2013	EEW	Email [redacted] regarding [redacted]	0.10	\$40.00
5/2/2013	EEW	Email [redacted] confirming [redacted]	0.10	\$40.00
5/2/2013	EEW	Email [redacted] forwarding Motion for Continuance and Discovery and Baron Discovery Requests to Receiver	0.10	\$40.00
5/2/2013	EEW	Receipt and review of email from Peter Vogel advising he would not attend second mediation and would not approval of any settlement	0.10	\$40.00
5/2/2013	EEW	Email [redacted] regarding second mediation	0.10	\$40.00
5/2/2013	EEW	Receipt and review of email [redacted] advising of latest settlement conference	0.10	\$40.00
5/3/2013	EEW	Telephone conference [redacted] regarding mediation	0.30	\$120.00
5/3/2013	EEW	Telephone conference [redacted] regarding results of mediation	0.40	\$160.00
5/4/2013	EEW	Receipt and review of email [redacted] regarding [redacted]	0.30	\$120.00
5/4/2013	EEW	Receipt and review of email [redacted] regarding [redacted]	0.10	\$40.00

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5/5/2013	EEW	Telephone conference . . . . . regarding case developments and mediation	0.40	\$160.00
5/5/2013	EEW	Telephone conference . . . . . regarding case developments	0.30	\$120.00
5/5/2013	EEW	Receipt and review of email . . . . .	0.30	\$120.00
		Confidential Proposal Mediation		
5/5/2013	EEW	Receipt and review of email . . . . . with attached	0.30	\$120.00
5/5/2013	EEW	Receipt and review of email . . . . . regarding	0.10	\$40.00
5/6/2013	EEW	Phone conversation . . . . .	0.30	\$120.00
5/6/2013	EEW	Telephone conversation . . . . . regarding case matters	0.30	\$120.00
5/6/2013	EEW	Telephone conversation . . . . . regarding case matters	0.30	\$120.00
5/6/2013	EEW	Telephone conversation . . . . . regarding case matters	0.40	\$160.00
5/6/2013	EEW	Receipt and review of objections . . . . .	0.80	\$320.00
5/6/2013	EEW	Began review . . . . .	3.00	\$1,200.00
5/6/2013	EEW	Email . . . . . regarding Fee Applications	0.10	\$40.00
5/6/2013	EEW	Receipt and review of Notice of Filing of Official Electronic Transcript of Status Conference Proceedings held on December 14, 2012 before Judge Royal Furgeson.	0.10	\$40.00
5/6/2013	EEW	Email . . . . . forwarding Notice of Filing Official Electronic Transcript of Settlement Conference	0.10	\$40.00
5/6/2013	EEW	Email . . . . . forwarding . . . . . fee applications	0.10	\$40.00
5/6/2013	EEW	Receipt and review of Electronic Order: It is hereby ORDERED that the deadline to file objections to fee applications is reset to Thursday, May 9, 2013. The pre-trial conference and trial on fees will still commence on Wednesday, May 8, 2013 at 2:00 pm.	0.10	\$40.00

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Client Number: BARAA00061

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5/6/2013	EEW	Receipt and review of Response filed by Robert Garrey, Jeffrey Hall, Gary G Lyon, David Pacione, Power Taylor LLP, Pronske & Patel PC, Shurig Jetel Backett Tackett re: [1233] Motion for Attorney Fees Fee Application for the Receiver, [1232] Motion for Attorney Fees for Gardere Wynne Sewell LLP, [1229] Motion for Attorney Fees Chapter 11 Trustee's Application for Reimbursement of Fees and Expenses from the Receivership Estate, [1234] Motion for Attorney Fees	0.50	\$200.00
5/6/2013	EEW	Email forwarding Response filed by Robert Garrey,	0.10	\$40.00
5/6/2013	EEW	Receipt and review of email regarding	0.10	\$40.00
5/6/2013	EEW	Email regarding	0.10	\$40.00
5/6/2013	EEW	Receipt and review of email Sherman	0.70	\$280.00
5/6/2013	EEW	Receipt and review of email regarding	0.10	\$40.00
5/6/2013	EEW	Email regarding objections and trial exhibits	0.10	\$40.00
5/6/2013	EEW	Receipt and review of email regarding objections	0.10	\$40.00
5/6/2013	EEW	Receipt and review of Order Instructing Receiver to Pay Dykema Gossett's Legal Fees and Expenses at 95% Rate	0.10	\$40.00
5/6/2013	EEW	Email forwarding 6th Dykema Dec Fee Application	0.10	\$40.00
5/6/2013	EEW	Receipt and review of Receiver's December 31, 2012 Dykema Fee Application	0.10	\$40.00
5/6/2013	EEW	Receipt and review of Exhibit "A" (17 Pages) to Dykema Fee Application	0.10	\$40.00
5/6/2013	EEW	Receipt and review of Receiver's 5th Dykema Fee Application	0.10	\$40.00
5/6/2013	EEW	Email Dykema Fee Application	0.10	\$40.00
5/6/2013	EEW	Receipt and review of Receiver's 4th Dykema Fee Application	0.10	\$40.00
5/6/2013	EEW	Receipt and review of Dykema 3rd Fee Application	0.10	\$40.00

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5/6/2013	EEW	Email forwarding Receiver 3rd Dykema Fee Application	0.10	\$40.00
5/6/2013	EEW	Receipt and review of Order Approving the Receiver's Second Dykema Fee Application	0.10	\$40.00
5/6/2013	EEW	Receipt and review of Exhibit "A" to Dykema 2d Fee Application	0.10	\$40.00
5/6/2013	EEW	Receipt and review of Receiver's Second Dykema Fee Application	0.10	\$40.00
5/6/2013	EEW	Receipt and review of Order approving the Receiver's First Dykema Fee Application	0.10	\$40.00
5/6/2013	EEW	Receipt and review of Exhibit "A" to Dykema 1st Fee Application	0.10	\$40.00
5/6/2013	EEW	Receipt and review of email regarding	0.20	\$80.00
5/7/2013	EEW	Receipt and review of voluminous documents	2.80	\$1,120.00
5/7/2013	EEW	Telephone conference regarding case	0.20	\$80.00
5/7/2013	EEW	Conference call regarding forthcoming trial script	0.50	\$200.00
5/7/2013	EEW	Receipt and review of suggested trial/appellate transcript	0.70	\$280.00
5/7/2013	EEW	Telephone conference regarding	0.30	\$120.00
5/7/2013	EEW	Receipt and review of three email with attachments from regarding trial	1.00	\$400.00
5/7/2013	EEW	Legal research on attorney's fees	3.00	\$1,200.00
5/7/2013	EEW	Trial preparation along with conferences	6.20	\$2,480.00
5/7/2013	EEW	Receipt and review of email with attached	0.20	\$80.00
5/7/2013	EEW	Receipt and review of email regarding Dykema	0.10	\$40.00
5/7/2013	EEW	Receipt and review of email with attached	0.20	\$80.00
5/7/2013	EEW	Email requesting 5th Circuit Scheduling Order regarding expeditied decision on case	0.10	\$40.00

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5/7/2013	EEW	Receipt and review of email regarding Dykema	0.10	\$40.00
5/7/2013	EEW	Receipt and review of email with attached Court Order on Sales of Assets Scheduled to be auctioned	0.20	\$80.00
5/7/2013	EEW	Receipt and review of articles to review regarding state bar publishings on attorney's fees	0.30	\$120.00
5/8/2013	EEW	Receipt and review of email with attached Objections to Fee Applications	0.30	\$120.00
5/8/2013	EEW	Receipt and review of email with attached Objections to Fee Applications	0.30	\$120.00
5/8/2013	EEW	Receipt and review of email with attached Motion for Leave to Amend or Alternataive to Abate or Determine	0.30	\$120.00
5/8/2013	EEW	Receipt and review of file-marked Objection filed by Jeffrey Baron	0.10	\$40.00
5/8/2013	EEW	Email forwarding Objection filed by Jeffrey Baron	0.10	\$40.00
5/8/2013	EEW	Receipt and review of Electronic Minute Entry for proceedings held before Judge Royal Furgeson: Evidentiary Hearing held on 5/8/2013.	0.10	\$40.00
5/8/2013	EEW	Receipt and review of email forwarding Impasse Letter from Mediator	0.20	\$80.00
5/8/2013	EEW	Email forwarding Minute Entry for proceedings held before Judge Royal Furgeson: Evidentiary Hearing held on 5/8/2013.	0.10	\$40.00
5/8/2013	EEW	Receipt and review of email with attached	0.10	\$40.00
5/9/2013	EEW	Receipt and review of email advising	0.10	\$40.00
5/9/2013	EEW	Email forwarding copy of email	0.10	\$40.00
5/9/2013	EEW	Receipt and review of email advising of Dean Ferguson's email	0.10	\$40.00
5/9/2013	EEW	Email advising of latest case developments	0.10	\$40.00
5/9/2013	EEW	Receipt and review of Motion for Leave to Amend	0.10	\$40.00

Continued On Next Page

13-10696.28072

Client Number: BARAA00061

5/13/2013

Matter Number: 1028-799

Page: 27

5/9/2013	EEW	Receipt and review of Response and Objection filed by Netsphere Inc 1271	0.20	\$80.00
5/9/2013	EEW	Receipt and review of Electronic Minute Entry for proceedings held before Judge Royal Furgeson: Day two of Evidentiary Hearing held on 5/9/2013.	0.10	\$40.00
5/9/2013	EEW	Prepared for second day of trial	1.50	\$600.00
5/9/2013	EEW	Trial	2.50	\$1,000.00
5/9/2013	EEW	Conference with	0.50	\$200.00
5/9/2013	EEW	Continued trial	4.00	\$1,600.00
5/9/2013	EEW	Reviewed and received motions for fees from all law firms involved in trial	3.00	\$1,200.00
5/9/2013	EEW	Revised Motion to Abate and Objections	1.00	\$400.00
5/9/2013	EEW	Receipt and review of 19 Notice of Interlocutory Appeals and Judgment/Mandates from Issac Schepps	0.50	\$200.00
5/10/2013	EEW	Receipt and review of Electronic Minute Entry for proceedings held before Judge Royal Furgeson: Day three of Evidentiary Hearing held on 5/10/2013	0.10	\$40.00

<b>Billable Hours / Fees:</b>	<b>188.90</b>	<b>\$75,560.00</b>
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**Timekeeper Summary**

Timekeeper EEW worked 188.90 hours at \$400.00 per hour, totaling \$75,560.00.

**Cost Detail**

<u>Date</u>	<u>Description</u>	<u>Amount</u>	<u>Check No.</u>
3/31/2013	Photocopies (105 copies @ \$0.20/page)	\$21.00	
5/9/2013	Photocopies (3164 copies @ \$0.20/page)	\$632.80	
5/13/2013	Parking Reimbursment	\$20.00	1826
	<b>Payee: Ed Wright</b>		
	<b>Total Costs</b>	<b>\$673.80</b>	

Continued On Next Page

**Client Number:** BARAA00061  
**Matter Number:** 1028-799

5/13/2013  
Page: 28

<b>Prior Balance:</b>	\$0.00
<b>Payments Received:</b>	\$0.00
<b>Current Fees:</b>	\$75,560.00
<b>Advanced Costs:</b>	\$673.80
<b>TOTAL AMOUNT DUE:</b>	<u>\$76,233.80</u>

Thank You for Letting Us Serve You.  
Payment Due Upon Receipt.

Federal Tax I.D. No. 75-2304583

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

**NETSPHERE, INC.,  
MANILA INDUSTRIES, INC., and  
MUNISH KRISHAN,  
Plaintiffs.**

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v.

**Civil Action No. 3-09CV0988-F**

**JEFFREY BARON, and  
ONDOVA LIMITED COMPANY,  
Defendants.**

**ORDER GRANTING ATTORNEY’S FEES OF EDWIN E. WRIGHT, III**

The Court, having reviewed the Motion for Attorney’s Fees of Edwin E. Wright, III, counsel for Defendant Jeffrey Baron, and being otherwise fully advised in the premises;

**IT IS HEREBY ORDERED** that the Motion is **GRANTED** in all respects. The Receiver shall issue a check payable to Edwin E. Wright, III in the amount of \$76,233.80 to cover the cost of legal services as well as reasonable and necessary expenses incurred in the representation of Defendant Jeffrey Baron in the above-entitled and numbered cause.

\_\_\_\_\_  
**HON. ROYAL FURGESON  
SENIOR DISTRICT COURT JUDGE**



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

**NETSPHERE, INC.,  
MANILA INDUSTRIES, INC.,  
AND MUNISH KRISHAN**

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**PLAINTIFFS,**

**v.**

**CIVIL ACTION No. 3:09-CV-0988-F**

**JEFFREY BARON AND  
ONDOVA LIMITED COMPANY,**

**DEFENDANTS.**

**AFFIDAVIT OF EDWIN E. WRIGHT, III**

**STATE OF TEXAS**

§  
§  
§

**COUNTY OF DALLAS**

**BEFORE ME**, the undersigned authority, on this day personally appeared **EDWIN E. WRIGHT, III**, who, being by me first duly sworn upon his oath, stated and deposed as follows:

"My name is **EDWIN E. WRIGHT, III**. My business address is Abrams Centre, 9330 LBJ Freeway, Suite 1400, Dallas, Texas 75243. I am over eighteen (18) years of age, I have never been convicted of nor have I plead guilty to a felony or a crime involving moral turpitude. I am physically and mentally capable of making this Affidavit. The facts set forth in this Affidavit are based upon my personal knowledge and are true and correct.

I am one of the attorneys for the Defendants in the above entitled and numbered cause. I have been duly licensed to practice law and have been actively engaged in the private practice of law in the State of Texas since 1977. Since December, 1983, I have been Board Certified in Personal Injury Trial Law and Civil Trial Law by the Texas Board of Legal Specialization. I am also a Board

Certified Civil Trial Advocate through the National Board of Trial Advocacy. A copy of my current resume is attached hereto for all pertinent purposes.

In my practice, I have tried over two hundred fifty cases (250) to jury verdict. I have tried cases in the Northern and Eastern Districts and argued cases before the Fifth Circuit. I have defended individuals and companies throughout the State of Texas in multi-million dollar disputes in hundreds of times in my 36 year career.

Attached hereto is an itemized bill listing the time and expenses which I expended and incurred in the above-referenced matter. Based upon my education, experience and personal knowledge of the time that I expenses working on this case as well as the expenses incurred, I believe a fair, reasonable and customary fee for the same or similar types of services in this case would be at a rate of \$400.00 per hour for myself. I have reviewed the statutory and case law considering my fees and expenses. This was a very complex case involving multiple law firms. I had to review numerous documents to familiarize myself with this case(s). I had to devote my time to this case exclusively preventing me from handling other cases. The legal issues were also complex given findings that Mr. Baron was a vexatious litigant involved in matters in bankruptcy court and this Honorable Court. My hourly rate of \$400.00 per hour is significantly less than the hourly rates of many lawyers for opposing parties in this case. All expenses were fair and reasonable as well as necessarily incurred in defense of Mr. Baron. Therefore, I think that my the time and expenses listed in my bill were was reasonable, fair and necessary to a successful defense of Mr. Baron's case according to case law and statutory law.

All the time tasks as well as expenses that are set forth herein on my fee bill were necessarily expended or incurred and were fair, reasonable and customary for the defense of Mr. Baron.


All opinions that I render herein are based upon my educational background, my experience, my personal knowledge as well as reasonable legal probability.

Further Affiant sayeth naught.”

  
EDWIN E. WRIGHT, III

SUBSCRIBED AND SWORN TO BEFORE ME on this, the 15<sup>th</sup> day of May, 2013.



  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

**MUNSCH HARDT  
KOPF & HARR** PC  
ATTORNEYS & COUNSELORS  
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May 15, 2013

Honorable Royal Furgeson  
United States District Court  
1100 Commerce Street  
Dallas, Texas 75242

*Re: Case No. 3:09-cv-0988; Netsphere Inc. et. al. v. Jeffrey Baron, et. al.*

Dear Judge Furgeson:

During closing arguments last Friday on the *Chapter 11 Trustee's Application for Reimbursement of Fees and Expenses from the Receivership Estate* [docket no. 1229] (the "Application"), filed by Daniel J. Sherman (the "Trustee") as the trustee of the Ondova Limited Company bankruptcy estate, the Court requested that I file this letter brief concerning two closing arguments made by Mr. MacPete. Specifically, the Court requested that I brief the question of whether the existence of a contract between the Trustee and Munsch Hardt Kopf & Harr, P.C. ("Munsch Hardt") defeats the Trustee's claim in *quantum meruit*, and whether the Fifth Circuit's order reversing this Court's prior order allowing and directing reimbursement to the Trustee defats the Application.

**A. QUANTUM MERUIT AND EXPRESS CONTRACT**

The question concerning *quantum meruit* and express contract is best understood conceptually. This is because, conceptually, the Application is not an application of Munsch Hardt for legal services rendered to the Receiver. Rather, it is a request for the reimbursement of expenses that the bankruptcy estate provided to the receivership estate. True, there is a contract between the Trustee and Munsch Hardt, but as the Court has already found, there is no express contract between the bankruptcy estate and the receivership estate. Munsch Hardt is not now seeking payment of its fees from the Trustee. On that issue, there is a contract and *quantum meruit* would be inapplicable. Instead, it is the Trustee seeking reimbursement for expenses and benefit advanced to the Receiver consisting of Munsch Hardt's fees and expenses incurred in defending this Court's orders before the Fifth Circuit.

By analogy, suppose that a defendant hops into a taxi at the airport and, at the end of the ride, refuses to pay the driver because there is no express contract or promise by him to pay for the ride. The driver would have a claim recoverable in *quantum meruit*. Would it matter that the driver was leasing his car from a third party, or that he purchased a contract of liability insurance, or that he had a contract with the airport permitting him to accept rides at the airport, *i.e.* that he had express contracts with someone else that in some way touch the *quantum meruit* claim? Of course not. The service at issue would be the service of driving the defendant; it

Honorable Royal Furgeson

May 15, 2013

Page 2

would not be a claim for payment by the lessor of the car, or a claim against the insurance contract, or a claim under the airport contract. Indeed, insofar as any business is governed by a host of contracts, and insofar as our personal lives are replete with contracts of various types, it is difficult to conceive of a successful *quantum meruit* claim if the mere fact that one of the parties has a tangential express contract in place that in some way touches the goods or services at issue defeats the *quantum meruit* claim.

The *Truly v. Austin* case cited by Mr. MacPete holds that one may recover in *quantum meruit* “only when there is no express contract covering those services or materials.” 744 S.W.2d 934 (Tex. 1988). However, the contract in question must be an “express contract that covers the subject matter of the claim.” *Id.* The Trustee takes no issue with this law and agrees that it is a correct pronouncement of Texas law.

However, this law is inapplicable. The Trustee did not argue that there was an express contract between his estate and the receivership estate. He argued that there was an implied contract, or a contract formed by conduct, but even so, the Court found that there is no written or oral agreement between the Trustee (or Munsch Hardt) and the Receiver. Thus, the Court has already answered the underlying question—as there is no contract between the Trustee and the Receiver, there is no bar to *quantum meruit*. The services at issue are the services the Trustee and his estate performed in defending this Court’s orders, which services were induced by the Receiver and which services benefited the Receiver and his estate. That the Trustee, in so doing, had in place a contract with Munsch Hardt does not change the conclusion that there was no express contract between the Trustee and the Receiver by which the receivership estate would reimburse the bankruptcy estate. The two are separate issues.

Texas law imposes four elements on the *quantum meruit* cause of action: (i) valuable services or materials were provided; (ii) for the person sought to be charged; (iii) which were accepted by him and used and enjoyed by him; and (iv) under such circumstances as reasonably notified the person sought to be charged that the plaintiff was expecting to be paid. *See, e.g., Kona Tech Corp. v. S. Pac. Transp. Co.*, 225 F.3d 595, 606 (5th Cir. 2000). That the Trustee, though his counsel, provided valuable services is clearly evidenced by the record, and even Mr. MacPete admitted that this element is satisfied. That the circumstances reasonably notified the Receiver of his expectation of reimbursement is equally as clear and is conceded—after all, the Trustee filed his first reimbursement motion long ago, and the Court granted that motion. Although not conceded, the record also demonstrates that the Receiver accepted and enjoyed the benefits of those services. Among other things, the Receiver incorporated the appellate briefs filed by the Trustee, the Receiver confirmed that value was provided, and he confirmed that, had the Trustee not filed the briefing, his attorneys would have had to do the work. In this respect, it is true that the Receiver objected to reimbursing the Trustee on August 12, 2011 (after much work had already been done). However, the Trustee submits that an objection, appearing on page 143 of a 157 page document [docket no. 663] filed as a Notice of Compliance, is insufficient. This is all the more so when the basis of the objection is not that the Trustee did not provide valuable services, or that the Receiver never induced these services, but instead that the

Honorable Royal Furgeson  
May 15, 2013  
Page 3

receivership estate basically lacked the funds to reimburse the Trustee while the Trustee's estate, at that time, had sufficient funds on hand.

The element most contested by Mr. MacPete is the second element, which is whether the services were provided for the person sought to be charged. The answer to this element, and the reason why it is met, concerns the nature of this Court's orders that the Trustee defended on appeal. As we demonstrated during the hearing, the vast majority of those orders were receivership orders entered by this Court at the request of the Receiver, *e.g.* orders authorizing the Receiver to hire professionals, orders authorizing the Receiver to take various actions, orders authorizing the Receiver to sell domain names, and orders authorizing the compensation of the Receiver and his counsel. These were orders affecting and concerning the receivership itself, which the Receiver should have defended on appeal. That the Trustee in some instances was designated as the appellee is immaterial, since the real party in interest was the Receiver and the receivership. This Court, sitting in equity, is empowered to look past form to substance, which is the hallmark of equity. And, the reason why the Trustee was sometimes designated as the appellee was simply because that is how Mr. Baron designated it on his notices of appeal. The Trustee simply does not understand how the Receiver can now argue that this ministerial act of a third party is more important than the substance of the underlying orders, and can only conclude that it is nothing more than form over substance. Moreover, the credible evidence demonstrated that the Receiver asked the Trustee to defend this Court's orders, even if the Court concludes that there was no express agreement to pay for the services. Accordingly, the majority of the appellate services provided by the Trustee were "for" the Receiver, at his request.

#### **B. FIFTH CIRCUIT REVERSAL**

At the outset, it should be noted that the Fifth Circuit's reversal of this Court's prior order authorizing and directing reimbursement to the Trustee in no way affects the Trustee's present Application or his *quantum meruit* claim. That being said, the Fifth Circuit, in reversing said order, ordered that "the cause if remanded to the District Court for further proceedings *in accordance with* the opinion of this Court." In that opinion, the Circuit concluded that "charging the current receivership fund for reasonable receivership expenses . . . is an equitable solution," and it remanded the cause to this Court to re-determine "all fees and expenses" based on equity.

That the Circuit reversed the prior award of reimbursement to the Trustee is not determinative. If it were, then every order entered in this case would be void *ab initio*, which was not ordered by the Circuit and is impossible in any event (for example, an order authorizing a sale of a domain name). All that the Circuit concluded was that it was for this Court to re-determine all fees and expenses based on the equities. It is precisely based on equity that the Trustee bases his Application, as *quantum meruit* and the estoppel arguments advanced by the Trustee are all equitable doctrines. The Circuit expressly authorized the payment of receivership expenses. Just as this Court would authorize expenses for a process server, briefing printer, oral argument travel expenses, and the like, so to is the benefit conferred by the Trustee on the receivership an expense of the receivership incurred in connection with defending this Court's orders.

Honorable Royal Furgeson

May 15, 2013

Page 4

The only difference may be that the Trustee's claim, while not an express contractual expense, is an equitable expense. But even this conclusion supports the Court's consideration of the Application, since the Court is tasked with arriving at an equitable result. Compensating the Trustee and his estate for valuable services, which the Receiver induced and from which he benefited, and which were provided to protect the integrity of this Court's orders, is the definition of equity.

Best regards,

*D. Rukavina (with permission 7/2/11)*

Davor Rukavina, Esq.

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

NETSPHERE, INC.,	§	
MANILA INDUSTRIES, INC.,	§	
AND MUNISH KRISHAN	§	
	§	
PLAINTIFFS,	§	
	§	
V.	§	CIVIL ACTION NO. 3:09-CV-0988-F
	§	
JEFFREY BARON AND	§	
ONDOVA LIMITED COMPANY,	§	
	§	
DEFENDANTS.	§	

JEFFREY BARON’S RESPONSE TO THE RECEIVER’S  
POST-HEARING BRIEFING

Jeffrey Baron, by and through counsel, files this response to the Receiver’s post-hearing briefing, and respectfully argues as follows:

**A. The Fifth Circuit did not find ‘no reversible error’.**

Contrary to the argument offered by the Receiver, the Fifth Circuit did not find there was ‘no reversible error’ and the Court of Appeals **did not affirm** the dozens of orders covered by the eleven appeals it ruled on. Rather, the Fifth Circuit **issued eight judgments of reversal** covering dozens



of orders issued by the District Court.<sup>1</sup> The Fifth Circuit was crystal clear in its reversal of the orders, ruling, for example:

“In a later order disbursing attorney fees, the district court also relied on precedents stating that a receivership is an equitable remedy. That is so, but for the reasons discussed below, **equity does not allow a receivership to be imposed over property that was not the subject of the underlying dispute.**”

*Netsphere, Inc. v. Baron*, 703 F.3d 296, 306 (5th Cir. 2012) (inner citations removed).

Thus, the Fifth Circuit ruled that there was fundamental reversible error as to the various receivership orders disposing of receivership property because a “court lacks jurisdiction to impose a receivership over property that is not the subject of an underlying claim or controversy” and **“equity does not allow a receivership to be imposed over property that was not the subject of the underlying dispute”**. *Netsphere* at 310, 306.

The Fifth Circuit unequivocally ruled that “the district court could not impose a receivership over Baron’s personal

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<sup>1</sup> Eight separate judgments of reversal were entered as follows: Docs. 1255 (No. 10-11202), 1256 (No. 11-10113), 1257 (No. 11-10289), 1258 (No. 11-10290), 1259 (No. 11-10390), 1261 (No. 12-10003), and 1262 (Nos. 12-10489, 12-10657 and 12-10804). One appeal, No. 11-10501, was dismissed for jurisdictional reasons (ripeness), Doc. 1260, because a motion for rehearing had been filed in the District Court. *Netsphere, Inc. v. Baron*, 703 F.3d 296, 305 n1 (5th Cir. 2012).

property and the assets held by Novo Point and Quantec.” *Id.* at 310. Accordingly, the Fifth Circuit ordered that “**everything subject to the receivership** other than cash currently in the receivership, which Baron asserts in a November 26, 2012 motion amounts to \$1.6 million, **should be expeditiously released**”. *Netsphere* at 313.

Notably, the Fifth Circuits’ multiple judgments of reversal and ruling that “everything subject to the receivership” should be released is consistent with the long established law of receiverships. *See e.g., Hernandez v. Ebrom*, 289 S.W.3d 316, 325 (Tex. 2009) (As a general matter, the setting aside of an order of receivership has “the effect of nullifying **all** intervening acts of the receiver”).

**B. The Court of Appeals did not reject Baron’s arguments against the ‘auction’ and the Court stayed consummation of the sale, permanently.**

Contrary to the Receiver’s briefing, the Fifth Circuit did not reject Baron’s arguments against allowing the auction. Instead, the Fifth Circuit rejected Dykema’s auction and entered a stay preventing any attempt to consummate the ‘auction’. Docs. 1091, 1254.

**C. Vogel and Dykema's block billing is deficient as a matter of law.**

Mr. Baron has objected that the Receiver and Dykema have not met their evidentiary burden to support their fees. Additionally, there is a clear problem with the block billing presented by Vogel and Dykema. It is well established that a party does not have the right to bill for time that is not properly documented. *Texas State Teachers Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 784, 109 S.Ct. 1486, 1489, 103 L.Ed.2d 866 (1989).

As a matter of established law, Block billing is deficient to support a fee award. *E.g.*, *Seastrunk v. Darwell Integrated Technology, Inc.*, 2009 WL 2705511 (N.D.Tex.)(reducing award in block billing case); *Kearney v. Auto-Owners Insurance Company*, 713 F. Supp.2d 1369 (M.D. Fla. 2010). Yet, in the instant case, the Receiver and Dykema have submitted fee applications supported entirely by block billing, which makes it impossible to exercise billing judgment.<sup>2</sup>

The term "block billing" refers to the time-keeping method by which each lawyer enters the total daily time spent

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<sup>2</sup> The failure to exercise billing judgment should result in denial of fees. *See Walker v. U.S. Dep't of Housing & Urban Dev.*, 99 F.3d 761, 770 (5th Cir. 1996)(block billing rejected).

working on a case, rather than itemizing the time expended on specific tasks. Such practices are unacceptable when a fiduciary applies for payment of fees from the estate for their services because, unlike applicants in ordinary attorney fee applications, a receiver and his attorneys have an extremely high duty to account to the estate for disbursements from the estate.

Mr. Vogel, as well as Dykema, submitted multiple tasks in a single entry that makes it difficult to understand what amount of time was spent on any one task. In Mr. Vogel's entries in 2012, for example, he non-specifically states: "Review pleading, files, emails, send emails, and related conversations with Receiver' counsel."(Dkt. 1122-2). Two entries differ in this bill because of hearings before Judge Furgeson one day and a hearing before Judge Jernigan the next day. This type of billing continued in 2013, for example in January, 2013, where Mr. Vogel repeated the same sort of non-specific entries billed in 2012. [Dkt 1233-7]. While counsel does not question whether Mr. Vogel devoted time to the case, the non-specific time entries fail to inform the court as to who Mr. Vogel talked to, for how long and why, the

nature of the tasks performed and their relationship to this case.

Dykema's fees suffer from the same lack of specificity and detail to enable the Court and counsel to determine the extent to which their fees are reasonable or necessary. Block billing is generally not allowed in bankruptcy proceedings because of the need to protect the bankruptcy estate. As a bankruptcy lawyer, Mr. Fine was well aware that block billing was a serious problem in terms of safeguarding and accounting for the funds in the receivership estate. Thus, in addition to failing to meet their burden to support the fees, as fees, the Receiver and Dykema have failed to satisfy their burden to articulate and establish the necessity and basis for their fees.

**D. The failure to timely defend the UDRP claims has created substantial damage to the LLCs and not the 'benefit' touted by the Receiver for allowing the entry of multiple defaults against the LLC assets.**

The harm created to the LLCs by allowing multiple UDRP defaults (literally hundreds) is substantial, and extends well beyond the domain names against which the UDRP complaints were lodged. See the attached declaration of

Jeffrey Baron, which explains the extent of the injury caused by the receiver's failure to defend the UDRP claims.

As graphically demonstrated by the hundreds of UDRP claim defaults generated by the receiver and the failure of the receiver to pay or file any tax returns for the business operations of the receivership under the receiver's control: The **multi-million Dollar billing** efforts of the receiver and his counsel have been directed at **defending the receiver's fees and continuation of the receivership** (allowing the billing of more fees). The receiver's multi-million Dollar attorney's fees were not costs incurred in the protection of any property held by the receiver as receivership res.

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**

On May 15, 2013, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or *pro se* parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5 (b)(2).

/s/Stephen R. Cochell  
Stephen R. Cochell

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

<b>NETSPHERE, INC.,</b>	§	
<b>MANILA INDUSTRIES, INC.,</b>	§	
<b>AND MUNISH KRISHAN</b>	§	
	§	
<b>PLAINTIFFS,</b>	§	
	§	
<b>V.</b>	§	<b>CIVIL ACTION NO. 3:09-CV-0988-F</b>
	§	
<b>JEFFREY BARON AND</b>	§	
<b>ONDOVA LIMITED COMPANY,</b>	§	
	§	
<b>DEFENDANTS.</b>	§	

**DECLARATION OF JEFFREY BARON**

Jeffrey Baron, hereby declares and states:

1. I am over the age of eighteen and make this declaration from personal knowledge. If called as a witness, I am competent to testify to the matters stated herein.
  
2. I was the president of Ondova Limited Company, a company accredited by the Internet Corporation for Assigned Names and Numbers, known as “ICANN.” Ondova was contractually obligated to the Uniform Domain Name Dispute Resolution Policy (“UDRP”) for all of the domain names it registered, at least several hundreds of thousands. Over the years, I have studied the UDRP policy and procedures on the ICANN website and reviewed scholarly and industry articles on the UDRP and its effects on business’ that are engaged in domain name registrations. As part of the contract between Ondova and ICANN, Ondova administered an estimated one hundred UDRP proceedings. I have responded to numerous UDRP proceedings and have read the policies and procedures of the UDRP Forums including the World Intellectual Property Organization and National Arbitration Forums.



3. The UDRP Policy is a process established by the Internet Corporation for Assigned Names and Numbers (ICANN) for the resolution of disputes regarding the registration of internet domain names. The UDRP currently applies to all .aero, .asia, .biz, .cat, .com, .coop, .info, .jobs, .mobi, .museum, .name, .net, .org, .pro, .tel and .travel top-level domains,[1] and some country code top-level domains.
4. A complainant in a UDRP proceeding must establish three elements to succeed including that “The registrant registered the domain name and is using it in "bad faith"”. See ICANN Uniform Domain Name Dispute Resolution Policy as approved by ICANN October 24, 1999.
5. In a UDRP proceeding, the panel that renders the final decision considers several factors to assess bad faith, such as: whether the domain name owner has engaged in a pattern of such conduct to prevent a mark holder from reflecting its mark in the domain name. (See ICANN Uniform Domain Name Dispute Resolution Policy as approved by ICANN October 24, 1999.)
6. A loss of a UDRP proceeding results in an order by the UDRP panel to transfer the domain name to the prevailing complainant and the permanent publication of the UDRP decision and findings of fact on the Internet.
7. Losing a UDRP proceeding, by default or otherwise, adversely affects businesses’ that own domain names such as Quantec and NovoPoint in several ways including loss of valuable domain names and disparagement to the business’ reputation.
8. Often, complainants under the UDRP are made by opportunistic complainants attempting to acquire valuable domain names. These complainants have specious

claims that have little or no merit. In these instances, a default by a defendant domain name owners causes loss of great value.

9. When a UDRP complaint results in an adverse ruling for the domain name owner, the panels' finding, by necessity, include "bad faith" by the domain name owner. These findings create significant harm to companies or individuals whose primary business is in Internet domain names.
10. UDRP decisions, including factual findings of bad faith are permanently published on the Internet by the UDRP forums for public view and are sometimes republished by private web sites. UDRP decisions are highly visible to Internet users and search engines, and are often the "top results" of a Google search for an individual or company who has been involved in a UDRP procedure .
11. The UDRP decisions have such a high Internet visibility that when a search engine user conducts general searches for the name of a company or individual that has had a UDRP proceeding, often the first thing they see is the UDRP decision. When the decision is adverse including findings of "bad faith", the companies' reputation is disparaged.
12. UDRP panels often cite domain owners' prior UDRP defaults or adverse rulings as a basis for establishing bad faith in subsequent UDRP decisions and for issuing adverse rulings.
13. Some examples are:
  - a.) *Nat'l Abortion Fed'n v. Dom 4 Sale, Inc.*, FA 170643 (Nat. Arb. Forum Sept. 9, 2003) (finding bad faith pursuant to Policy ¶ 4(b)(ii) because the domain name prevented the complainant from reflecting its mark in a domain name and the respondent had several adverse decisions against it

in previous UDRP proceedings, which established a pattern of cybersquatting).

- b.) *eLegalsupply.com, LLC v. Azeras LLC*, FA1204001438796 (Nat. Arb. Forum) (finding bad faith “In light of prior adverse UDRP decisions involving Respondent, the Panel finds that Respondent registered and uses the disputed domain name as part of a pattern of bad faith registration and use according to Policy ¶ 4(b)(ii).”)
- c.) *Sport Supply Group, Inc. v. Lang*, D2004-0829 (WIPO Dec. 10, 2004) found that the respondent registered the domain name to prevent the complainant from reflecting its mark in a corresponding domain name, and that a pattern of such conduct was established by two prior adverse decisions under the UDRP against the respondent.
- d.) *KOHL'S Illinois, INC. v. Diamond Point Enterprises Limited*, FA1203001435989 (Nat. Arb forum, May 4, 2012) “The Panel concludes that Respondent registered the <kolhls.com> domain name to prevent Complainant from reflecting its mark in a domain name, and that the two prior UDRP proceedings transferring the domain names from Respondent demonstrate a pattern of bad faith registration and use under Policy ¶ 4(b)(ii).”
- e.) *Regions Asset Company v. PrivacyProtect.org / Domain Admin* FA1203001434152 (Nat Arb Forum, May 7, 2012) “Past panels have held that prior UDRP cases involving the respondent may be treated as evidence that the respondent registered and uses the disputed domain name as a part of a pattern of bad faith registration and use”.
- f.) *MCAFEE, INC. v. Fundacion Private Whois / Domain Administrator*,FA1206001447283( Nat Arb. Forum July 24, 2012) “Panels have found that, where a respondent has been subject to multiple UDRP disputes where it lost the domain names, there is an inference of bad faith in the current case given the development of a pattern of bad faith.”
- g.) *Sport Supply Group, Inc. v. Lang*, D2004-0829 (WIPO Dec. 10, 2004), Finding bad faith against domain name owner because “The pattern of such conduct is established, inter alia, by the public decisions of two different UDRP proceedings [against] Respondent.”
- h.) *Hewlett-Packard Development Company, L.P. and Hewlett-Packard Company v. Numan c/o Qtechsol*, FA1101001370036 (Nat Arb. Forum, March 18, 2011). Finding that bad faith pattern is established by “Complaint and having been previously named in at least one adverse UDRP decision”

14. In other words, an adverse UDRP decision often results in loss of other domain names in other UDRP proceedings for that company or individual. This has been described as a “death spiral”.
15. As more adverse UDRP decisions are made against an individual or company, reputation disparagement to the affected company or individual is increasingly severe. The reputation damage adversely affects the domain name owners’ ability to conduct business and ability to defend other UDRP or court actions involving domain names. Adverse UDRP decisions are also used in court proceedings by complainants, who sue for damages.
16. This is a summary of my testimony.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on May 15, 2013.

/s/Jeffrey Baron  
Jeffrey Baron

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

<b>NETSPHERE, INC.,</b>	§	
<b>MANILA INDUSTRIES, INC.,</b>	§	
<b>AND MUNISH KRISHAN</b>	§	
	§	
<b>PLAINTIFFS,</b>	§	
	§	
<b>V.</b>	§	<b>CIVIL ACTION NO. 3:09-CV-0988-F</b>
	§	
<b>JEFFREY BARON AND</b>	§	
<b>ONDOVA LIMITED COMPANY,</b>	§	
	§	
<b>DEFENDANTS.</b>	§	

**JEFFREY BARON’S REPLY TO TRUSTEE’S LETTER BRIEF [1276]**

Jeffrey Baron, by and through counsel, responds to the Trustee’s letter brief, as follows:

The Trustee goes to great lengths to assert that he provided services to the Receiver as one of his attorneys and that he deserves to receive fees from the receivership as a matter of implied contract or quantum meruit. However, the Trustee and his lawyers never entered an appearance as counsel for the Receiver and does not claim that there was an agreement by the Receiver to pay such services. The Trustee was the appellee and had a legal interest in defending a receivership which he created and for which he was responsible for defending.

The Trustee’s own filing before the Fifth Circuit reveals that the Trustee always understood and appreciated that he was responsible for defending the receivership. In one of his briefs, the Trustee admitted: "Trustee’s costs incurred creating and defending the receivership." Document 00511947203 filed 8/06/2012 in Appeal No. 12-10489 at Page 68. This admission, filed more than a year ago, constitutes the *truth* of the matter. The Trustee’s attempt to go back and redefine the facts in his quest to obtain compensation should be rejected by the Court.

Accordingly, the Trustee should be required to disgorge all fees paid by the receivership estate.

Respectfully submitted,

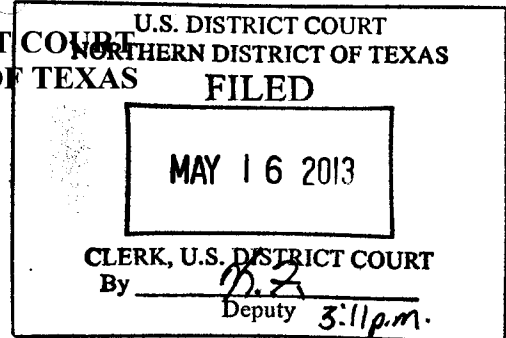
/s/ Stephen R. Cochell  
Stephen R. Cochell  
The Cochell Law Firm, P.C.  
Texas Bar No. 24044255  
7026 Old Katy Rd., Ste 259  
Houston, Texas 77096  
(713)980-8796 (phone)  
(713)980-1179 (facsimile)  
srcochell@cochellfirm.com

**Certificate of Service**

On May 15, 2013, I electronically submitted the foregoing document with the clerk of court for the U.S. Bankruptcy Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or *pro se* parties of record electronically or by another manner authorized by Federal rule of Civil Procedure 5 (b)(2).

/s/Stephen R. Cochell  
Stephen R. Cochell

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



NETSPHERE, INC.,  
MANILA INDUSTRIES, INC., AND  
MUNISH KRISHAN

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PLAINTIFFS,

V.

JEFFREY BARON AND  
ONDOVA LIMITED COMPANY,

DEFENDANTS.

CIVIL ACTION NO. 3:09-CV-0988-F

**ORDER DENYING WITHOUT PREJUDICE MOTIONS OF JEFFREY BARON'S  
COUNSEL FOR ATTORNEYS FEES WITH FURTHER INSTRUCTIONS**

BEFORE THE COURT are Jeffrey Baron's Motion for Attorney Fees, filed March 27, 2013 (Docket No. 1214), Jeffrey Baron's Motion for Attorney Fees, filed March 28, 2013 (Docket No. 1215) and Motion for Attorney Fees of Edwin E. Wright, III, Counsel for Defendant Jeffrey Baron, filed May 15, 2013 (Docket No. 1274). Given the current posture of this case, the Court DENIES these motions WITHOUT PREJUDICE and enters FURTHER INSTRUCTIONS regarding any future filings.<sup>1</sup>

**I. Background and Discussion**

Immediately following the release of the Fifth Circuit opinion reversing the Receivership Order in this case, Mr. Baron's former attorneys filed an involuntary bankruptcy against him. That case is currently pending before United States Bankruptcy Judge Stacey Jernigan. On April 4, 2013, this Court and the Bankruptcy Court held a joint status conference. At this hearing, the Bankruptcy Court ordered that the automatic stay be modified to allow this Court to review and adjudicate Receivership fees and expenses pursuant to the Fifth Circuit's Opinions. This was later

<sup>1</sup> This resolves Docket Nos. 1214, 1215 and 1274.

memorialized in a written order: Sua Sponte Order Modifying Automatic Stay (Section 362) to Permit Adjudication of Allowable Receivership Fees and Expenses in District Court (Bankruptcy Case No. 12-37921-SGJ-7, Docket No. 115). At this same hearing, and in clarification of the modification of the stay, both Courts agreed that none of the parties would be paid from the Receivership estate until a ruling could be made on the involuntary bankruptcy.

Following this hearing, the Court issued a scheduling order setting the date of trial on fees and briefing deadlines on the issue of Receivership fees and expenses. This schedule was modified several times in light of the parties' attempts to reach a global settlement; unfortunately, no settlement could be achieved. The Court did not set a deadline for Baron's counsel to submit fee applications. On April 18, 2013, the Court entered an Order Denying Motion to Set Dates for Submission of Fee Applications for Baron's Counsel (Docket No. 1236). In this Order, the Court explained that the automatic stay in the involuntary bankruptcy has only been modified to allow this Court to adjudicate Receivership fees and expenses pursuant to the Fifth Circuit order. This narrow modification does not permit the Court to make disbursements from the Receivership estate to reimburse or provide retainers for legal services rendered to Mr. Baron arising out of this case.

On April 19, 2013, Baron's counsel filed a Motion for Discovery, for Continuance and to Re-Consider Funding for Jeffrey Baron's Counsel (Docket No. 1240). The Court denied the Motion to Re-consider reiterating that no party would be paid until the bankruptcy could be resolved. The Court further reminded Baron's counsel that remedies would be available to seek payment at a later time. The Bankruptcy Court has not entered or denied an order for relief in the pending involuntary bankruptcy case; the automatic stay, except as modified, remains in effect. The stay precludes the Court from disbursing Receivership funds, which are, for the time being,



under the jurisdiction of the Bankruptcy Court. Furthermore, the Court declines to withdraw the reference to pay Baron's counsel at this time.

As the modified automatic stay does not provide this Court authority to pay Baron's counsel for prior, current or future legal services, the Court DENIES WITHOUT PREJUDICE these motions for attorneys' fees. Baron's counsel may re-file these motions in accordance with instructions provided below.

## II. Instructions for Future Filings

In making this ruling, the Court instructs Baron's counsel to make any future requests for payment to the Bankruptcy Court; however the Court cautions that the Bankruptcy Court has also ordered that no party be paid until a decision regarding the involuntary bankruptcy is entered. Should an order for relief be entered in the involuntary case, payment of Baron's counsel will proceed under bankruptcy law and procedures. Should the involuntary be deemed improper, it will be up to the parties and transferee judge to consider whether to include any payments to Baron's counsel as part of the wind down process, otherwise reimbursement may be sought by remedies allowed under Texas law.

Any further requests for fees from Baron's counsel to this Court before a decision issues on the involuntary bankruptcy will be summarily denied.

## III. Conclusion

For the reasons articulated above, the Court DENIES Jeffrey Baron's Motions for Attorney Fees and Motion for Attorney Fees of Edwin E. Wright, III, Counsel for Defendant Jeffrey Baron.

IT IS SO ORDERED.

SIGNED this 16th day of May, 2013.



Royal Furgeson  
Senior United States District Judge

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

<p><b>NETSPHERE, INC., MANILA INDUSTRIES, INC., AND MUNISH KRISHAN</b></p> <p style="text-align: center;"><b>PLAINTIFFS,</b></p> <p><b>V.</b></p> <p><b>JEFFREY BARON AND ONDOVA LIMITED COMPANY,</b></p> <p style="text-align: center;"><b>DEFENDANTS.</b></p>	§ § § § § § § § § § § §	<p><b>CIVIL ACTION NO. 3:09-CV-0988-F</b></p>
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**RECEIVER’S SUPPLEMENTAL APPLICATION FOR PAYMENT OF  
RECEIVERSHIP EXPENSES (EQUIVALENT DATA)**

Court-appointed Receiver Peter S. Vogel (the “Receiver”) files this Expedited Application For Payment of Receivership Expenses (Equivalent Data) (the “Application”) seeking authorization to immediately pay the following invoices: (1) Equivalent Data for invoices totaling \$9,314.40<sup>1</sup>. The Receiver respectfully asks the Court to consider the following:

1. The Receiver is in receipt of invoices for Receivership expenses from a third-party vendor, Equivalent Data, that provided copy and bates labeling services during the court ordered expedited discovery during the confirmation hearings in late 2012, in connection with these proceedings. Those invoices are attached hereto as Exhibit A.

**CONCLUSION**

Based on the foregoing Application, the Receiver respectfully requests authority to immediately pay the following invoices: (1) Equivalent Data invoices totaling \$9,314.40. The Receiver also requests all other relief at law or in equity to which he may be entitled.

---

<sup>1</sup> A true and correct copy of the Equivalent Data invoices are attached hereto as Exhibit A.

Respectfully submitted,

DYKEMA GOSSETT PLLC

By: /s/ David J. Schenck

David J. Schenck

State Bar No. 17736870

Jeffrey R. Fine

State Bar No. 07008410

Christopher D. Kratovil

State Bar No. 24027427

1717 Main Street, Suite 4000

Dallas, Texas 75201

(214) 462-6455

(214) 462-6401 (Telecopier)

ATTORNEYS FOR THE RECEIVER, PETER S.  
VOGEL

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served via the Court's ECF system on all counsel of record on May 20, 2013.

By: /s/ David J. Schenck

David J. Schenck

# **EXHIBIT A**

Remit Payment to:

**4809 Westway Park Blvd.  
 Payment Center  
 Houston, Texas 77041  
 ACH Remit to: Rachel.Kreitz@eqd.com**

TAX ID: 76-0438874



Invoice Number 00168605  
 CLIENT MATTER NO: 108946-1  
 CASE NAME:  
 ACCOUNT MANAGER: Dean Rylander  
 INVOICE DATE: 10/17/2012  
 PAYMENT DUE: 11/22/2012  
 Page Number 1

**For Copy of W-9 email:  
 Rachel.Kreitz@eqd.com**

BILL TO: ALEXA PARNELL  
 Dykema Gossett PLLC  
 1717 Maint St.  
 Suite 4000  
 Dallas, TX 75201

QTY.	DESCRIPTION	PRICE	TOTAL
12,390	Copies- Heavy Litigation	\$0.12	\$1,486.80
12,267	Labels G & A	\$0.05	\$613.35
22,630	BB- Native File w/ Staples	\$0.08	\$1,810.40
2	Labor - DI	\$60.00	\$120.00

Peter Vogel Doc Production

**Thanks for using Equivalent DATA!**

SUBTOTAL	\$4,030.55
POSTAGE/FREIGHT	\$0.00
SALES TAX	\$332.52
AMT APPLIED	\$0.00
<b>TOTAL</b>	<b>\$4,363.07</b>

-Pay your balance today with MasterCard or Visa credit cards. Call Rachel Kreitz at 713-986-4817 for payment assistance.

-Data is retained on our storage devices for up to 6 months. Additional charges may be applicable.

Remit Payment to:

**4809 Westway Park Blvd.  
 Payment Center  
 Houston, Texas 77041  
 ACH Remit to: Rachel.Kreitz@eqd.com**

TAX ID: 76-0438874



Invoice Number 00168698  
 CLIENT MATTER NO: 108946-1  
 CASE NAME: Vogel Doc Production  
 ACCOUNT MANAGER: Dean Rylander  
 INVOICE DATE: 10/24/2012  
 PAYMENT DUE: 11/30/2012  
 Page Number 1

**For Copy of W-9 email:  
 Rachel.Kreitz@eqd.com**

BILL TO: ALEXA PARNELL  
 Dykema Gossett PLLC  
 1717 Maint St.  
 Suite 4000  
 Dallas, TX 75201

QTY.	DESCRIPTION	PRICE	TOTAL
	REC004079 - REC004862		
2,244	Copies- Heavy Litigation	\$0.12	\$269.28
1,899	Labels G & A	\$0.05	\$94.95
	Hot Doc Binders		
1,970	Copies- Heavy Litigation	\$0.12	\$236.40
4	3" Binder	\$14.00	\$56.00
96	11" Tabs	\$0.30	\$28.80
	Damon Nelson June 2012 - September 2012 Email		
2,713	Blowbacks - PDF w/ Staples	\$0.08	\$217.04

**Thanks for using Equivalent DATA!**

SUBTOTAL	\$902.47
POSTAGE/FREIGHT	\$0.00
SALES TAX	\$74.45
AMT APPLIED	\$0.00
<b>TOTAL</b>	<b>\$976.92</b>

-Pay your balance today with MasterCard or Visa credit cards. Call Rachel Kreitz at 713-986-4817 for payment assistance.

-Data is retained on our storage devices for up to 6 months. Additional charges may be applicable.

**Remit Payment to:**

**4809 Westway Park Blvd.  
 Payment Center  
 Houston, Texas 77041  
 ACH Remit to: Rachel.Kreitz@eqd.com  
 TAX ID: 76-0438874**



Invoice Number 00168812  
 CLIENT MATTER NO: 108946-1  
 CASE NAME:  
 ACCOUNT MANAGER: Dean Rylander  
 INVOICE DATE: 11/2/2012  
**PAYMENT DUE: 12/2/2012 \***  
 Page Number 1

**BILL TO: ALEXA PARNELL  
 Dykema Gossett PLLC  
 1717 Maint St.  
 Suite 4000  
 Dallas, TX 75201**

**For Copy of W-9 email:  
 Rachel.Kreitz@eqd.com**

QTY.	DESCRIPTION	PRICE	TOTAL
2,268	Copies- Heavy Litigation	\$0.12	\$272.16
1,472	Labels G & A	\$0.05	\$73.60

Damon Nelson's Email Produced and Priv

**Thanks for using Equivalent DATA!**

SUBTOTAL	\$345.76
POSTAGE/FREIGHT	\$0.00
SALES TAX	\$28.53
AMT APPLIED	\$0.00
<b>TOTAL</b>	<b>\$374.29</b>

-Pay your balance today with MasterCard or Visa credit cards. Call Rachel Kreitz at 713-986-4817 for payment assistance.

-Data is retained on our storage devices for up to 6 months. Additional charges may be applicable.

**Remit Payment to:**

**4809 Westway Park Blvd.  
 Payment Center  
 Houston, Texas 77041  
 ACH Remit to: Rachel.Kreitz@eqd.com**

TAX ID:76-0438874



Invoice Number 00168825  
 CLIENT MATTER NO: 108946-1  
 CASE NAME:  
 ACCOUNT MANAGER: Dean Rylander  
 INVOICE DATE: 11/2/2012  
**PAYMENT DUE: 12/5/2012 \***  
 Page Number 1

**BILL TO: ALEXA PARNELL**  
 Dykema Gossett PLLC  
 1717 Maint St.  
 Suite 4000  
 Dallas, TX 75201

**For Copy of W-9 email:**  
 Rachel.Kreitz@eqd.com

QTY.	DESCRIPTION	PRICE	TOTAL
11,252	Blowbacks - PDF w/ Staples	\$0.08	\$900.16
5,626	Electronic Endorsement (EBS)	\$0.01	\$56.26
1	Express Mail Fee	\$118.73	\$118.73

**Thanks for using Equivalent DATA!**

SUBTOTAL	\$1,075.15
POSTAGE/FREIGHT	\$0.00
SALES TAX	\$88.70
AMT APPLIED	\$0.00
<b>TOTAL</b>	<b>\$1,163.85</b>

-Pay your balance today with MasterCard or Visa credit cards. Call Rachel Kreitz at 713-986-4817 for payment assistance.

-Data is retained on our storage devices for up to 6 months. Additional charges may be applicable.



**Remit Payment to:**

**4809 Westway Park Blvd.  
 Payment Center  
 Houston, Texas 77041  
 ACH Remit to: Rachel.Kreitz@eqd.com  
 TAX ID: 76-0438874**



Invoice Number 00168979  
 CLIENT MATTER NO: 108946-1  
 CASE NAME: Vogel  
 ACCOUNT MANAGER: Dean Rylander  
 INVOICE DATE: 11/12/2012  
**PAYMENT DUE: 12/13/2012 \***  
 Page Number 1

**BILL TO: ALEXA PARNELL  
 Dykema Gossett PLLC  
 1717 Maint St.  
 Suite 4000  
 Dallas, TX 75201**

**For Copy of W-9 email:  
 Rachel.Kreitz@eqd.com**

QTY.	DESCRIPTION	PRICE	TOTAL
13,905	Copies- Medium Litigation	\$0.12	\$1,668.60
1	4" Binder	\$24.00	\$24.00
9	5" Binder	\$50.00	\$450.00
360	11" Tabs	\$0.30	\$108.00

**Thanks for using Equivalent DATA!**

SUBTOTAL	\$2,250.60
POSTAGE/FREIGHT	\$0.00
SALES TAX	\$185.67
AMT APPLIED	\$0.00
<b>TOTAL</b>	<b>\$2,436.27</b>

-Pay your balance today with MasterCard or Visa credit cards. Call Rachel Kreitz at 713-986-4817 for payment assistance.

-Data is retained on our storage devices for up to 6 months. Additional charges may be applicable.

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

<b>NETSPHERE, INC.,</b>	§	
<b>MANILA INDUSTRIES, INC.,</b>	§	
<b>AND MUNISH KRISHAN</b>	§	
	§	
<b>PLAINTIFFS,</b>	§	
	§	
<b>V.</b>	§	<b>CIVIL ACTION NO. 3:09-CV-0988-F</b>
	§	
<b>JEFFREY BARON AND</b>	§	
<b>ONDOVA LIMITED COMPANY,</b>	§	
	§	
<b>DEFENDANTS.</b>	§	

**SUPPLEMENTAL ARGUMENT ON FEE REQUESTS**

Jeffrey Baron, by and through counsel, offers the Court this supplemental argument on the pending fee requests, as follows:

As this Court reviews the multi-million dollar fee requests now at bar, the Court may wish to consider the role played by the receiver and his counsel in the Fifth Circuit’s reversal of the orders entered by this Honorable Court. While citing the Fifth Circuit case on point to this Court, the Receiver’s lawyers edited the actual holding of the case and misled this Court as to the controlling precedent of the Fifth Circuit.

The receiver and his lawyers informed this Court that the controlling law was set out by the Fifth Circuit in *Santibanez v. Wier McMahon & Co*, 105 F.3d 234, 251 (5<sup>th</sup> Cir. 1997), and erroneously represented the holding in that case. With that opinion in hand, the receiver repeatedly represented to this Court that *Santibanez*<sup>1</sup> holds:

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<sup>1</sup> The Court adopted a substantial portion of the Receiver’s Proposed Findings of Fact and Conclusions of law, including the Receiver’s misrepresentation of *Santibanez*. Docket 514

“receivership may be an appropriate remedy . . . to subject equitable assets to the payment of . . . claim[s]”

*Santibanez*, 105 F.3d at 241. The Court relied on the Receiver’s misrepresentation of the law, granted their Motion to Approve Assessment and Disbursement of Former Attorney Claims and entered Findings of Fact and Conclusions of Law, Doc. 575 at 5 (holding “receivership may be an appropriate remedy . . . to subject equitable assets to the payment of . . . claim[s]”).<sup>2</sup>

The record is clear and speaks for itself loudly– the attorneys for the receiver cropped the quotation, which is misleading the court and intellectually dishonest. The actual instruction of *Santibanez* is as follows:

"receivership may be an appropriate remedy **for a judgment creditor** ... who seeks to subject equitable assets to the payment of **his judgment**"

*Santibanez* at 241. The result of misquoting and editing the relevant quotation in *Santibanez* Court is apparent. If quoted accurately, the Receiver would have undermined his position that the receivership was properly created and given the Court the controlling law dictating that the receivership was improper and should be dissolved. If the Court had been given the correct law earlier, millions in fees and untold judicial resources would have been saved. Maintaining a receivership and billing millions after a law firm becomes aware that their basis for continuing a receivership is inequitable and a violation of their duties as attorneys for the Receiver.

In light of the clear rule of law laid down by the Fifth Circuit in *Santibanez*, it should come as no surprise that the Fifth Circuit reversed the orders of this Honorable

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at 5.

Court because “to justify the appointment of a receiver such claims would **already have been reduced to judgment**”. *Netsphere, Inc. v. Baron*, 703 F.3d 296, 306, 308 (5th Cir. 2012) (explaining “the claims had not been **reduced to judgment** such that a receiver would have been proper”).

This Court trusted the receiver’s counsel’s statement of the law and adopted the receiver’s statement of the law.<sup>3</sup> However, the Receiver and his counsel misrepresented the law. The Fifth Circuit ultimately reversed because of the Receiver provided an inaccurate statement of the law to the Court. **The Court should not reward lawyers for misleading the Court into a receivership that was reversed for abuse of discretion.** The lawyers who led this Court down a path in direct contravention of the established precedent of the Fifth Circuit should not be rewarded with millions of dollars in fees for efforts spent unsuccessfully attempting to ‘fight the law’. Ultimately, the receiver’s counsels’ tactics and discredited two and a half year ‘no holds barred’ battle did not serve the Court, Mr. Baron and benefitted no one except the Receiver and his lawyers.

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

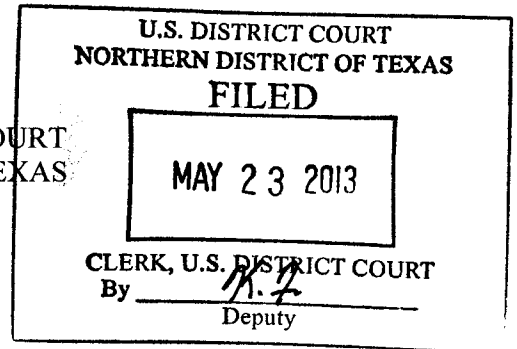
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<sup>3</sup> Doc 575 at 5.

Certificate of Service

On this date I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or *pro se* parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5 (b)(2).

/s/Stephen R. Cochell  
Stephen R. Cochell



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

NETSPHERE, INC.,  
MANILA INDUSTRIES, INC., AND  
MUNISH KRISHAN

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PLAINTIFFS,

V.

CIVIL ACTION NO. 3:09-CV-0988-F

JEFFREY BARON AND  
ONDOVA LIMITED COMPANY,

DEFENDANTS.

**ORDER GRANTING RECEIVER'S FEE APPLICATION REGARDING  
CERTAIN MISCELLANEOUS RECEIVERSHIP PROFESSIONALS  
[DOC. NO. 1233]**

On this day, the Court heard the Receiver's Fee Application [Doc. No. 1233] (the "Application") in the above entitled and numbered cause, and the Court, having considered same in the context of the Fifth Circuit's recent mandate to reconsider all Receivership professional fees, is of the opinion that said Application in regard to certain miscellaneous Receiver professionals is well taken and should be GRANTED.

IT IS THEREFORE ORDERED that the claims of the following Receivership professionals are hereby allowed for all purposes in the following amounts:

Joshua Cox	\$8,733.15
James Eckels	\$3,150.00
Jeffrey Harbin	\$8,572.00
Grant Thornton	\$12,089.00
Damon Nelson	\$18,300.00
Matt Morris	\$54,572.50

In addition, Court Reporter Dickman Davenport, Inc.'s 12/5/2012 invoice for the deposition of Daniel Sherman in the amount of \$3,395.00, and Equivalent Data's invoices in the amount of \$9,314.40 for copy and bates labeling services, are allowed for all purposes.

SIGNED this 23<sup>rd</sup> day of May, 2013.

  
\_\_\_\_\_  
JUDGE PRESIDING

Gerrit M. Pronske  
State Bar No. 16351640  
Rakhee V. Patel  
State Bar No. 00797213  
Melanie P. Goolsby  
State Bar No. 24059841  
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**COUNSEL FOR THE PETITIONING CREDITORS**

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

<b>NETSPHERE, INC., MANILA</b>	§	
<b>INDUSTRIES, INC., AND MUNISH</b>	§	
<b>KRISHAN,</b>	§	
	§	
<b>Plaintiffs</b>	§	<b>CIVIL ACTION NO. 3:09-cv-0988-F</b>
	§	
<b>v.</b>	§	
	§	
<b>JEFFREY BARON AND ONDOVA</b>	§	
<b>LIMITED COMPANY,</b>	§	
	§	
<b>Defendants.</b>	§	

**PETITIONING CREDITORS’ SUPPLEMENTAL OBJECTION TO THE FINAL APPLICATION FOR ALLOWANCE AND SUBSEQUENT PAYMENT OF COMPENSATION FOR SERVICES AND REIMBURSEMENT OF EXPENSES TO DYKEMA GOSSETT PLLC, AS ATTORNEYS FOR PETER S. VOGEL, RECEIVER**

Pronske & Patel, P.C., Shurig Jetel Beckett Tackett, Gary G. Lyon, Robert Garrey, Powers Taylor, LLP, Jeffrey Hall, and David Pacione (together, the “Petitioning Creditors”) file this Supplemental Objection (the “Objection”) to the Final Application for Allowance and Subsequent Payment of Compensation for Services and Reimbursement of Expenses to



Dykema Gossett PLLC, as Attorneys for Peter S. Vogel, Receiver (the “Fee Application”) [Docket No. 1234], and in support thereof would respectfully show the Court as follows:

### I. PROCEDURAL POSTURE

1. On December 18, 2012, the United States Courts of Appeals for the Fifth Circuit entered its panel opinion (the “Opinion”) reversing this Court’s Order Appointing Receiver (the “Receivership Order”) [Docket No. 130]. In conjunction with its opinion reversing the appointment of the Receiver, the Fifth Circuit instructed this Court to pay the remaining receivership professional fees from the cash in the receivership fund after consideration of the fees according to the reasonableness standard set forth in the Opinion. (Opinion, p.30)

2. Also on December 18, 2012 (the “Petition Date”), the Petitioning Creditors filed an involuntary bankruptcy petition against Jeffrey Baron (“Baron”) under Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”).

3. As indicated on the record at the joint status conference before this Court and the Bankruptcy Court on April 4, 2013, the fee amounts of the various receivership professionals approved by this Court will be treated as allowed claims in the Baron bankruptcy, in the event that the Bankruptcy Court enters an order for relief after concluding the Baron involuntary trial. This Court has reinforced the position that no professionals will be paid from the Receivership estate prior to a ruling from the bankruptcy court in its own orders, writing: “At this same hearing, and in clarification of the modification of the stay, both Courts agreed that none of the parties would be paid from the Receivership estate until a ruling could be made on the involuntary bankruptcy.” Order Denying Without Prejudice Motions of Jeffrey Baron’s Counsel for Attorneys Fees with Further Instructions, p.2 [Docket No. 1279].

4. On April 17, 2013, pursuant to this Court's Scheduling Order [Docket No. 1220] entered on April 5, 2013, Daniel J. Sherman, Chapter 11 Trustee for Ondova Limited Company (the "Trustee"), Peter S. Vogel, Receiver over Jeffrey Baron (the "Receiver"), Dykema Gossett PLLC ("Dykema"), and Gardere Wynne Sewell, LLP ("Gardere") each filed motions to approve attorneys fees incurred in the receivership matter (together, the "Applicants").

5. On May 8 through 10, this Court held a hearing on the fee applications filed by Dykema and the other professionals seeking payment from the receivership estate. Following the hearing on the Fee Application, Dykema and the Receiver filed their Consolidated Post-Hearing Brief (the "Post-Hearing Brief") [Docket No. 1272] addressing some of the legal issues raised at the fee application hearing.

## II. SUPPLEMENTAL OBJECTION

6. In the Receiver and Dykema's Post-Hearing Brief, the Receiver and Dykema make two requests of this Court that are a violation of Bankruptcy law and must be addressed. First, Dykema argues that the \$739,000 paid to the firm by the Receiver should be considered by this Court to be earmarked and that Dykema should be given a security interest in those funds. Since the payment to Dykema was made following the filing of the involuntary bankruptcy petition against Jeffrey Baron, the payment of the \$739,000 was a "post-petition" event vis-à-vis the involuntary bankruptcy case of Jeffrey Baron.

7. As such, both the payment of the \$739,000 into income (which has not happened yet because those funds are in Dykema's trust account) and the granting of a security interest or earmarking of such funds (which Dykema now requests) would be clear violations of the automatic stay of section 362(a) of the Bankruptcy Code. The granting of a security interest in property of the bankruptcy estate is as much a violation of the automatic stay as

would be a transfer of the property itself. Dykema has competent bankruptcy counsel involved in this case that is aware that the request for the granting of a security interest in the funds post-petition is a wholesale violation of the automatic stay.

8. The second improper request that Dykema has made in its Post-Hearing Brief is that this Court rule that “all of its post December 18 orders were entered with knowledge of the pending Baron involuntary bankruptcy and that *the stay was implicitly lifted to allow entry of same.*” (Post-Hearing Brief, p.9). Since the Bankruptcy Court has been most specific, and most detailed, regarding where the stay is lifted and where the stay is not lifted, it is procedurally improper to request this Court, without first request the Bankruptcy Court, to rule as to the status of the automatic stay in a case where the Bankruptcy Court is otherwise actively involved in making precise stay rulings.

9. In fact, the Bankruptcy Court’s Sua Sponte Order Modifying Automatic Stay (Section 362) to Permit Adjudication of Allowable Receivership Fees and Expenses in District Court (the “Stay Order”) [Bankr. Docket No. 115] modified the automatic stay for the express purpose of determining the claim of Dykema and other Receivership professionals, stating specifically and in italics and in bold that “the bankruptcy court hereby issues this *very narrow sua sponte Order.*” (Stay Order, p.3) Dykema, a party to that proceeding and the Stay Order, is now asking this Court to lift the stay where the Bankruptcy Court specifically addressed this issue and denied the relief with a purposefully “*very narrow*” Stay Order.

10. Further, the Stay Order specifically stated that the automatic stay was being “modified to allow the District Court to proceed with making appropriate rulings regarding the amount of fees and expenses (of administration) that should be allowed and assessed against the Receivership Proceeding res,” but the Stay Order was equally clear that “no payments of any allowed amounts shall be made from the res unless the automatic stay in Mr. Baron’s

bankruptcy case is further modified by further orders of this court or the involuntary bankruptcy case is dismissed.” (Stay Order, p.3)(Emphasis added).

11. No payments from the Receivership res means no payments from the Receivership res. It is not subject to interpretation. To the extent that Dykema is requesting immediate payment, immediate transfer of a security interest in the Receivership res, or immediate earmarking of the Receivership res, they are all violations of the automatic stay, violations of the direct Stay Order entered by the Bankruptcy Court, and clear violations of the spirit of the Stay Order. Those requests disrespect the clear intentions of the Bankruptcy Court and should be denied.

### **III. CONCLUSION**

WHEREFORE, PREMISES CONSIDERED, the Petitioning Creditors respectfully request that the Court enter orders regarding the Dykema Fee Application in conformance herewith and grant the Petitioning Creditors such other and further relief to which they may show themselves justly entitled.

Dated: May 23, 2013.

Respectfully submitted,

/s/ Gerrit M. Pronske

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Rakhee V. Patel

State Bar No. 00797213

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**COUNSEL FOR THE PETITIONING  
CREDITORS**

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that, on May 23, 2013, a true and correct copy of the above and foregoing pleading was served via ECF email upon all parties accepting such service.

/s/ Melanie P. Goolsby

Melanie P. Goolsby

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

NETSPHERE, INC.,  
MANILA INDUSTRIES, INC., AND  
MUNISH KRISHAN

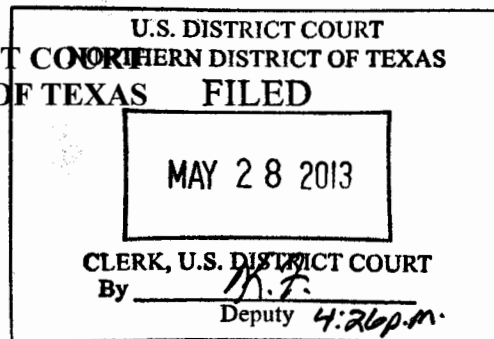
PLAINTIFFS,

V.

JEFFREY BARON AND  
ONDOVA LIMITED COMPANY,

DEFENDANTS.

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CIVIL ACTION NO. 3:09-CV-0988-F

**ORDER DENYING JOINT MOTION BY JEFFREY BARON AND FORMER  
LAWYERS FOR ENTRY OF WIND DOWN PLAN AND FOR EXPEDITED HEARING  
THEREON**

BEFORE THE COURT is the Joint Motion by Jeffrey Baron and Former Lawyers for Entry of Wind Down Plan and for Expedited Hearing thereon filed May 28, 2013 (Docket No. 1284). Having reviewed the proposed plan in consideration of the posture of this case, the Court rules that this Motion be DENIED.

Baron and the Petitioning Creditors have submitted a proposed settlement between them and have filed it before this Court. This settlement relates exclusively to the claims in the involuntary bankruptcy matter now before the Bankruptcy Court; however, it requests immediate disbursements from the Receivership estate that would give the Petitioning Creditors a priority over the Receiver's Professionals. This is entirely inappropriate. Indeed, from a reading of the proposed settlement, it appears to the Court that Baron and the Petitioning Creditors are attempting to circumvent both the instructions from the Fifth Circuit and the priority system of the Bankruptcy Code, to achieve in settlement that could never be achieved under the law. The Fifth Circuit has explicitly ruled that this Court lacks authority to resolve state law claims for the

fees of Baron's former attorneys. There is no independent federal jurisdiction over these claims except as brought in the bankruptcy; if there is no bankruptcy, then the settlement must be effectuated privately or through the state courts. On the other hand, if there is a bankruptcy the priority provisions would apply.

Another infirmity in the proposed settlement is an opt-in provision which would allow Netsphere to settle its claims with Baron, at some later date, but there is no indication as to whether or not Netsphere would accept these terms. Such an inchoate plan, however, could never be a basis for court approval because the terms of the plan as to Netsphere are unclear at this point.

Given that this proposed settlement would not release any of the claims before this Court and given that it does not encompass the consent and input from all other parties, the Court rejects it in its totality.

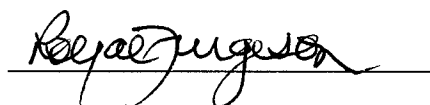
Before this Joint Motion was filed, the Court had been informed by Baron's counsel that a settlement agreement would be filed. The Court was under the impression that this would be a global settlement between all parties, including the Receiver, the Ondova Trustee and their professionals. Without a global settlement, nothing truly makes sense because the burdens on the judiciary, which have been substantial here, would continue unabated. The need for a global settlement is so acute that the Court might have been tempted to delay its work thinking that the entirety of the litigation was to be resolved. Yet, in light of the track record of this litigation, such a course would have defied experience. Under such circumstances, this Court has not delayed its consideration of the fee issue required by the Fifth Circuit and an Order will be entered in that regard very shortly.

If the Petitioning Creditors and Baron are able to reach a settlement, it will only be implemented in one of two ways: after the entry of an order for relief in the involuntary bankruptcy, and after priority creditors have been paid, the agreement between Baron and the Petitioning Creditors would be recognized, or if involuntary petition is withdrawn, after this Court has had the opportunity to implement a wind down plan, Baron and the Petitioning Creditors could execute their agreement following the return of the Receivership assets to Baron and his entities. No in-between disbursements from the Receivership estate will be allowed.

The Court accordingly DENIES this proposed settlement and instructs the parties that any future settlement proposals must conform to the instructions set forth herein.

It is so ORDERED.

SIGNED this 28<sup>th</sup> day of May, 2013.



W. Royal Furgeson, Jr.

Senior United States District Judge



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

NETSPHERE, INC.,  
MANILA INDUSTRIES, INC., AND  
MUNISH KRISHAN

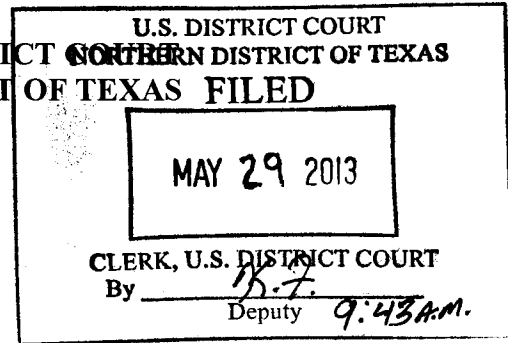
PLAINTIFFS,

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CIVIL ACTION NO. 3:09-CV-0988-F

**ORDER ON RECEIVERSHIP PROFESSIONAL FEES**

BEFORE THE COURT are the following applications for fees of purported Receivership Professionals in the above-numbered case<sup>1</sup>:

First, the Chapter 11 Trustee in the Ondova Bankruptcy (“Trustee”) filed its Chapter 11 Trustee’s Application for Reimbursement of Fees and Expenses from the Receivership Estate on April 17, 2013 (Docket No. 1229).<sup>2</sup> All parties in interest have responded to this application, including: the Receiver and Dykema Gossett LLP (“Dykema”) on April 25, 2013 (Docket Nos. 1248 and 1249 respectively); the Petitioning Creditors on May 6, 2013 (Docket No. 1268); Jeffrey Baron on May 8, 2013 (Docket No. 1269); and Netsphere on May 9, 2013 (Docket No. 1271). With the permission of this Court, the Trustee filed a post-trial brief on May 15, 2013 (Docket No. 1276). Jeffrey Baron responded to the post-trial brief on May 15, 2013 (Docket No. 1278)

<sup>1</sup> This resolves Docket Nos. 1035, 1075, 1096, 1116, 1117, 1125, 1229, 1232, 1233, and 1234.  
<sup>2</sup> This motion encompasses those issues raised in pending motions: Second Motion for Reimbursement of Fees and Expenses from the Receivership Estate, filed October 19, 2012 (Docket No. 1075); Trustee’s Motion for Partial Reimbursement of Fees and Expenses from Receivership Estate, filed December 21, 2012 (Docket No. 1096); and Third Motion of Daniel J. Sherman, Chapter 11 Trustee for Ondova Limited Company, for Reimbursement of Fees and Expenses from the Receivership Estate, filed December 31, 2012 (Docket No. 1125).

Second, Gardere Wynne Sewell LLP (“Gardere”), former counsel to the Receiver, filed its Motion for Attorney Fees for Gardere Wynne Sewell LLP on April 17, 2013 (Docket No. 1232).<sup>3</sup> The Petitioning Creditors filed a response on May 6, 2013 (Docket No. 1268). Jeffrey Baron filed a response on May 8, 2013 (Docket No. 1269). Netsphere filed a response on May 9, 2013 (Docket No. 1271).

Third, Peter S. Vogel, the Receiver, filed his Fee Application for the Receiver on April 17, 2013 (Docket No. 1233).<sup>4</sup> The Petitioning Creditors filed a response on May 6, 2013 (Docket No. 1268). Jeffrey Baron filed a response on May 8, 2013 (Docket No. 1269). Netsphere filed a response on May 9, 2013 (Docket No. 1271). The Receiver and its current counsel, Dykema, filed a consolidated post-trial brief on May 14, 2013 (Docket No. 1272). Jeffrey Baron responded to the post-trial brief on May 15, 2013 (Docket No. 1277).

Finally, Dykema, current counsel for the Receiver, filed its Motion for Attorney Fees on April 17, 2013 (Docket No. 1234). The Petitioning Creditors filed a response on May 6, 2013 (Docket No. 1268). Jeffrey Baron filed a response on May 8, 2013 (Docket No. 1269). Netsphere filed a response on May 9, 2013 (Docket No. 1271). The Receiver and its current counsel, Dykema, filed a consolidated post-trial brief on May 14, 2013 (Docket No. 1272). Jeffrey Baron responded to the post-trial brief on May 15, 2013 (Docket No. 1277). The Petitioning Creditors filed a supplemental objection to Dykema’s application on May 23, 2013 (Docket No. 1283).

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<sup>3</sup> This motion encompasses those issues raised in pending motion Receiver’s Nineteenth Application for Gardere Fees, filed July 31, 2012 (Docket No. 1035).

<sup>4</sup> This motion encompasses those issues raised in the pending motions: Motion for Attorney Fees for Peter S. Vogel, filed December 21, 2012 (Docket No. 1116) and Amended Motion for Attorney Fees Twenty-Second Motion, filed December 21, 2012 (Docket No. 1117).

## I. BACKGROUND

This case has been described by all involved as a “nightmare.” What should have been a simple contract dispute between the Netsphere parties and Jeffrey Baron and Ondova has morphed into a four-year train-wreck involving numerous attorneys, millions of dollars in legal fees, thousands of docket entries, and massive frustrations for all parties, for this Court, for the Bankruptcy Court and for the Fifth Circuit.

This case was ongoing long before it was brought to this Court. At least seven lawsuits arose from a joint venture between Baron and Munish Krishan involving the ownership and sale of domain names. In April 2009, the parties were able to reach an agreement and signed a Memorandum of Understanding which settled all disputes between them. This agreement was short lived and only a month later, Netsphere filed this lawsuit to enforce the MOU after Baron and Ondova allegedly breached it.

Almost immediately after this case was initiated, Baron began to delay time sensitive discovery issues and to avoid deadlines imposed by the Court for the production of important documents. Just a few days before Baron was required to comply with discovery and deposition deadlines, his counsel withdrew from representation and new attorneys appeared. (Docket Nos. 15 and 16). The Friedman & Feiger lawyers, who would ultimately remain in the case for seven months, were understandably harried by the fast approaching deadlines to comply with massive discovery obligations. The same day that they appeared in the case (Docket No. 18), the Court entered a temporary restraining order and scheduled a hearing for the following week on Netsphere’s motion for a Preliminary Injunction. (Docket Nos. 18, 20 and 21). In many ways, this hearing foreshadowed the eventual course of this litigation.

At this hearing, Netsphere's counsel informed the Court that Baron had used a change in counsel as a litigation delay tactic in the litigation underlying the settlement. There had already been seven sets of lawyers employed by Baron in those proceedings. This case was looking to be no different: not even a month after this case was filed in federal courts, Baron's counsel, Anthony Vitullo, James Bell and Caleb Rawls, withdrew from representing Baron and Ondova. (Docket No. 15) They were immediately replaced by the ninth set of lawyers, Friedman & Feiger. Given this information, the Court was justifiably concerned that Baron would continue to frustrate the judicial system by cycling through attorneys in order to cause delay. The Court's confidence was further shaken by Baron's testimony at the same hearing regarding access passwords to relevant domain names; despite a clear order regarding discovery on this issue, Baron continued to deny not only knowing necessary passwords, but to knowing the basic functions of his own business. Even more troubling was Baron's insistence on making his own determinations on what domain names were at issue and how to define the scope of discovery, again in order to avoid production. The Court was so concerned by Baron's unwillingness to cooperate that it even made the suggestion of a receiver to ensure that the companies were run correctly. Transcript July 1, 2009 hearing (49:15-17).

To alleviate its concerns that Baron would change attorneys to cause continual delay, especially during the critical discovery phase of the litigation, the Court implemented protective measures. First, the Court designated Baron's current attorneys as lead counsel and ordered that they obtain approval from the Court before employing new or additional counsel or from withdrawing from the case. Second, the Court ordered a large, nonrefundable retainer be placed in Friedman & Feiger's trust account that would not be returned if Baron chose to fire his attorneys.

Nevertheless, as the record in this case indicates, Friedman & Feiger eventually withdrew from their representation and Baron continued to add more lawyers to his representation. *See* Docket No. 81. When Baron placed Ondova into bankruptcy, this pattern continued, disrupting the bankruptcy proceedings and threatening to derail the orderly conclusion of the bankruptcy itself.

It was under these conditions that the Trustee and Bankruptcy Court suggested a Receivership to the Court. Under the circumstances, the Court believed that a short-term Receivership would enable both forums to speedily resolve the pending matters and curtail the disruptive revolving door of attorneys.

Unfortunately, the Receivership lasted significantly longer than anyone anticipated. The Receivership Order was appropriately appealed under 28 U.S.C. §1292(a)(2). The Court believed that the Fifth Circuit would make a ruling within a short time frame; however, Baron's appellate counsel continued to appeal every order entered by the Court with an accompanying motion to stay pending the appeal. All 17 motions to stay were denied and the appeals of over a hundred orders were consolidated before the Fifth Circuit. Yet a ruling on the Receivership was not immediately forthcoming. Although the Court can only speculate as to what caused delayed in the Fifth Circuit, the numerous and procedurally questionable appeals surely must have confounded the Court as it tried to sort through what was happening in the District Court.

Two years after the Court entered the Receivership Order, the Fifth Circuit held oral arguments on the various appeals in this case. On December 18, 2012 the Fifth Circuit issued its ruling, but withheld the Mandate, which issued months later.

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## II. FIFTH CIRCUIT OPINION AND THE COURT'S CHARGE

The Fifth Circuit defined the central issue in the appeal as “whether a court can establish a receivership to control a vexatious litigant” where the receiver was granted control over assets “that were not at issue in the underlying litigation over the domain names”. *Netsphere, Inc. v. Baron*, 703 F.3d 296, 305 (5th Cir. 2012). Finding no authority to establish a receivership for that purpose, the Court ultimately concluded that the creation of the Receivership was an abuse of discretion.

The Fifth Circuit also found that “[t]here certainly was evidence that Baron’s actions were disrupting, complicating, and making more expensive both the bankruptcy and the district court suit. We do not, though, find evidence that Baron was threatening to nullify the global settlement agreement by transferring domain names outside the court’s jurisdiction...Rather, the receivership was established to pay the attorneys and to control vexatious litigation.” *Id.* at 308.

The Fifth Circuit found no authority allowing a court to impose a receivership to pay attorneys’ fees that were not the subject of the underlying litigation. Ultimately, “a court lacks jurisdiction to impose a receivership over property that is not the subject of an underlying claim or controversy.” *Id.* at 310 (citing *Cochrane v. W.F. Potts Son & Co.*, 47 F.2d 1026, 1029 (5th Cir. 1931)). Because this Receivership encompassed Baron’s personal property and property of entities not named as parties in the underlying lawsuit, the Receivership was deemed improper.

To the extent that the Receivership was imposed to control Baron’s vexatious litigation tactics, the Fifth Circuit determined that there was no statutory authority to do so. Nevertheless, the Fifth Circuit recognized this Court’s dilemma, finding that “Baron’s longstanding vexatious litigation tactics presented the district court with an exceedingly difficult situation. The district court recognized that it has the inherent authority to address those tactics.” *Id.* at 311.

Essentially, the Fifth Circuit agreed that the Court faced a real and challenging problem, but that it chose the wrong remedy. Instead, the Fifth Circuit found that this Court, rather than creating a receivership, should have “entered a sufficiently specific order”, held Baron in contempt if he continued to violate the Court’s directives, and issued fines or imprisonment as a penalty. *Id.* Alternatively, this Court “could have required Baron to proceed with the same lawyer or pro se at his choice.” *Id.* Although this Court had determined that some of these remedies would be inadequate and that a receivership was the “most restrained path to ensure that its orders are followed and [that] justice can be administered,” Docket No. 268, p. 21, the Fifth Circuit concluded that a complete failure to halt vexatious litigation tactics by traditional means does not then authorize a receivership.

While the Fifth Circuit did find the Receivership to be an abuse of discretion, the ruling did not vindicate Baron and his conduct. Normally when a receivership is improper, the party that sought the receivership may be held accountable for the receivership fees and expenses that did not benefit the fund. *See W.F. Potts*, 59 F.2d at 377-78. The party subjected to a wrongful receivership may be entitled, under equity principles, to recover costs from those who have provoked the receivership. *See Porter v. Cooke*, 127 F.2d 853 (5th Cir. 1942). Here, no party “provoked” the receivership—it was recommended by the Bankruptcy Court and moved for by the Trustee under that recommendation. Given that this case did not fit the norm, the Fifth Circuit decided that a different kind of equity analysis was required.

While the Circuit found that Baron received no benefit from the Receivership, it also concluded that equity warranted that Baron’s own improper conduct and contributing role in the proceedings must be taken into account. “Here, the record supports that the circumstances that led to the appointment of a receiver were primarily of Baron’s own making...[t]he manner in

which the district court responded to [the] circumstances was errant, but the court's perception was reasonable that a vigorous response was required.... We also take into account that, to a large extent, Baron's own actions resulted in more work and more fees for the receiver and his attorneys. For those reasons, charging the current receivership fund for reasonable receivership expenses, without allowing any additional assets to be sold, is an equitable solution." *Netsphere*, 703 F.3d at 313.

This conclusion was bolstered by the Fifth Circuit's finding that there was no ill motive on the part of any one involved. The appointment of the Receiver was not collusive or in bad faith: "there was no malice nor wrongful purpose, and only an effort to conserve property". *Id.*

It is under this assessment that the Fifth Circuit issued its directive to this Court<sup>5</sup>: "in light of our ruling that the receivership was improper, equity may well require the fees to be discounted meaningfully from what would have been reasonable under a proper receivership. Fees already paid were calculated on the basis that the receivership was proper. Therefore, the amount of all fees and expenses must be reconsidered by the district court. Any other payments made from the receivership fund may also be reconsidered as appropriate." *Id.*

Baron contends that this Court must apply a slightly different standard: "the costs, expenses, and disbursements incurred by a receiver whose appointment was improvidently made, or who has taken wrongful possession of property, will, upon equitable principles, be charged by the court of jurisdiction against the property to the extent that they have inured to its benefit." *Speakman v. Bryan*, 61 F.2d 430, 431 (5th Cir. 1932). Baron argues that any Receivership professional claiming fees must show that those fees inured a benefit to the Receivership estate.

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<sup>5</sup> The Fifth Circuit also directed this Court to wind up the Receivership and release assets to Baron and his entities; however, the Court is unable to do this with involuntary bankruptcy proceedings still in process.



The Court, however, disagrees. Its equity calculus need not be so narrow. Although the Fifth Circuit did note that Baron did not receive any benefit from the Receivership, it did not limit the Court's analysis. To the contrary, the Circuit specifically observed that Baron's complicity in creating additional, and largely unnecessary, work for the Receivership professionals was a factor for this Court to consider. Given the unique circumstances of this case, the Fifth Circuit explicitly did not limit equity considerations to the benefit received by the estate. That being said, the benefit given is but one equity factor for the Court to consider.

Further, Baron argues Third and Seventh Circuit law for the proposition that fees incurred in the process of defending a Receivership or in defense of fees sought are not properly chargeable against the receivership estate. *U.S. v. Larchwood Gardens, Inc.*, 420 F.2d 531, 535 (3rd Cir. 1970); *In re Marcuse & Co.*, 11 F.2d 513, 516 (7th Cir. 1926) (denying fees where receiver acted as litigant and not neutral party). The Court finds these cases inapplicable and unpersuasive. Here, the Fifth Circuit was well aware of the expense incurred by the Receiver and Trustee in defending the Receivership; again the Court points to the finding of complicity by Baron in inflating these expenses. Indeed, given how Baron through his appellate counsel, Gary Schepps, swamped the Fifth Circuit with questionable appeals, the Court finds that it would be entirely inequitable to deny these fees. Accordingly, the Court sees no reason not to charge the Receivership estate for the additional expenses incurred by Baron and Schepps's conduct. To the extent that fees were incurred in defending the Receivership Order itself, the Court finds that charging the estate is proper under both the Fifth Circuit's ruling and principles of equity.

### **III. INVOLUNTARY BANKRUPTCY AND SUBSEQUENT PROCEEDINGS**

The same day that the Fifth Circuit's opinion was issued, Baron's former counsel filed an involuntary bankruptcy against Baron. The automatic stay immediately went into effect; this,

combined with the fact that the Fifth Circuit issued its opinion without the Mandate, effectively prevented this Court from acting on the Circuit's instructions. Instead the Court filed an advisory outlining its initial intentions regarding how it would reduce fees to comply with the Fifth Circuit's directions.

The Bankruptcy Court has effectively managed this case since the December opinion, but it has also struggled to act in the absence of the Mandate; there was still a chance that the Fifth Circuit would grant a re-hearing and/or issue an en banc ruling. This was problematic as there were significant pressing issues, particularly regarding payment of professionals hired by the Receiver. A joint hearing was held on April 4, 2013 to discuss these issues before both the District and Bankruptcy Courts. It was during this hearing that the Fifth Circuit's ruling was received, denying the motions for a rehearing and issuing the Mandate without altering the initial December opinion, thereby clarifying how the case was to move forward.

At the April 4<sup>th</sup> hearing, the Bankruptcy Court announced that it would lift the automatic stay to allow this Court to determine reasonable receivership fees and expenses in accordance with the Fifth Circuit's opinion. The implementation of this ruling will depend upon the outcome of the involuntary bankruptcy. If the Bankruptcy Court finds that the Petitioning Creditors have established the requirements to bring an involuntary case against Jeff Baron, then the amounts authorized by this Court will be treated as administrative claims with priority under the Bankruptcy Code. Whether any unauthorized amounts may be payable in bankruptcy beyond those authorized by this Court as unsecured claims will be determined by the Bankruptcy Court at the appropriate time; this Court's determination will set the limits on administrative claims. If the Bankruptcy Court ultimately concludes that the conditions necessary to bring an involuntary

bankruptcy case have not been met, then the amounts allowed by this Court herein will be paid from the Receivership estate as part of the wind down plan.

#### **IV. STATUS OF DISTRICT COURT ORDERS UNDER FIFTH CIRCUIT OPINION**

Also at issue is the effect of the Fifth Circuit's opinion on all other Orders entered by the District Court. Baron contends that the Fifth Circuit specifically vacated many of the Orders that were appealed; however, the Court disagrees. In a subsequent clarifying Order, the Fifth Circuit wrote: "We point out that our opinion did not dissolve the receivership immediately. We ordered a remand for an expeditious winding up of the receivership. No assets that were brought under the control of the receiver will be released immediately from that control even when the mandate is issued. The district court will thereafter have the authority to manage the process for ending the receivership as quickly as possible." Fifth Circuit's Order, Dec. 31, 2012. This clarification, combined with the simultaneous issuance of the mandate on all the appeals with the direction that "the District Court is reversed, and the cause remanded to the District Court for further proceedings in accordance with the opinion of this Court", indicate that all Orders issued under the Receivership remain in effect until the Receivership is wound down. *See* Docket Nos. 1254-1263.

The Fifth Circuit did not vacate the Orders authorizing the payment of fees to Receivership professionals; instead it instructed the Court to reconsider these disbursements. As no other Orders were specifically vacated, the Court finds that all Orders remain in effect until the wind down.

#### **V. DISCUSSION ON FEES**

Before addressing the merits of each party's claim to fees, the Court desires to make one point regarding Mr. Baron and his many lawyers. At the hearing on these applications, Mr.

Baron's counsel expressed concern that Mr. Baron has been disparaged during court proceedings by unjustified claims that he "hired and fired" lawyers. His current counsel now insinuates that the frequent turnover of attorneys for Mr. Baron and his entities resulted from unethical abuses on the side of these attorneys; essentially they saw Baron as an easy mark to milk fees and Baron had no other option but to refuse to pay them the fees he believed they did not deserve or to fire them. Although the Court finds it difficult to believe that all of the twenty-plus lawyers engaged by Mr. Baron during the course of this litigation were negligent or abusive, it is not this Court's place, as clearly explained by the Fifth Circuit, to make determinations regarding the relationships between Baron and his counsel. These decisions are left either to the Bankruptcy Court or, if an involuntary bankruptcy is disallowed, to state courts. It is indeed possible that a straight forward legal dispute, which should have been resolved several years ago, may now continue for another decade.

While the Court takes no position regarding Baron's relationships with his former counsel, it instead points to the incontrovertible facts: regardless of Baron's motives in frequently changing his attorneys, the effect of this conduct was to essentially throw a wrench into the proceedings and grind the cases in this Court and the Bankruptcy Court to a halt. The record shows that this Court, opposing counsel and Baron's own counsel frequently found that he stifled the forward momentum of these cases. Baron's actions, whether with the intent to frustrate the court system or not, prevented this Court and the Bankruptcy Court from performing their primary obligation under Rule 1 of the Federal Rules of Civil Procedure: the just, speedy and inexpensive determination of disputes.

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**A. TRUSTEE AND COUNSEL MUNSCH HARDT**

The Ondova Trustee has filed an application for reimbursement for fees it incurred on behalf of the Receivership. The Trustee's legal work was performed by the law firm of Munsch, Hardt, Kopf & Karr P.C. Lead counsel was Raymond Urbanik and lead appellate counsel was Richard Hunt. Before the Court can address the reasonableness of these fees, it must first resolve what it has referred to as the "entitlement" issue. Unlike the other parties before the Court, the Trustee was not a professional or employee of the Receiver. The Court is tasked with determining reasonable "receivership fees and expenses"—implying that only those fees and expenses incurred by the Receivership itself should be paid.

The Trustee argues that the Fifth Circuit did not intend to limit this Court's ability to pay his fees. Rather, he argues that Fifth Circuit was unaware of who was performing the legal work for the Receiver and had it known that the Trustee was performing some of that work, it would have allowed for their payment. The Court disagrees with this assessment. Not only did Baron object to and appeal to the Fifth Circuit the order awarding legal fees to the Trustee, but the Fifth Circuit recognized that the Trustee and the Receiver were distinct parties based on their denial of the motion to substitute the Trustee as the named appellee in one of the many appeals. The Fifth Circuit could not have misunderstood that the Trustee performed the legal work to write the brief submitted under his own name.

Further the Trustee argues that the language used by the Fifth Circuit throughout the opinion speaks of receivership expenses very broadly; but this interpretation begs the question. Although the interpretation of "receivership expenses" may be broad, it does not necessarily require the inclusion of the Trustee merely because he was a participating party. The Court agrees that the term is broad and includes more than the Receiver and his attorney, but also

includes anyone employed by the Receivership. Although equity controls as to the allowed amount of fees, it does not equally apply to the determination of who is entitled to fees as a Receivership professional. In order to be classed as such a professional, there must be a legal basis to do so either in contract or under some quasi-contract theory.

The record presented to the Court at the evidentiary hearing is abundantly clear: there was no written or oral contract between the Receiver and the Trustee or his counsel for the services it performed in defending the Receivership at the Fifth Circuit.<sup>6</sup> The Receiver has provided ample evidence that all professionals and employees of the Receivership signed contracts with the Receiver; the Trustee is the only professional claiming to fall within the Receivership who did not have such a contract. The Receiver contracted with various parties, including several attorneys who performed legal work on behalf of the Receivership. Although the Trustee asserts that implications were made regarding these services, he willingly admits that no formal agreement was ever achieved. The Receivership Order empowered the Receiver to “choose, engage and employ attorneys, accountants, appraisers and other independent contractors and technical specialists (collectively ‘Professionals’) as each Receiver deems necessary or advisable in the performance of duties and responsibilities under the authority granted by this Order.” Receivership Order, p.3 ¶ K, Docket No. 130. There was no engagement or employment of the Trustee or his counsel at any point during this litigation. Furthermore,

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<sup>6</sup> The elements for establishing an oral contract under Texas law are the same as any other contract: the parties must show (1) an offer, (2) an acceptance, (3) a meeting of the minds, (4) a communication that each party accepts the terms, (5) execution and delivery of the contract with the intent that it be mutual and binding, and (6) consideration. *Angelou v. African Overseas Union*, 33 S.W.3d 269, 278 (Tex. App.—Houston [14th Dist.] 2000). However, when an oral contract is alleged, “the court looks to the communications between the parties and to the facts and circumstances surrounding those communications. The terms must be expressed with sufficient certainty so that there will be no doubt as to what the parties intended.” *Copeland v. Alsobrook*, 3 S.W.3d 598, 605 (Tex. App.—San Antonio 1999).

there is no statutory authority to allow for “substantial contribution” payments in an equitable receivership. Therefore, in order to recover fees it would need to do so under a theory of *quantum meruit*.

1. *Solvency Arguments*

As a preliminary matter, the Court will address the arguments raised by all other parties regarding the solvency and cumulative assets of the Ondova estate at various times during this litigation. The general argument of the objecting parties is that the Trustee could have and should have settled claims with all Ondova creditors and shut down the bankruptcy at some earlier date. The evidence clearly establishes that the Trustee had, through his counsel, endeavored to do this, but was stymied by the continual influx of former Baron or Ondova attorneys making substantial contributions claims to the bankruptcy estate; unlike normal creditor claims, substantial contributions claims are not subject to the time bars imposed by the Bankruptcy Court for asserting a claim. Therefore, these claims may continue to trickle in during the course of a bankruptcy. Baron contends that the Trustee further exacerbated the problem by seeking out former attorneys and asking them to make additional claims. The Trustee, through his counsel, admits that it did contact former attorneys, not to ask them to file substantial contribution claims, but to determine whether they would be filing such claims in an effort to determine whether and when the bankruptcy could come to an end.

Given the situation, the Court finds the Trustee’s conduct, primarily through the work of the Munsch Hardt law firm, to be reasonable and appropriate. The Court further finds that the Trustee, despite having the assets at various times to satisfy creditor claims, was prevented from closing the bankruptcy in large part due to the choices made by Baron and Ondova to either fire their attorneys or to refuse to pay them (for whatever reason) and thus create a new applicant for

priority payment from the estate. This conduct was the initial basis for the recommendation of a receivership from the Bankruptcy Court, which rightfully concluded that without an effective remedy to prevent additional changes in counsel, the Ondova bankruptcy would continue in perpetuity. The Court concludes that these objections are not relevant to the determination of fees as they relate to the Receivership; to the extent that they are relevant to any portion of the litigation, it is the reasonableness and necessity of the Trustee's fees in connection with the Ondova bankruptcy itself.

2. *Docket History of Trustee Requests for Reimbursement*

The Trustee filed its First Motion for Reimbursement of Fees and Expenses on April 19, 2011 (Docket No. 467). Baron filed a response and objection to this motion on May 10, 2011 (Docket No. 556). The Court granted this motion on May 3, 2012 (Docket No. 896).

The Trustee filed its Second Motion for Reimbursement of Fees and Expenses from the Receivership Estate on October 19, 2013 (Docket No. 1075).

The Trustee filed Trustee's Motion for Partial Reimbursement of Fees and Expenses from the Receivership Estate on December 6, 2012 (Docket No. 1096). Baron filed an objection on December 27, 2012 (Docket No. 1119).

3. *Quantum Meruit*

In Texas, the elements of *quantum meruit* require a showing that "1) valuable services and/or materials were furnished, 2) to the party sought to be charged, 3) which were accepted by the party sought to be charged, and 4) under such circumstances as reasonably notified the recipient that the plaintiff, in performing, expected to be paid by the recipient." *Heldenfels Bros., Inc. v. City of Corpus Christi*, 832 S.W.2d 39, 41 (Tex. 1992); *Vortt Exploration Co., Inc. v. Chevron U.S.A., Inc.*, 787 S.W.2d 942, 944 (Tex. 1990). "A party generally cannot recover under



quantum meruit when there is a valid contract covering the services or materials furnished.” *In re Kellogg Brown & Root, Inc.*, 166 S.W.3d 732, 740 (Tex. 2005); *see also Truly v. Austin*, 744 S.W.2d 934, 936 (Tex. 1988).

*i. Value of Services*

The evidence clearly establishes that the Trustee and especially Trustee’s counsel worked incredibly hard to defend the Receivership at the Fifth Circuit. The Court has been informed by the Trustee that he is not seeking reimbursement for work done in the defense of the Order Appointing Receiver (5th Cir. 10-11202) nor for the work done on behalf of the confirmation plan which was moot after the Fifth Circuit’s opinion. As part of his fee application before the Court, the Trustee provided a narrative describing all the work it did following the implementation of the Receivership. Chapter 11 Trustee’s Application for Reimbursement of Fees and Expenses from the Receivership Estate, Docket No. 1229, Exhibit A. The work conducted by the Trustee and his counsel regarding the Receivership can be categorized as follows: review and analysis of district court filings, conferring with Receiver and his counsel regarding the Receivership, and appellate work to defend Receivership and District Court orders. The latter category can be further distinguished between work done as the named appellee as opposed to work done as an amici.

All of the work performed by the Trustee, and especially his counsel, was valuable, yet for this inquiry, the Court must first determine whether the services were valuable to the Receivership. In this regard, the Court finds that the work done by the Trustee and his counsel in reviewing and analyzing all filings in the District Court provided little benefit to the Receivership. The Receiver was an active participant in District Court proceedings; there was no need, for the sake of the Receivership, for the duplication of efforts. The value of these actions to

the Ondova estate is another matter, which appears to have been resolved already by the Bankruptcy Court. Additionally, any work done by the Trustee or his counsel to defend his own role or legitimacy in the Receivership proceedings provided little benefit to the Receivership. Although both the Trustee and his counsel at Munsch Hardt were intelligent and thoughtful contributors in this case, the Receivership received no particular benefit from their appointment in the Ondova case that would distinguish him from any other potential appointee.<sup>7</sup> Nevertheless, any analysis that was communicated to the Receiver or his counsel was a valuable service, but only to the extent that the Trustee provided new insights as opposed to merely duplicating the efforts of the Receiver.

The appellate work conducted by the Trustee, through his counsel, was undoubtedly of value to the Receivership, even when it was the Trustee named as appellee. The Trustee's counsel filed extensive briefing on the appeal of the Order Appointing Receiver, No. 10-11202, on which he was the only named appellee; the Trustee seeks no reimbursement for this work, therefore the Court will ignore it as it proceeds to analyze this claim.

Baron's second appeal, No. 11-10113, challenged the Order Granting Receiver's Motion to Clarify the Receiver Order with Respect to Novo Point, LLC and Quantec, LLC (Docket No. 176) and Order Requiring Non-Renewal of Money Losing Domain Names (Docket No. 177). The Receiver moved to substitute the Trustee as the named appellee, but this motion was denied. Instead, the Trustee filed a responsive brief as Amicus Curaie on June 7, 2011. The Receiver filed a motion two days later adopting the Trustee's brief as his own. A month after Dykema was retained as the Receiver's counsel, it filed an omnibus brief on behalf of the Receiver, which included a response to this appeal. The Receiver clearly benefitted from the work of the Trustee

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<sup>7</sup> Docket No. 171, Docket No.

on this appeal. Had the Trustee not written this brief, either Receiver's counsel or other hired counsel would have needed to respond.

Baron's third appeal, No. 11-10289, challenged sixteen orders entered by the District Court, including several orders clarifying the Receiver Order and various orders approving fee applications made by Receivership professionals and employees. The Trustee was the named appellee and only the Trustee filed briefing on this appeal. The brief filed in response to this appeal also addressed other appeals, including some in which the Receiver was named as appellee.<sup>8</sup> Although the Receiver was not the named appellee as to this appeal, the work done by the Trustee to defend these motions provided a valuable service to the Receivership; someone had to defend this appeal and failure to do so entirely would have subjected the Receivership to significant problems.

Baron's fourth appeal, No. 11-10290, challenged thirteen orders entered by the District Court. The Receiver was named as appellee. The Trustee's October brief addressed this appeal. The same day that the Trustee filed its brief responsive to this appeal, the Receiver filed a brief adopting the Trustee's brief in so much as they addressed appeals in which the Receiver was the named appellee. Dykema later filed an omnibus brief that addressed this appeal. The work done by the Trustee on this appeal was a valuable service, as explained above with regard to Appeal No. 11-10113.

Baron's fifth appeal, No. 11-10390, challenged sixteen District Court orders. Baron's sixth appeal, No. 11-10501, challenged thirty district court orders. Both the Receiver and Ondova were named as appellees on each of these appeals. Both appeals were addressed in the

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<sup>8</sup> The brief in question, filed on October 21, 2011, addressed appeal numbers: 11-10289, 11-10290, 11-10390 and 11-10501. The Trustee also filed a brief almost a year later, on August 6, 2012, readdressing this appeal and further expanding on appeal numbers: 12-10489, 10-11202, 11-10390, 11-10501 and 12-10444.

Trustee's October brief, which was adopted by the Receiver. Both Ondova and the Receiver addressed these appeal in subsequent briefs filed in August 2012. The work done by the Trustee on these appeals was a valuable service, as explained above with regard to Appeal No. 11-10113.

Both the Receiver and the Trustee filed briefs on August 6, 2012 in response to Baron's eighth through eleventh appeals, Nos. 12-1044, 12, 10489, 12-10657 and 12-10804. As explained above, the work done by the Trustee in these briefs was a valuable service to the Receiver to the extent that the Trustee raised arguments that the Receiver did not raise or could not raise due to page limitations for briefs.

The Court finds that, as to the first element of its *quantum meruit* claim, the Trustee provided services that were valuable to the Receivership during its appellate activity defending the Receivership and the Orders of this Court. The Court also finds that in some instances, the Trustee provided valuable advisory services to the Receiver during the course of this litigation. The Receiver has acknowledged that the Trustee's work saved him time and money.

*ii. Services were Not Furnished to the Receivership*

Although the Court finds that these services were valuable to the Receivership, the Court ultimately concludes that they were not furnished to or for the Receivership and were done in the course of the Trustee's independent duties to the Ondova estate as well as its duty to defend the Receivership as the moving party.

The theory underlying *quantum meruit* is to avoid unjust enrichment. Quantum meruit enables a party to recover "when non payment for the services rendered would 'result in an unjust enrichment to the party benefited by the work.'" *Vortt Exploration Co.*, 787 S.W.2d at 944 (quoting *City of Ingleside v. Stewart*, 554 S.W.2d 939, 943 (Tex. Civ. App.—Corpus Christi 1977)). "Unjust enrichment, itself, is not an independent cause of action, but rather 'characterizes

the result of a failure to make restitution of benefits either wrongfully or passively received under circumstances that give rise to an implied or quasi-contractual obligation to repay.”*Casstevens v. Smith*, 269 S.W.3d 222, 229 (Tex. App.—Texarkana 2008).

Here, the Receivership benefitted from the work done by the Trustee and his counsel, but it was not wrongfully or passively received. While it might be unfair to the Trustee and Munsch Hardt that their bankruptcy estate is unable to provide adequate compensation for their work, the Trustee was independently obligated to perform it. The Trustee in the Ondova case had a duty to keep abreast of all matters in the District Court proceedings. This duty was two-fold: as the party moving for the Receivership, the Trustee was exposed to the risk of responsibility for the costs of the Receivership; in addition, even if the Trustee had not moved for the Receivership, he would have been obligated to stay informed of the District Court proceedings as these proceedings would have undoubtedly affected the resolution of the bankruptcy.

Both the Trustee, as the moving party, and the Receiver, as ordered by this Court, had independent and overlapping duties to defend the Receivership at the Fifth Circuit and to participate in proceedings before this Court. Receivership law in this Circuit clearly provides for the possibility that the moving party be responsible for all Receivership costs. Munsch Hardt is very familiar with receivership law—members of their firm have acted as receivers in many cases. (Testimony of Urbanik). Although the Court is unaware of a requirement that the moving party know of this risk, the Court finds that Munsch Hardt should have and likely did know that the Trustee could potentially be held responsible for the Receivership if the Fifth Circuit overturned the Order. The fact that the idea for the Receivership originated with Bankruptcy Judge Jernigan would not necessarily override the Trustee’s obligations; the Trustee adopted this idea as his own in promoting it to this Court.

The fate of the Receivership was intrinsically connected with the bankruptcy throughout its existence. The Trustee's narrative account of his work in the case admits as much: in reviewing documents, preparing for hearings and writing briefs in the District Court proceedings, the Trustee acknowledged that he was required to determine how they would affect "both the Ondova bankruptcy and the Receivership proceedings." *See e.g.*, Exhibit A, p. 4. Furthermore, the Receivership was created in part to aid the resolution of all matters in the Bankruptcy Court and to prevent the influx of additional lawyers that could stall the proceedings with substantial contribution claims. After the creation of the Receivership, the Court addressed the payment of former Baron attorneys. Some of this work would potentially reduce substantial contribution claims made on the Bankruptcy estate; therefore, the Trustee was obligated to promote the Receivership to reduce the amount of claims made on the bankruptcy estate. The Receivership also allowed the Trustee to develop the confirmation plan, now moot, to reach that resolution in the Ondova bankruptcy. Accordingly, the Trustee was interested in the fate of the Receivership; his participation at the Fifth Circuit, even when not named as the appellee, provided a benefit to his ability to perform his work as the Trustee.

This conclusion is bolstered by the Trustee's own arguments that the Bankruptcy Court already approved the fees requested as necessary and reasonable. Since the Bankruptcy Court only had jurisdiction over the bankruptcy estate, her ruling did not reach whether the Trustee's fees were necessary and reasonable to the Receivership estate. If the fees have been approved as part of the bankruptcy, then there could be no unjust enrichment by the Receiver—the Receiver merely took advantage of work that was necessarily done by another interested party. This was not in conflict with the Receiver's own duty to perform only that work which was necessary and reasonable for his own estate. As the testimony of the attorneys, including David Schenck and

Peter Loh, revealed, it is not unusual for counsel of parties with similar interests to work together or even to adopt each other's work to avoid duplicative efforts. Never had any of these attorneys, who have been practicing for many years, received from or made a request to the other party to be reimbursed for the work that was done to the benefited everyone. It would be highly unusual for this Court to find this collaborative effort to be any different.

The fact that the Trustee indicated that he expected to be reimbursed for its share of the work does not change this analysis. Instead of agreeing to pay the Trustee, the Receiver instructed him to file a motion in this Court for reimbursement. This could not be interpreted as an assent to pay, but a deferral to the Court to determine whether or not payment from the Receivership estate was appropriate. The fact that the Receiver did not object is irrelevant because the request that the Trustee file his own motion is enough; all other requests for payment from the Receivership, with the exception of those from Baron's own attorneys, were filed *by the Receiver*. If the Receiver believed that the Trustee was his professional or that he had hired the Trustee to perform legal work on behalf of the Receivership, the Receiver would have filed the motion himself. The Court granted the Motion under the presumption that the Receivership was valid. Now that this misconception has been corrected, the Court has to re-examine this disbursement. Hindsight reveals the Trustee's failure to obtain a valid contract with the Receiver to be a mistake, and a mistake that the Court can not correct.

*iii. Conclusion*

The Court concludes that although the Receivership benefitted from the valuable services rendered by the Trustee, they were not rendered or furnished to the Receivership; the benefit received was a side effect of the work done on the Trustee's own behalf. The responsibilities of

the Trustee and the Receiver overlapped; that either party benefitted from the work of the other does not create an obligation for payment.<sup>9</sup>

4. *Payment of Trustee as "Other Payments"*

Having found that the Trustee is not a Receivership professional, the Court may not reimburse the Trustee for fees incurred. It is therefore irrelevant to consider the *Johnson* factors or § 330(a)(1) of the Bankruptcy Code. *See Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). Although the Court ultimately concludes that the Trustee and his counsel were not Receivership professionals and should not be reimbursed from the Receivership estate for work that did benefit the Receivership, the Court has also been tasked with reviewing those non-receivership fees and expenses which have already been paid by this Court.

The Trustee argues that the Fifth Circuit's opinion authorizes additional payments of non-receivership expenses. The Court disagrees, however. The Fifth Circuit ordered that "other payments *made* from the receivership fund may also be reconsidered as appropriate." *Netsphere*, 703 F.3d at 313 (emphasis added). The intentional use of the past tense requires the court to make a retrospective analysis of what it has already distributed in light of the ruling, but surely does not authorize any additional payments. Further, the Court finds it appropriate to distinguish between the unpaid fees of the Receiver, his counsel and his other employees and the requested but unpaid fees of the Trustee. The Court agrees with the Fifth Circuit that the only motive behind the Trustee's motion for the Receivership was to stop the cycle of new attorneys to allow

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<sup>9</sup> Baron has implied that the failure of this claim for reimbursement from the Trustee shows that the Trustee and Receiver were colluding and fabricating claims to execute the liquidating trust that was necessary to accomplish the confirmation plan. The Court finds that the Trustee legitimately brought this claim against the Receiver and that the subsequent settlement efforts were legitimately engaged in. That the Trustee was ultimately unsuccessful and that the Receiver did not *need* to settle, is hindsight. Given the circumstances, it was perfectly reasonable to assume that either party could be successful. The Court attributes no ill motive on the part of the Trustee or Receiver with regard to this matter.



both this Court and the Bankruptcy Court to efficiently resolve the matters pending before them; there was no malice or collusion and no intent to cause harm to Mr. Baron. Nevertheless, although the Court is not wholly bound by receivership law attributing all Receivership losses on the moving party, the Court cannot avoid the fact that the Trustee promoted the idea of the receivership to this Court. The Receiver, although involved in the litigation and consulted on this matter as the special master in this case, did not undertake the responsibility of the Receivership, except to the extent ordered in the Order Appointing Receiver.

Both the Fifth Circuit's directive and equity considerations prohibit payment of additional fees to the Trustee, but at the same time, the Court finds it would inequitable to require the Trustee to remit the funds it has already received. As Ray Urbanik's testimony at the hearing on this matter illuminated, Munsch Hardt, as Trustee's counsel, encountered daunting legal problems as they sought to do duty to their client and to both the District Court and the Bankruptcy Court. The representation proved much more arduous than the work that an attorney would normally encounter even in a protracted case. Yet, Munsch Hardt never faltered and performed at a very high level. In doing so, the work has undoubtedly benefitted the Receivership; therefore, the Court finds that the Trustee should keep the \$379,761.18 it has been paid. This amount that has already been awarded and that Munsch Hardt is allowed to retain is in recognition of the valuable appellate work that was incurred as a result of Baron's excessive appeals. It in no way is designed to compensate the Trustee or his counsel for any work which they were obligated to do as the Trustee in the Ondova case, but to account for Baron's complicity in the additional fees that were incurred. Equity requires no less.

The result of this decision is that the Trustee's request for fees and expenses above the amount already paid, which equals \$840,014.50, is disallowed. While the Court has no doubt that

the Trustee actually incurred the fees now disallowed, that the fees charged were reasonable in every way and that the fees were incurred in good faith, the Court also believes, for the reasons stated above, that these additional fees cannot be paid, in accordance with the direction of the Fifth Circuit.

**B. GARDERE WYNNE SEWELL**

The Receiver retained Gardere as his counsel from November 24, 2010 to July 6, 2012. In this fee application, Gardere requests a total of \$2,010,862.22 in fees and expenses.<sup>10</sup> They have already been paid \$1,479,571.95<sup>11</sup> and thus request an additional disbursement of \$531,290.27. Of course, the Court must reconsider all professional fees, even those which have already been paid.

Initially, this Court paid Gardere's fee requests in full. By the third application, the Court decided to reduce its payouts to 75% of the total request with the caveat that the Court would consider paying the additional 25% when the Receivership was closed, if there were sufficient funds to do so.

The controlling law when awarding attorneys' fees is found in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). In this case, the Fifth Circuit adopted the lodestar method combined with a variety of other factors to determine the reasonableness of fees requested. The Court agrees that this analysis controls the initial inquiry, but that after determining what fees were reasonable in general, the Court must then discount meaningfully those fees to account for the fact that this Receivership was improper.

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<sup>10</sup> Gardere has already submitted fee applications for this period. Docket Nos. 193, 258, 324, 418, 491, 493, 606, 648, 678, 698, 713, 650, 781, 840, 853, 877, 879, 993 and 1035.

<sup>11</sup> These were approved by this Court in nine orders, Docket Nos. 276, 294, 386, 427, 533, 535, 807, 906 and 1009.

Turning first to the *Johnson* factors, the Court considers: (1) the time and labor required, (2) the novelty and difficult of the questions, (3) the skill requisite to perform the legal service properly, (4) the preclusion of other employment by the attorney due to acceptance of the case, (5) the customary fee for similar work in the community, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation and ability of the attorneys, (10) the undesirability of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases. *Id.* at 717-719. The Court notes that these factors are not fully binding, but serve as guidelines to the Court. *Id.*

Representing the Receiver required a great amount of time and labor. Initially, the Receivership estate was in disarray: both entities and assets needed to be located and controlled, unorganized documents needed to be sorted and reviewed, assets needed to be valued and plans needed to be enacted to manage the domain name portfolios. Gardere, in representing the Receiver, tackled this task immediately. During the course of their representation, Gardere located and acquired 17 additional parties that fell under the Receivership order and began to task of managing these businesses. To obtain these assets, Gardere needed to work with local counsel around the country and the world and file motions in various courts.

Even as the Receiver worked to put together the Receivership estate, he was bombarded with actual and threatened claims of cybersquatting or claims under the Uniform Domain Name Dispute Resolution Policy (“UDRP”). The Court had stayed, as part of the Receivership Order, all actions against any of the Receivership parties. Gardere worked to enforce this stay and, when efficiently possible, to resolve some of these claims. This task was further complicated when the Internet Corporation for Assigned Names and Numbers (“ICANN”) refused to cooperate with

the Receiver. Gardere and the other attorneys it hired to accomplish this task were incredibly successful and no names were lost during their representation.

In addition to these practical tasks associated with organizing and managing the Receivership estate, Baron's prolific activity in the Bankruptcy Court, this Court and in appealing orders to the Fifth Circuit, required Gardere's constant attention. Many of Baron's motions and appeals required responses from the Receiver. Additionally, as part of the Receiver's duty to the Court, his counsel prepared detailed accounts of the work done for the Receivership. Baron's counsel argued that these reports, which could exceed 30 pages, were an unnecessary expense; however, given the circumstance, the Court concludes that Gardere was obligated to prepare these documents. Furthermore, they undercut Baron's other argument that Gardere's application is vague as the work performed has been attentively chronicled throughout the duration of their employment.

Moreover, Gardere's effort brought additional value to the estate. First, Gardere worked to reclaim names that Receivership parties had lost even prior to the invocation of the Receivership. Second, Gardere consolidated all the domain names with one monetizer, Domain Holdings, and negotiated a contract with particularly favorable terms; this resulted in considerable savings to the estate both in terms of the cost and time necessary to manage it. The arrangement with Domain Holdings established that Domain Holdings would perform certain programming services at no charge, guaranteed a minimum monthly monetization revenue and increased the overall monetization revenue. Third, Gardere developed a system for determining the value of domain names that allowed it to make choices regarding the fate of individual names: whether to develop, to park, to sell or to let lapse. This was critical particularly because it enabled counsel to make decisions when faced with cybersquatting or UDRP claims on certain

names and to identify money losing names that should be culled from the portfolios. Although Baron may have elected to run these businesses differently, all of these actions were reasonable and prudent; all of these actions, or some variation, would have required Baron to hire his own counsel to complete them.

Gardere performed this work in good faith and with an abundance of care. They were thoughtful in their presentations to the Court and in assisting in the management of the large estate, in spite of the impediments caused by Baron's obstructive conduct and relentless appeals.

While the Court is of the view that they should have given the appeals more direction and that they should have developed a quicker plan to end the Receivership, Gardere's management of the estate was exemplary. Once Gardere had established procedures for managing and running the estate and had resolved all the legal matters involved in doing so, however, it should have delegated these activities to less costly professional managers and shifted its focus. To the Court, it is clear that Gardere was distracted by the admittedly disruptive actions of Baron and found it difficult to transition to its other requirements. While the Court appreciates the challenges that Gardere faced, there was a great need in this case to push for a prompt decision on appeal and for an equally prompt resolution of the Receivership itself.

It is true that Receiver had no duty to defend the original appeal of the Receivership Order; however, it did have a duty under said Order to defend the subsequent appeals. This was particularly true for any appeals for which it was named as appellee. The evidence presented to the Court clearly shows that Gardere allowed the Trustee to take on the lion's share of the work in this regard. To some extent, this was justified as the Trustee was also obligated to defend the Receivership and duplicating work would have been detrimental to both estates. That being said, had Gardere truly collaborated with the Trustee, they could have split their briefing obligations

and possibly expanded on their arguments. Even at the time, and not just in hindsight, the Court was unclear why Gardere did not take a more proactive role in the appellate process and in moving more quickly toward a wind down. What Gardere did was, in the end, good work; it simply was not performed with a sense of urgency demanded by the circumstances.

There is one additional wrinkle in Gardere's representation. From time to time, they seemed distracted by the possibility that Baron would eventually sue the firm. Of course, such a prospect can always be disconcerting, but it can never be a basis for a lack of performance. Still, as the Court has reflected on the matter, it has not discerned any failure on Gardere's part during its representation of the Receiver in connection with this distraction.

Applying all of these facts to the *Johnson* factors, it is apparent that significant amounts of time and labor were required to control the estate at the outset of the Receivership; these requirements were amplified by the particular nature of the entities involved in the Receivership as the assets were scattered around the country and world. The time required necessarily precluded the particular Gardere attorneys assigned to this case, particularly Barry Golden and Peter Loh, from taking on other employment, though given its excellent reputation as a firm, Gardere as a whole likely did not lose substantial business and was in some capacity able to rearrange client assignments.

It is clear that Gardere undertook tasks that were quite difficult to resolve, particularly as they raised legal issues from a variety of fields—commercial litigation, receivership law, bankruptcy and intellectual property. Furthermore, the estate itself was worth millions of dollars, contained over 200,000 domain names, and several millions of dollars were at stake. Initially, and for some months after the Receivership estate was created, legal analysis was required for the daily management. Eventually, however, once these processes had settled somewhat, the

need to involve legal personnel diminished. Gardere should have delegated many of the tasks its lawyers handled sooner. When it did delegate, the Receiver selected appropriate substitutes. Mr. Cox and Mr. Eckels were adept at handling the UDRP claims in light of the stay. Damon Nelson, who worked for the Receivership during its duration, was a competent manager and was a proper choice given his familiarity with Baron's portfolios prior to the Receivership.

During its representation of the Receiver, Gardere charged on an hourly rate the fees customary for its regular corporate clients. These fees are comparable to those charged by other firms practicing in the community for similar kinds of work. These fees were also reasonable given that Mr. Loh and Mr. Golden have significant experience in commercial litigation and have excellent reputations that correspond to their abilities.

Given these factors, in addition to what the Court has discussed above, the Court finds that had the Receivership been proper, Gardere would have been entitled to approximately 80% of its fees once its billings related to tasks that could have been performed by others was appropriately reduced and several modifications made for duplicative billing when multiple attorneys participated in calls or meetings where one or two would have sufficed. Nevertheless, the Court must still meaningfully discount this award taking into account the directives of the Fifth Circuit. The Court concludes that equity requires that Gardere keep all the fees that it has been paid by this Court, but that no additional payments may be made. This essentially awards Gardere 73% of its requested fees and expenses.

The Court also finds that equity requires that Gardere keep all of its fees and expenses associated with the initial management of the estate; this work was superbly done, added value and comprised work that Baron or his employees would have needed to do in the absence of the Receivership. The only real charge laid against Gardere by Baron, beyond claims that more

attorneys participated in calls and meetings than was necessary, is that Gardere allowed 710 UDRP claims to accumulate and that Baron and his companies will need to resolve them once the Receivership is closed. This is not fairly attributed to Gardere or the Receiver. These claims would have arisen regardless of whether the domain names in question were under Baron's control or under the authority of the Receiver and the stay imposed by the Court. The Court finds that Gardere dealt with these claims in a reasonable manner given the circumstances of the stay. Further, the Court does not conclude, as Baron does, that he will necessarily be bombarded by these claims. Although the Court does not propose a solution at this time, it believes that a remedy can be achieved as part of the wind down process, such as a continuing stay for the necessary amount of time to efficiently address these pending claims.

As for the remainder of the fees, the Court finds that Gardere's duty was to take aggressive control of the appellate litigation in an effort to push it forward to a swifter resolution. While the Court still believes that the improper appeal of every order was the main cause of the unusually long delay in connection with the initial appeal, there is little evidence that Gardere was doing enough to educate the circuit on the problems with delay. All that being said, it is still clear to this Court that the circumstances of this case posed unusual difficulties that explain Gardere's inability to transition as expected; however, although this conduct was reasonable, it prevented Gardere from being as effective as it could have been. For this reason, the Court finds that a meaningful reduction in fees counsels against any additional disbursements, but similarly does not require any disgorgement.

The bottom line, of course, is this Order requires that Gardere forfeits \$531,290.27 in fees where the work was expended and was done in good faith in a reasonable manner. While Gardere could have acted with more urgency, that fact does not discount that the work they did



was of high quality. In the end, however, the Court is of the view that this result is required under the directions from the Fifth Circuit.

### **C. PETER S. VOGEL, RECEIVER**

Peter Vogel served as special master in this case prior the creation of the Receivership. When the Receivership was created, the Court appointed him as the Receiver due to his recognized expertise in technology law and the internet. Vogel has served in this capacity since the Receivership Order issued on November 24, 2010 to the present. His fee application covers the fees of various parties, including himself. The Court will first address those fees by other parties not covered in this Court's previous Order Granting Motion for Fee Application for the Receiver in Regard to Certain Miscellaneous Receiver Professionals (Docket No. 1282), filed May 23, 2013. Then the Court will address the fees of the Receiver himself.

#### *1. Other Receivership Professionals*

In the Court's previous Order, it authorized the payment in full of various employees of the Receiver as follows:

- Joshua Cox in the amount of \$8,733.15. Mr. Cox served as counsel for Receivership party Quantec, LLC and was responsible for handling UDRP claims against domain names in the Quantec portfolio.
- James Eckles in the amount of \$3,150. Mr. Eckles served as counsel for Receivership party Novo Point, LLC and was responsible for handling UDRP claims against domain names in the Novo Point portfolio.
- Jeffrey Harbin in the amount of \$8,572. Mr. Harbin managed the Novo Point and Quantec parties from December 2010 and February 2011.
- Grant Thornton LLP in the amount of \$12,089. Grant Thornton provided CPA services to the Receivership from December 2010 to the present.
- Damon Nelson in the amount of \$18,300. Mr. Nelson managed the Novo Point and Quantec parties from February 2011 to the present.
- Matt Morris in the amount of \$54,572.50. Mr. Morris served as a Receivership expert during the Ondova bankruptcy confirmation hearing.

As part of its ruling, the Court authorizes the payment of any additional fees and expenses incurred by these employees and professionals that accrue until the wind down and close of the Receivership estate. To the extent that the Court has authorized payment to these professionals in the past, the Court finds that these were also appropriate and need not be reduced in any way.

The Court also finds no need to reduce or adjust the payments previously authorized to pay the thirteen law firms outside of Texas which served as counsel for the filing of 28 U.S.C. §754 miscellaneous actions to reach Receivership assets; Thomas Jackson who served as counsel for Novo Point and Quantec between December 2010 and March 2011; Gary Lyon who has served as counsel to the Receiver from December 2010 to the present. All of these parties have been paid in full. Although the Court finds it unlikely that any of these parties will incur additional fees, it authorizes any fees that accrue until the wind down and close of the Receivership.

The Court does take a moment to address the \$95,285.52 authorized and paid to Mr. Martin Thomas, who the Court appointed to represent Baron in the Ondova bankruptcy. Thomas was paid a flat fee of \$5,000 a month for his services. This representation occurred for almost two years before the Court was informed by Thomas that although he had attended all the bankruptcy hearings and had worked with the other attorneys to promote Baron's interests, he never made an appearance before the Bankruptcy Court and never filed anything on Baron's behalf. The Court never intended that Thomas's participation be so limited and finds that he should have consulted both the Bankruptcy Court and this Court if he was confused about the extent of his authority to participate. Essentially, based on his own admission, he was paid for doing relatively little. To date, although Baron has objected to these fees, Thomas has not appeared to defend this payment in light of the revelation that he was not performing the work

that the Court believed him to be doing. At this time the Court neither approves of nor disapproves of the fees already paid to Thomas, but gives leave to Baron to file a motion to compel Thomas to appear before the presiding judge and give testimony as to his fees. The presiding judge will then issue an opinion on whether or not to disgorge any of Thomas's fees.

2. *Peter Vogel*

Vogel requests a total of \$1,250,680 in fees. This Court has already authorized and paid \$708,926, leaving \$527,576 outstanding. Unlike the other professional fees considered by the Court in this Order, these are not attorney's fees. Vogel, although an attorney by trade, took on the non-attorney role of Receiver. His role was to investigate, conserve, hold and manage all the Receivership assets and to perform all acts necessary or advisable to preserve the value of those assets.

Throughout the course of the Receivership, this Court has been impressed with Mr. Vogel's understanding of the domain name industry and the unique legal dynamics associated with it. He accepted and approached his obligations with great care and made thoughtful decisions that benefitted the property under his control. In addition, his task was hindered from the outset by Baron's uncooperative and disruptive litigation tactics.

Baron has raised many objections to the Receiver's fees which the Court finds unpersuasive. The Court has already addressed some of these claims as they also relate to Gardere and will discuss some of these claims below as they relate to Dykema. Of those that apply primarily to the Receiver and not his counsel, the Court turns first to Baron's argument that the Receiver was obligated to distinguish and segregate the services rendered between the specific entities within the Receivership estate under Fifth Circuit law. *Bank of Commerce & Trust Co. v. Hood*, 65 F.2d 281 (5th Cir. 1933). The Court finds that in this regard the Receiver

acted appropriately. Not only did the majority of his activity benefit the estate generally, but the Court also specifically ordered the Receiver to charge his fees against particular accounts. As the Receiver complied with the Court's Orders, the Court finds that the Receiver did not act inappropriately in this regard.

Second, Baron argues that duplicative billings occurred after Dykema was retained when the Receiver would have meetings with three Dykema attorneys at once: Jeff Fine, a bankruptcy specialist; Chris Kratovil, a litigator; and David Schenck, an appellate specialist. Baron argues that there was no need to have all three present at once to advise the Receiver on the same issue. The Court disagrees. This was and is an extremely complex case with many moving parts. The expertise of all three attorneys was often necessary to fully understand the impact of various events in one proceeding on the others. This need extended to hearings before this Court as there were multiple occasions where all three attorneys would be called upon to explain or argue a situation to the Court. The Court finds that these meetings do not constitute duplicative billings.

Third, Baron asserts that no benefit was provided to the estate because the attorney fees for which the Receivership was created, in part, to resolve were never paid. This Court's order explicitly stayed and prohibited payment of those fees until the Fifth Circuit issued its opinion on the Receivership. This charge is irrelevant.

Finally, Baron argues that the Receiver should have quickly settled this case instead of prolonging the Receivership and incurring significant and unnecessary fees. While this would have indeed been a favorable outcome of the case, this Court concludes that any settlement negotiated by the Receiver would have been subject to an immediate objection and appeal to the Fifth Circuit. This objection presupposes that Baron would have complied with whatever settlement the Receiver made, but this Court's experience has been that Baron will often act

against his own self-interest, which likely would have included a rejection of even the most favorable settlement terms. The Court can find no fault with the Receiver's failure to reach a settlement given these circumstances.

Although the Court finds Vogel's work exemplary and entirely appropriate, there are legitimate objections raised by Baron and Netsphere which require the Court to substantially reduce his allowed fees. The major objection is that Vogel performed work as a lead litigator in this case in addition to his work as the Receiver. Mr. Vogel is a capable and well-respected attorney in this field and was certainly qualified to do this work; nevertheless, it was not the work he was appointed to do, especially given that he had retained trial attorneys to do it. As the Receiver, Vogel was to function as the client representative of the estate, meaning that his duties were akin to the general counsel of a corporation involved in a lawsuit. With regard to the litigation, his role was to stay informed of the proceedings before the Court, to appear and address the Court when needed, and to contribute to the general strategy of the litigation. Vogel did do this, but he also expended some time involved in the minutiae of the litigation which should have been left solely to his counsel. The result was that the estate was essentially billed for two lead litigators. This problem is confounded by the fact that Vogel's billings were often generic and repetitive<sup>12</sup>, making it difficult to determine exactly what work was done when.

The Court has no doubt that Vogel's only objective as the Receiver was to ensure that the Receivership was run smoothly and that his expertise could be at the utmost advantage to the Court. Nevertheless, despite the competent work of the Receiver in this area, the Court must reduce the fees incurred for this extra, though unauthorized, activity. Accordingly the Court finds that equity requires the Receiver's fees to be paid at 70%. The Court thereby reduces the

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<sup>12</sup> A majority of entries read "Review pleadings, files, emails, send emails, and related conversations with Receiver's counsel."

Receiver's allowed fees to \$875,476. As the Receiver has already been paid \$708,926, the Court authorizes an additional and final disbursement of \$166,550. Additional fees in the amount of \$361,026 are disallowed, as required by the direction of the Fifth Circuit and as explained herein.

**D. DYKEMA GOSSET**

Dykema was retained as the Receiver's counsel from July 6, 2012 to the present. Dykema now seeks payment for fees and expenses totaling \$1,473,183.12. The Court has already paid Dykema \$398,893.91 and Dykema holds \$737,276.73 in its trust account.

Dykema previously filed six fee applications with the Court.<sup>13</sup> The Court approved all of these applications; however, only two were approved prior to the release of the Fifth Circuit opinion.<sup>14</sup> On January 7, 2013, the Court approved Dykema's Third through Sixth Applications and ordered payment at a 95% rate based on the directive from the Fifth Circuit that the Court discount Receivership professional fees. These fees were paid, but as ordered, were to remain in Dykema's trust account until further order of the Court.

From the outset, the Court has been impressed by Dykema's work on this case, under the remarkable leadership of David Schenck. Until Dykema, it appeared to that Court that little could be done to lift the case above the chaos perpetuated by Baron. Yet, because of their prompt engagement with the issues and thoughtful approach to moving the case forward, Dykema refused to be distracted by all the noise surrounding this case and put it on an appropriate course. Granted, the Court recognizes that in many ways the timing of their entry and the structure developed by Gardere contributed to Dykema's success. Dykema entered the case right as the Fifth Circuit had finally agreed to hear the appeal. Additionally, Gardere's work to organize and

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<sup>13</sup> Dykema filed four applications prior to the release of the Fifth Circuit opinion. Docket Nos. 1050, 1068, 1084 and 1095. Two were filed after the Fifth Circuit opinion. Docket No. 1113 and 1123.

<sup>14</sup> Docket Nos. 1050 and 1068 were approved and paid in full.

manage the Receivership estate allowed Dykema to delegate many tasks which Gardere initially needed to accomplish. Nevertheless, when Dykema came in with fresh eyes, they were able to triage the situation and effectively pursue their obligations.

The Dykema lawyers immediately assessed and developed a plan to tackle the key objectives at the time of their representation: the impending Fifth Circuit oral argument and the need to wind down the Receivership. Within a month of retention, Dykema drafted and filed a detailed omnibus brief defending the Receivership and various orders on appeal. They then prepared for and conducted the oral argument, which their appellate specialist, David Schenck, obviously performed with exceptional skill. In the meantime, Dykema also negotiated with the Trustee to resolve his claim that the Receivership should cover his legal expenses associated with defending the Receivership. A settlement agreement was reached conditioned upon the execution of a transfer of assets from one estate to the other. Having presumably reached an agreement on the issue of the Trustee's fees, Dykema worked with the Trustee to develop a Joint Plan that would close out the bankruptcy estate and return significant funds to Baron. Much of this work was the result of the superior efforts of Dykema's Jeffrey Fine.

This Plan involved the transfer of two domain name portfolios to the bankruptcy estate; this would allow the portfolios to be sold under the Bankruptcy Code and thereby preclude Baron from later attacking the sale. Dykema took a primary role in the auction procedures, working with interested bidders. The Plan was presented first to this Court for preliminary approval. Although the Court declined to specifically approve the plan, it noted that its terms seemed reasonable. An auction was held and the plan was submitted to the Bankruptcy Court for approval. A full confirmation hearing was held before Bankruptcy Judge Jernigan at which the Receiver and Dykema were major participants.

At this hearing, several objections to the plan were raised by Baron through his counsel, many of which were re-argued before this Court for the purposes of determining fees. Baron argued that he was denied adequate discovery regarding the auction and the plan, that the preliminary valuation of the domain names was tens of millions too low, that the auction procedures were improper, that legitimate bidders were denied an opportunity to participate, and that the top two bidders were owned by the same company overseas. Judge Jernigan was not persuaded by Baron's arguments. She found that discovery was provided as required, that the auction procedures were proper, that the valuation of the names was accurate and that no other factors warranted a denial of the plan. The plan was confirmed. It was not, however, ever executed because the Fifth Circuit had issued an interim order, before its final decision, that allowed the auction to occur, but that stayed any transfer of assets.

This Court finds that Baron has not presented any evidence to make this Court disagree with the findings of the Bankruptcy Court. Dykema's role during the auction and confirmation proceedings was proper. In addition to attacking the merits of the auction and Plan itself, which the Court has already found unconvincing, Baron also argues that both the Receiver and the Trustee should have waited to move forward with this plan until after the Fifth Circuit released its opinion; with oral arguments scheduled and heard, there was no need to spend hundreds of thousands in legal fees to move forward with a plan that could be, and was eventually shown to be, moot after the Circuit's ruling. The Court is sympathetic with this argument, but finds that because the Fifth Circuit declined to stay the auction or plan confirmation entirely, that these proceedings were implicitly allowed to continue. If the Fifth Circuit found no need to impose a broad stay, despite anticipating the direction of its own ruling, there was no reason for any of the parties to voluntarily abate, particularly as both this Court and the Bankruptcy Court were urging



prompt resolution and were operating under the impression that the Receivership Order would be affirmed.

After the Fifth Circuit rendered its opinion and the involuntary bankruptcy was filed, Dykema took an active role in that bankruptcy to attempt to preserve the Fifth Circuit's ability to have a rehearing or an en banc ruling. Netsphere has argued that the Receiver had no interest in whether the assets of the Receivership estate went to the involuntary bankruptcy or were returned to their original owner through a wind down process and therefore the Receiver should have had no interest in what happened in the involuntary bankruptcy. The Court concludes, however, that the Receiver did have a continuing obligation to ensure that the Fifth Circuit's opportunity for a rehearing or an en banc opinion was preserved as such an event could have potentially validated the Receivership. Even Baron agrees that the Receiver, by his counsel, had the obligation to protect the Receivership estate from the petitioning creditors, although the Court rejects Baron's assertion that the Receiver was obligated to pursue a show cause against the Petitioning Creditors for violation of the Court's stay. Docket No. 1269 at 12. Furthermore, Baron himself had requested a rehearing. Yet, the Court does find that Dykema's actions in the involuntary proceedings that related to their fees and not the ability of the Circuit to reconsider its opinion are not proper to be paid.

The Court finds that, except for those fees incurred relating solely to their own payment, Dykema's fees and expenses would have been paid in full had this been a proper Receivership. A significant amount of time and labor was required for Dykema to provide expert advice in this case. Not only did Dykema need to catch up with several years of activity in this complex case, but they also needed to prepare briefing for the Fifth Circuit under an extreme deadline. Dykema worked with exceptional diligence to accomplish this task and, at the same time, did so with a

performance of surpassing quality. Dykema also kept the Court informed of all progress and provided helpful insight as the Court proceeded with the case. Simultaneously, the firm's attorneys worked with the Trustee to develop the Joint Plan in the Ondova bankruptcy. This engagement was difficult and in some instances presented issues where there was no clear precedent in this Circuit. In order to perform these tasks within the short time period required, Dykema needed to engage some of its most experienced attorneys, who were then precluded from taking on additional work.

Dykema's fees in this case conform to those charged in the market for regular corporate clients billed at an hourly rate. The firm accepted this representation without any contingencies, except for final approval of all fees and expenses by this Court. The issues tackled and the particular circumstances of this case justify the number of hours that Dykema billed. Ultimately, the Court finds that the firm and its attorneys were diligent in fulfilling their obligations to the Receivership as the Receiver's counsel, and that they did so in an appropriate, thoughtful, highly skilled and efficient manner. None of Dykema's activity contributed in any way to the confusion that prolonged this case and, in fact, the Court believes that Dykema helped to clarify issues and gave helpful insight to all forums involved here. Further, David Schenck testified that in reviewing the final billings, Dykema was particularly conservative in reducing the number of billable hours. The Court therefore concludes that equity requires only a very modest reduction in fees.

The Court finds that Dykema's fees and expenses should be paid at a 98% rate for the period of July 6, 2012 to December 18, 2012. The Court finds that Dykema's fees and expenses incurred between December 18, 2012 and April 4, 2013, when the Mandate was issued, should be paid at a 90% rate to account for the fact that billing hours would have been reduced to some

extent given that the Receivership had been found to be improper and to account for the fees incurred solely defending Dykema's own interests as relates to their fees. Finally, the Court awards all fees and expenses incurred by Dykema during the month of April at a 95% rate as the majority of the work during this period was in an attempt to reach a global settlement in this case.

For the period between July 6 and December 18, 2012, Dykema billed \$1,153,247.11.<sup>15</sup> The Court now reduces this amount to \$1,130,182.17. For the period between December 18, 2012 and April 2013, Dykema billed \$392,811.53. The Court now reduces this amount to \$353,530.37. For the month of April, Dykema billed \$82,095. The Court now reduces this amount to \$77,990.25. The total allowed for Dykema is \$1,561,702.79. The firm has already been paid \$398,893.91, leaving the amount due to be \$1,162,808.88. This figure will be rounded down to \$1,130,000 to be certain of a conservative approach. Dykema is ordered to continue to maintain the \$737,276.72 currently held in its trust account. If the involuntary bankruptcy is denied, then these trusts proceeds as well as other proceeds held by the Receiver in the sum of \$392,724 will be paid to meet the requirements of this Order. If the involuntary bankruptcy is granted, then Bankruptcy Judge Jernigan will enter the necessary orders to finalize payment. Even then, despite the exceptional and exemplary performance of the firm's lawyers, Dykema's entitlements are still discounted by over \$100,000. Given that David Schenck testified that he adjusted downward his billing statements by tens of thousands of dollars, this engagement

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<sup>15</sup> Dykema submitted an invoice for the month of December that did not distinguish between fees incurred before and after the Fifth Circuit's opinion. During that month, Dykema billed 193.90 attorney and paralegal hours. 72.7 of those hours occurred on or after December 18. This means that approximately 62% of the billings were incurred prior to the ruling. The Court estimates that this amount was equal to approximately \$63,407.1645.

certainly did not provide a premium that a first rate performance of this nature normally would call for.

In making this ruling, the Court denies Dykema's assertion that the funds in its trust account are earmarked for itself. The Court also orders that Dykema's priority be established pursuant to the Bankruptcy Code if an involuntary bankruptcy is approved. Dykema has claimed that its contract with the Receiver gives it priority over other professionals, but the Court finds that this agreement will be effectual if there is no order for relief in the involuntary bankruptcy; otherwise, the Bankruptcy Court will consider these terms under the Bankruptcy Code.

#### **VI. GENERAL OBJECTION BY PETITIONING CREDITORS**

The Petitioning Creditors did not file any specific objections to any of the fee applications before the Court. They did, however, file a general objection asking the Court to award fees such that the involuntary bankruptcy estate would have sufficient funds after the payment of priority parties to pay the Petitioning Creditors in full. These claims total approximately \$1,400,000.

In support of this argument, the Petitioning Creditors point to the stay imposed by this Court with the creation of the Receivership that prohibited any attempts to collect their unpaid fees in any court proceedings. Further, although the Court initially intended to pay the former attorneys through the Receivership, it stayed its order and instructed the Receiver to refrain making such payments until the Fifth Circuit ruled on the Receivership. As part of this Order, the Court instructed the Receiver to segregate sufficient funds to pay these attorneys when the Fifth Circuit opinion was released. The Receiver, apparently, did not segregate these funds. In light of these considerations, the Petitioning Creditors assert that equity warrants a consideration of the impact any award of professional fees would have on their pending claims.

While the Court joins the former attorneys and every other participant in this matter with the frustrations engendered by the delay, caused by the appeal and the stay on actions against Baron, the Court does not find this sufficiently compelling to alter its determination on fees.<sup>16</sup> If the Bankruptcy Court had dealt with this issue, the Court believes it would not have taken into account the claims of the Petitioning Creditors.

#### **VII. PAYMENT OF FEES IN ACCORDANCE WITH THIS ORDER**

The Court understands that if an order for relief is entered in the Bankruptcy Court that these claims will have priority consideration under 11 U.S.C. §§ 330, 503 and 507 and will be paid under those sections accordingly. If an order for relief is denied and this Court must begin the wind down process as instructed by the Fifth Circuit, the Court ORDERS that any monies paid out during the wind down process be paid in the following order:

1. Dykema Gosset
2. Other unpaid Receivership professionals under the Order Granting Motion for Fee Application for the Receiver in Regard to Certain Miscellaneous Receivership Professionals (Docket No. 1282)
3. Receiver, Peter Vogel

Each claim is to be paid in full before the next claimant may receive anything. These fees must be paid from the available cash in the Receivership estate and no other assets may be sold to satisfy these claims.

#### **VIII. CONCLUSION**

As articulated above, the Court authorizes additional payments to the Receiver in the amount of \$166,550 and to Dykema in the amount of \$1,130,000. These additional allowed fees total \$1,296,550. The Court understands that payment now depends on the cash reserves of the

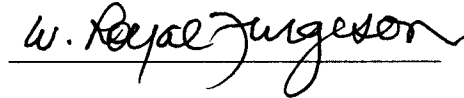
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<sup>16</sup> The Court is also of the opinion that the Receiver's failure to segregate the funds owed to the former attorneys is irrelevant as the Fifth Circuit found that this Court could not order the payment of these fees from the Receivership estate.

Receivership estate. The Court has allowed Gardere and the Trustee to retain the funds already distributed, but will authorize no more.

It is so ORDERED.

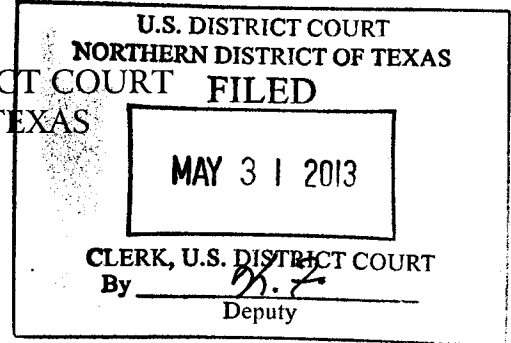
SIGNED this 29<sup>th</sup> day of May, 2013.



W. Royal Furgeson, Jr.

Senior United States District Judge

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



NETSPHERE, INC., et al

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§  
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Plaintiffs,

v.

JEFFREY BARON AND  
ONDOVA LIMITED COMPANY

Defendants.

CIVIL ACTION NO. 3:09-CV-988-F

**ORDER**

By **ORDER** of this Court, the Sealed Memorandum signed on May 31, 2013, the Sealed transcript of the in-camera hearing held on February 7, 2013 and the Sealed transcript of the telephonic conference call held on February 12, 2013, shall be placed under seal. None of these matters shall be unsealed and none shall be available to the parties or their attorneys or anyone else except by a Court order.

It is so **ORDERED** on this 31<sup>st</sup> day of May, 2013.

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ROYAL FURGESON  
Senior United States District Judge

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

RE-ASSIGNMENT ORDER

It is hereby **ORDERED** that the following civil cases assigned to the docket of Senior United States District Judge Royal Furgeson be returned to the U.S. District Clerk's Office for re-assignment. All orders, including scheduling order deadlines, shall remain in effect until and unless otherwise ordered by the assigning judge.

3:08-CV-1975-F	3:11-CV-0572-F	3:11-CV-2709-F
3:08-CV-2132-F	3:11-CV-0785-F	3:11-CV-3444-F
3:09-CV-0137-F	3:11-CV-0879-F	3:12-CV-0244-F
3:09-CV-0988-F	3:11-CV-0915-F	3:12-CV-0616-F
3:09-CV-1848-F	3:11-CV-0936-F	3:12-CV-1318-F
3:10-CV-1033-F	3:11-CV-1258-F	3:12-CV-1674-F
3:10-CV-1280-F	3:11-CV-1422-F	3:12-CV-1910-F
3:10-CV-1884-F	3:11-CV-1758-F	3:13-CV-1294-F
3:10-CV-2408-F	3:11-CV-1971-F	
3:11-CV-0016-F	3:11-CV-2337-F	
3:11-CV-0182-F	3:11-CV-2388-F	

Signed this 31<sup>st</sup> day of May, 2013.

  
\_\_\_\_\_  
ROYAL FURGESON  
SENIOR UNITED STATES DISTRICT JUDGE



**United States District Court**  
NORTHERN DISTRICT OF TEXAS  
1100 COMMERCE STREET, RM. 1528  
DALLAS, TEXAS 75242

CHAMBERS OF  
**SIDNEY A. FITZWATER**  
CHIEF JUDGE  
(214) 753-2333

June 3, 2013

Mrs. Karen Mitchell  
Clerk of Court  
United States District Court  
1100 Commerce Street, Rm. 1452  
Dallas, Texas 75242

Re: *Netsphere Inc et al v Baron et al.*  
Civil Action No. 3:09-CV-0988-D

*Sherman et al v Emke et al.*  
Civil Action No. 3:11-CV-1971-D

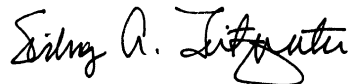
*Emke et al v Sherman, et al*  
Civil Action No. 3:12-CV-0244-D

*Baron et al v Sherman*  
Civil Action No. 3:13-CV-1294-D

Dear Mrs. Mitchell:

I desire to recuse myself in the referenced civil actions.

Respectfully,



Sidney A. Fitzwater  
Chief Judge

**United States Court of Appeals**  
FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

TEL. 504-310-7700  
600 S. MAESTRI PLACE  
NEW ORLEANS, LA 70130

May 22, 2013

Ms. Karen S. Mitchell  
Northern District of Texas, Dallas  
United States District Court  
1100 Commerce Street  
Earle Cabell Federal Building  
Room 1452  
Dallas, TX 75242

~~United States Courts Southern District of Texas  
United States District Court Southern District of Texas  
FILED  
MAY 24 2013  
RECEIVED  
MAY 24 2013  
David J. Bradley, Clerk of Court  
Clerk of Court~~

Nos. 10-11202, 11-10113, 11-10289, 11-10290, 11-10390,  
11-10501, 12-10003, 12-10489, 12-10657, 12-10804,  
12-11082 Netsphere, Inc. v. Jeffrey Baron  
USDC No. 3:09-CV-988

Enclosed for the district court and counsel is the approved bills of costs. The bills of costs were inadvertently not issued with the mandate on April 19, 2013.

Sincerely,

LYLE W. CAYCE, Clerk

*Mary Stewart*  
By: Mary C. Stewart, Deputy Clerk  
504-310-7694

cc w/encl:

- Mr. Thomas Fenton Allen Jr.
- Mr. Craig Alan Capua
- Mr. Stephen Rudolph Cochell
- Mr. Curt M. Covington
- Mr. Richard M. Hunt
- Mr. Edwin Paul Keiffer
- Mr. Christopher D. Kratovil
- Mr. Gary Gene Lyon
- Mr. Christopher Anthony Payne
- Mr. David John Schenck
- Mr. Gary N. Schepps
- Mr. Michael John Stanley
- Mr. Jeffrey Michael Sutherland
- Mr. Raymond James Urbanik
- Mr. Peter S. Vogel

U.S. DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
FILED  
MAY 31 2013  
CLERK, U.S. DISTRICT COURT  
By \_\_\_\_\_  
Deputy

80th District Court  
 District of Texas  
 MAY 24 2013  
 David J. Bradley, Clerk of Court  
 Clerk of Court  
 RECEIVED

Case: 10-11202 Document: 00512099112 Page: 1 Date Filed: 01/02/2013  
 Case: 10-11202 Document: 00512087840 Page: 1 Date Filed: 12/18/2012  
 UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

**BILL OF COSTS**

NOTE: The Bill of Costs is due in this office within 14 days from the date of the opinion, See FED. R. APP. P. & 5th CIR. R. 39. Untimely bills of costs must be accompanied by a separate motion to file out of time, which the court may deny.

Netisphere, Inc. et al v. Jeffrey Baron, et al (and consolidated cases) No. 10-11202

The Clerk is requested to tax the following costs against: Daniel J. Sherman

COSTS TAXABLE UNDER Fed. R. App. P. & 5th Cir. R. 39	REQUESTED				ALLOWED (If different from amount requested)			
	No. of Copies	Pages Per Copy	Cost per Page*	Total Cost	No. of Documents	Pages per Document	Cost per Page*	Total Cost
Docket Fee (\$450.00)				450.00				450.00
Appendix or Record Excerpts	7	63	8.8	38.80	7	63	.88	38.81
Appellant's Brief	10	74	16.8	124.32	10	73	.15	111.00
Appellee's Brief								
Appellant's Reply Brief	10	56	16.8	94.08	10	56	.15	84.00
Other: Covers & Binding	27		4.09	110.43	27		1.105	44.85
				Total \$ 817.63	Costs are taxed in the amount of \$ 728.310			

Costs are hereby taxed in the amount of \$ 728.310 this 22nd day of January, 2013.

State of Texas / Dallas  
 County of Texas / Dallas  
 LYLE W. GAYCE, CLERK  
 By Daniel J. Kelley  
 Deputy Clerk

I Gary N. Schepps do hereby swear under penalty of perjury that the services for which fees have been charged were incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy of this Bill of Costs was this day mailed to opposing counsel, with postage fully prepaid thereon. This 2nd day of January, 2013.

/s/ Gary N. Schepps (Signature)  
 Attorney for Jeffrey Baron

Case: 10-11202 Document: 00512099115 Page: 1 Date Filed: 01/02/2013  
 Case: 10-11202 Document: 00512087840 Page: 1 Date Filed: 12/18/2012  
 UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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**BILL OF COSTS**

NOTE: The Bill of Costs is due in this office within 14 days from the date of the opinion. See Fed. R. App. P. & 5th Cir. R. 39. Untimely bills of costs must be accompanied by a separate motion to file out of time, which the court may deny.

Netsphere, Inc. et al

v. Jeffrey Baron, et al (and consolidated cases)

No. 11-10113

The Clerk is requested to tax the following costs against: Peter S. Vogel

COSTS TAXABLE UNDER Fed. R. App. P. & 5th Cir. R. 39	REQUESTED				ALLOWED (If different from amount requested)			
	No. of Copies	Pages Per Copy	Cost per Page*	Total Cost	No. of Documents	Pages per Document	Cost per Page*	Total Cost
Docket Fee (\$450.00)				450.00				450.00
Appendix or Record Excerpts	7	71	8.8	43.73	7	71	.088	49.74
Appellant's Brief	10	54	16.8	90.72	10	53	.15	79.80
Appellee's Brief								
Appellant's Reply Brief	10	43	16.8	72.24	10	43	.15	104.50
Other: Covers + Binding	27		4.09	110.43	27		1.05	44.55
				Total \$ 767.72	Costs are taxed in the amount of \$ 1082.29			

Costs are hereby taxed in the amount of \$ 1082.29 this 22nd day of January, 2013.

State of Texas  
 County of Dallas

LYLE W. CARRE, CLERK  
 By [Signature]  
 Deputy Clerk

I, Gary N. Schepps, do hereby swear under penalty of perjury that the services for which fees have been charged were incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy of this Bill of Costs was this day mailed to opposing counsel, with postage fully prepaid thereon. This 2nd day of January, 2013.

/s/ Gary N. Schepps (Signature)

\*SEE REVERSE SIDE FOR RULES GOVERNING TAXATION OF COSTS

Attorney for Novo Point LLC and Quantec LLC

Case: 10-11202 Document: 00512099118 Page: 1 Date Filed: 01/02/2013  
 Case: 10-11202 Document: 00512087840 Page: 1 Date Filed: 12/18/2012  
 UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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**BILL OF COSTS**

NOTE: The Bill of Costs is due in this office within 14 days from the date of the opinion, See FED. R. APP. P. & 5<sup>th</sup> CIR. R. 39. Untimely bills of costs must be accompanied by a separate motion to file out of time, which the court may deny.

Netsphere, Inc. et al v. Jeffrey Baron et al (and consolidated cases) No. 11-10289

The Clerk is requested to tax the following costs against: Daniel J. Sherman

COSTS TAXABLE UNDER Fed. R. App. P. & 5 <sup>th</sup> Cir. R. 39	REQUESTED				ALLOWED (If different from amount requested)			
	No. of Copies	Pages Per Copy	Cost per Page*	Total Cost	No. of Documents	Pages per Document	Cost per Page*	Total Cost
Docket Fee (\$450.00)				450.00				450.00
Appendix or Record Excerpts	7	78	8.8	48.05	7	78	.088	48.05
Appellant's Brief	10	38	16.8	63.84	10	37	.15	56.80
Appellee's Brief								
Appellant's Reply Brief	10	58	16.8	97.44	10	58	.15	87.00
Other: Covers + Binding	27		4.09	110.43	27		1.05	44.55
				Total \$ 769.76	Costs are taxed in the amount of \$ 685.10			

Costs are hereby taxed in the amount of \$ 685.10 this 22nd day of January, 2013.

State of Texas / Dallas  
 County of Texas / Dallas  
 LYLE W. CAMPBELL, CLERK  
 By: [Signature] Deputy Clerk

I Gary N. Schepps do hereby swear under penalty of perjury that the services for which fees have been charged were incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy of this Bill of Costs was this day mailed to opposing counsel, with postage fully prepaid thereon. This 2nd day of January, 2013.

/s/ Gary N. Schepps (Signature)  
 Attorney for Jeffrey Baron

\*SEE REVERSE SIDE FOR RULES GOVERNING TAXATION OF COSTS

Case: 10-11202 Document: 00512099121 Page: 1 Date Filed: 01/02/2013  
 Case: 10-11202 Document: 00512087840 Page: 1 Date Filed: 12/18/2012  
 UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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**BILL OF COSTS**

NOTE: The Bill of Costs is due in this office within 14 days from the date of the opinion, See FED. R. App. P. & 5<sup>th</sup> Cir. R. 39. Untimely bills of costs must be accompanied by a separate motion to file out of time, which the court may deny.

Netsphere, Inc. et al v. Jeffrey Baron, et al (and consolidated cases) No. 11-10290

The Clerk is requested to tax the following costs against: Peter S. Vogel

COSTS TAXABLE UNDER Fed. R. App. P. & 5 <sup>th</sup> Cir. R. 39	REQUESTED				ALLOWED (If different from amount requested)			
	No. of Copies	Pages Per Copy	Cost per Page*	Total Cost	No. of Documents	Pages per Document	Cost per Page*	Total Cost
Docket Fee (\$450.00)				450.00				450.00
Appendix or Record Excerpts	7	70	8.8	43.12	7	70	.088	43.12
Appellant's Brief	10	35	16.8	78.32	10	35	.15	52.50
Appellee's Brief								
Appellant's Reply Brief	10	19	16.8	16.8	10	19	.19	28.50
Other: Covers + Binding	27		4.09	110.43	27		1.05	44.55
				Total \$ 735.79	Costs are taxed in the amount of \$ 218.107			

Costs are hereby taxed in the amount of \$ 218.107 this 22<sup>nd</sup> day of January, 2013.

State of Dallas  
 County of Dallas  
 LYLE W. RAYCE, CLERK  
 By [Signature]  
 Deputy Clerk

I Gary N. Schepps, do hereby swear under penalty of perjury that the services for which fees have been charged were incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy of this Bill of Costs was this day mailed to opposing counsel, with postage fully prepaid thereon. This 2nd day of January, 2013.

/s/ Gary N. Schepps (Signature)  
 Attorney for Novo Point LLC and Quantec LLC

Case: 10-11202 Document: 00512099127 Page: 1 Date Filed: 01/02/2013  
 Case: 10-11202 Document: 00512087840 Page: 1 Date Filed: 12/18/2012  
 UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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**BILL OF COSTS**

NOTE: The Bill of Costs is due in this office within 14 days from the date of the opinion, See FED. R. APP. P. & 5th CIR. R. 39. Untimely bills of costs must be accompanied by a separate motion to file out of time, which the court may deny.

Netsphere, Inc. et al v. Jeffrey Baron, et al (and consolidated cases) No. 11-10390

The Clerk is requested to tax the following costs against: Daniel J. Sherman

COSTS TAXABLE UNDER Fed. R. App. P. & 5 <sup>th</sup> Cir. R. R. 39	REQUESTED				ALLOWED (If different from amount requested)				
	No. of Copies	Pages Per Copy	Cost per Page*	Total Cost	No. of Documents	Pages per Document	Cost per Page*	Total Cost	
Docket Fee (\$450.00)				450.00				450.00	
Appendix or Record Excerpts	7	86	8.8	52.98	7	86	.088	52.98	
Appellant's Brief	10	39	16.8	65.52	10	39	.15	58.50	
Appellee's Brief									
Appellant's Reply Brief	10	47	16.8	78.96	10	47	.15	70.50	
Other: Covers + Binding	27		4.09	110.43	27		1.105	44.55	
				Total \$ 757.89					Total \$ 1076.53

Costs are hereby taxed in the amount of \$ 1076.53 this 22nd day of January, 2013.

State of Texas / Dallas  
 LYLE W. CAYCE, CLERK  
 By *[Signature]*  
 Deputy Clerk

I Gary N. Schepps do hereby swear under penalty of perjury that the services for which fees have been charged were incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy of this Bill of Costs was this day mailed to opposing counsel, with postage fully prepaid thereon. This 2nd day of January, 2013.

/s/ Gary N. Schepps (Signature)

\*SEE REVERSE SIDE FOR RULES GOVERNING TAXATION OF COSTS

Attorney for Jeffrey Baron

Case: 10-11202 Document: 00512099128 Page: 1 Date Filed: 01/02/2013  
 Case: 10-11202 Document: 00512087840 Page: 1 Date Filed: 12/18/2012  
 UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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**BILL OF COSTS**

NOTE: The Bill of Costs is due in this office within 14 days from the date of the opinion, See FED. R. APP. P. & 5<sup>th</sup> CIR. R. 39. Untimely bills of costs must be accompanied by a separate motion to file out of time, which the court may deny.

NetSphere, Inc. et al

v. Jeffrey Baron, et al (and consolidated cases)

No. 11-10390

The Clerk is requested to tax the following costs against: Daniel J. Sherman

COSTSTAXABLE UNDER Fed. R. App. P. & 5 <sup>th</sup> Cir. R. 39	REQUESTED				ALLOWED (If different from amount requested)			
	No. of Copies	Pages Per Copy	Cost per Page*	Total Cost	No. of Documents	Pages per Document	Cost per Page*	Total Cost
Docket Fee (\$450.00)								
Appendix or Record Excerpts								
Appellant's Brief								
Appellee's Brief								
Appellant's Reply Brief	10	47	16.8	78.96	10	47	16.8	70.50
Other: Covers + Binding	10		4.09	40.90	10		1.00	10.50
Total \$				<u>119.86</u>	Costs are taxed in the amount of \$ <u>87.00</u>			

Costs are hereby taxed in the amount of \$ 87.00 this 22nd day of January, 2013.

State of Texas / Dallas  
 County of Texas / Dallas

LYLE W. GAYCE, CLERK  
 By [Signature]  
 Deputy Clerk

I, Gary N. Schepps, do hereby swear under penalty of perjury that the services for which fees have been charged were incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy of this Bill of Costs was this day mailed to opposing counsel, with postage fully prepaid thereon. This 2nd day of January, 2013.

/s/ Gary N. Schepps

(Signature)

\*SEE REVERSE SIDE FOR RULES GOVERNING TAXATION OF COSTS

Attorney for Quantec LLC and Novo Point LLC



Case: 10-11202 Document: 00512099129 Page: 1 Date Filed: 01/02/2013  
 Case: 10-11202 Document: 00512087840 Page: 1 Date Filed: 12/18/2012  
 UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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**BILL OF COSTS**

**NOTE:** The Bill of Costs is due in this office within 14 days from the date of the *opinion*, See FED. R. App. P. & 5<sup>th</sup> CIR. R. 39. Untimely bills of costs must be accompanied by a separate motion to file out of time, which the court may deny.

Netsphere, Inc. et al v. Jeffrey Baron, et al (and consolidated cases) No. 11-10390

The Clerk is requested to tax the following costs against: Peter S. Vogel

COSTS TAXABLE UNDER Fed. R. App. P. & 5 <sup>th</sup> Cir. R. 39	REQUESTED				ALLOWED (If different from amount requested)			
	No. of Copies	Pages Per Copy	Cost per Page*	Total Cost	No. of Documents	Pages per Document	Cost per Page*	Total Cost
Docket Fee (\$450.00)								
Appendix or Record Excerpts								
Appellant's Brief								
Appellee's Brief								
Appellant's Reply Brief	10	19	16.8	34.93	10	19	1.15	28.50
Other: Covers + Binding	10		4.09	40.90	10		1.05	10.50
Total \$ <u>7282</u>					Costs are taxed in the amount of \$ <u>49.00</u>			

Costs are hereby taxed in the amount of \$ 49.00 this 22nd day of January, 2013.

State of Texas / Dallas  
 County of Texas / Dallas  
 LYLE W. CANACE, CLERK  
 By [Signature]  
 Deputy Clerk

I Gary N. Schepps, do hereby swear under penalty of perjury that the services for which fees have been charged were incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy of this Bill of Costs was this day mailed to opposing counsel, with postage fully prepaid thereon. This 2nd day of January, 2013.

/s/ Gary N. Schepps (Signature)

\*SEE REVERSE SIDE FOR RULES GOVERNING TAXATION OF COSTS  
 Attorney for Novo Point LLC and Quantec LLC

Case: 10-11202 Document: 00512099132 Page: 1 Date Filed: 01/02/2013  
 Case: 10-11202 Document: 00512087840 Page: 1 Date Filed: 12/18/2012  
 UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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**BILL OF COSTS**

**NOTE:** The Bill of Costs is due in this office *within 14 days from the date of the opinion, See FED. R. APP. P. & 5<sup>TH</sup> CIR. R. 39.* Untimely bills of costs must be accompanied by a separate motion to file out of time, which the court may deny.

Netisphere, Inc. et al

v. Jeffrey Baron, et al (and consolidated cases)

No. 11-10501

The Clerk is requested to tax the following costs against: Daniel J. Sherman and Peter S. Vogel

COSTS TAXABLE UNDER Fed. R. App. P. & 5 <sup>th</sup> Cir. R. 39	REQUESTED				ALLOWED (If different from amount requested)			
	No. of Copies	Pages Per Copy	Cost per Page*	Total Cost	No. of Documents	Pages per Document	Cost per Page*	Total Cost
Docket Fee (\$450.00)				450.00				450.00
Appendix or Record Excerpts	7	122	8.8	75.15	7	120	0.088	73.92
Appellant's Brief	10	89	16.8	149.52	10	89	.15	133.50
Appellee's Brief								
Appellant's Reply Brief								
Other: Covers + Binding	17		4.09	69.83	17		1.65	28.05
				Total \$ <u>744.32</u>	Costs are taxed in the amount of \$ <u>685.47</u>			

Costs are hereby taxed in the amount of \$ 685.47 this 22nd day of January, 2013.

State of Texas / Dallas  
 County of Texas / Dallas

LYLE W. CRYCE, CLERK  
 By [Signature]  
 Deputy Clerk

I GARY N. SCHEPPS, do hereby swear under penalty of perjury that the services for which fees have been charged were incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy of this Bill of Costs was this day mailed to opposing counsel, with postage fully prepaid thereon. This 2nd day of January, 2013.

/s/ Gary N. Schepps

(Signature)

\*SEE REVERSE SIDE FOR RULES GOVERNING TAXATION OF COSTS

Attorney for Jeffrey Baron, Novo Point LLC & Quantec I

Case: 10-11202 Document: 00512099135 Page: 1 Date Filed: 01/02/2013  
 Case: 10-11202 Document: 00512087840 Page: 1 Date Filed: 12/18/2012  
 UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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**BILL OF COSTS**

NOTE: The Bill of Costs is due in this office within 14 days from the date of the opinion, See FED. R. APP. P. & 5<sup>TH</sup> CIR. R. 39. Untimely bills of costs must be accompanied by a separate motion to file out of time, which the court may deny.

Netsphere, Inc. et al v. Jeffrey Baron, et al (and consolidated cases) No. 12-10003

The Clerk is requested to tax the following costs against: Daniel J. Sherman and Peter S. Vogel

COSTS TAXABLE UNDER Fed. R. App. P. & 5 <sup>th</sup> Cir. R. 39	REQUESTED				ALLOWED (If different from amount requested)			
	No. of Copies	Pages Per Copy	Cost per Page*	Total Cost	No. of Documents	Pages per Document	Cost per Page*	Total Cost
Docket Fee (\$450.00)				450.00				450.00
Appendix or Record Excerpts	7	104	8.8	64.06	7	104	.088	64.00
Appellant's Brief	10	89	16.8	149.52	10	89	.15	133.50
Appellee's Brief								
Appellant's Reply Brief	10	60	16.8	100.80	10	60	.15	90.00
Other: Covers + Binding	27		4.09	110.43	27		1.05	44.55
				Total \$ 874.81				
					Costs are taxed in the amount of \$ 782.11			

Costs are hereby taxed in the amount of \$ 782.11 this 22nd day of January, 2013.

State of Texas / Dallas  
 County of Texas / Dallas  
 LYLE W. CAYCE, CLERK  
 By [Signature] Deputy Clerk

I Gary N. Schepps do hereby swear under penalty of perjury that the services for which fees have been charged were incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy of this Bill of Costs was this day mailed to opposing counsel, with postage fully prepaid thereon. This 2nd day of January, 2013.

/s/ Gary N. Schepps (Signature)  
 Attorney for Jeffrey Baron, Novo Point LLC and Quantle

\*SEE REVERSE SIDE FOR RULES GOVERNING TAXATION OF COSTS

Case: 10-11202 Document: 00512099138 Page: 1 Date Filed: 01/02/2013  
 Case: 10-11202 Document: 00512087840 Page: 1 Date Filed: 12/18/2012  
 UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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**BILL OF COSTS**

NOTE: The Bill of Costs is due in this office within 14 days from the date of the opinion, See FED. R. APP. P. & 5th CIR. R. 39. Untimely bills of costs must be accompanied by a separate motion to file out of time, which the court may deny.

Netisphere, Inc, et al v. Jeffrey Baron, et al (In re Novo Point LLC v Daniel J. She No. 12-10444)

The Clerk is requested to tax the following costs against: Daniel J. Sherman

COSTS TAXABLE UNDER Fed. R. App. P. & 5 <sup>th</sup> Cir. R. R. 39	REQUESTED				ALLOWED (If different from amount requested)			
	No. of Copies	Pages Per Copy	Cost per Page*	Total Cost	No. of Documents	Pages per Document	Cost per Page*	Total Cost
Docket Fee (\$450.00)				450.00				450.00
Appendix or Record Excerpts								
Appellant's Brief	10	63	16.8	105.84	10	63	15	94.50
Appellee's Brief								
Appellant's Reply Brief								
Other: Covers + Binding	6		4.09	81.80	6		1.05	9.90
				Total \$ 637.64				

Costs are hereby taxed in the amount of \$ 554.40 this 22nd day of January, 2013.

State of Texas / Dallas County of Dallas

LYLE W. CANCE, CLERK  
 By [Signature]  
 Deputy Clerk

I Gary N. Schepps, do hereby swear under penalty of perjury that the services for which fees have been charged were incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy of this Bill of Costs was this day mailed to opposing counsel, with postage fully prepaid thereon. This 2nd day of January, 2013.

/s/ Gary N. Schepps (Signature)

\*SEE REVERSE SIDE FOR RULES GOVERNING TAXATION OF COSTS

Attorney for Novo Point LLC

Case: 10-11202 Document: 00512099141 Page: 1 Date Filed: 01/02/2013  
 Case: 10-11202 Document: 00512087840 Page: 1 Date Filed: 12/18/2012  
 UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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**BILL OF COSTS**

**NOTE:** The Bill of Costs is due in this office within 14 days from the date of the opinion, See FED. R. APP. P. & 5<sup>th</sup> CIR. R. 39. Untimely bills of costs must be accompanied by a separate motion to file out of time, which the court may deny.

Netsphere, Inc. et al

v. Jeffrey Baron, et al (and consolidated cases)

No. 12-10489 + 12-10657

The Clerk is requested to tax the following costs against: Daniel J. Sherman and Peter S. Vogel

COSTS TAXABLE UNDER Fed. R. App. P. & 5 <sup>th</sup> Cir. R. 39	REQUESTED				ALLOWED (If different from amount requested)			
	No. of Copies	Pages Per Copy	Cost per Page*	Total Cost	No. of Documents	Pages per Document	Cost per Page*	Total Cost
Docket Fee (\$450.00)				450.00				450.00
Appendix or Record Excerpts	7	127	8.8	78.23	7	127	.088	78.23
Appellant's Brief	10	115	16.8	193.20	10	115	.15	172.50
Appellee's Brief								
Appellant's Reply Brief	10	73	16.8	162.64	10	73	.15	109.50
Other: Covers + Binding	27		4.09	110.43	27		1.65	44.55
				Total \$ 954.50	Costs are taxed in the amount of \$ 854.78			

Costs are hereby taxed in the amount of \$ 854.78 this 22nd day of January, 2013.

State of Texas / Dallas  
 County of Texas / Dallas

LYLE W. CAYCE, CLERK  
 By [Signature]  
 Deputy Clerk

I, Gary N. Schepps, do hereby swear under penalty of perjury that the services for which fees have been charged were incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy of this Bill of Costs was this day mailed to opposing counsel, with postage fully prepaid thereon. This 2nd day of January, 2013.

/s/ Gary N. Schepps

(Signature)

\*SEE REVERSE SIDE FOR RULES GOVERNING TAXATION OF COSTS

Attorney for Jeffrey Baron, Novo Point LLC + Quantec

**BILL OF COSTS**

NOTE: The Bill of Costs is due in this office within 14 days from the date of the opinion. See FED. R. APP. P. & 5th CIR. R. 39. Untimely bills of costs must be accompanied by a separate motion to file out of time, which the court may deny.

Netsphere, Inc. et al

v. Jeffrey Baron, et al (and consolidated cases)

No. 12-10804

The Clerk is requested to tax the following costs against: Daniel J Sherman and Peter S. Vogel

COSTS TAXABLE UNDER Fed. R. App. P. & 5 <sup>th</sup> Cir. R. 39	REQUESTED				ALLOWED (If different from amount requested)			
	No. of Copies	Pages Per Copy	Cost per Page*	Total Cost	No. of Documents	Pages per Document	Cost per Page*	Total Cost
Docket Fee (\$450.00)				450.00				450.00
Appendix or Record Excerpts								
Appellant's Brief								
Appellant's Brief								
Appellant's Reply Brief								
Other:								
				Total \$ <u>450.00</u>				
				Costs are taxed in the amount of \$		<u>450.00</u>		

Costs are hereby taxed in the amount of \$ 450.00 this 22nd day of January, 2013.

State of Texas  
 County of Dallas

LYLE W. CAROE, CLERK  
 By [Signature]  
 Deputy Clerk

I Gary N. Schepps, do hereby swear under penalty of perjury that the services for which fees have been charged were incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy of this Bill of Costs was this day mailed to opposing counsel, with postage fully prepaid thereon. This 2nd day of January, 2013.

/s/ Gary N. Schepps

(Signature)

\*SEE REVERSE SIDE FOR RULES GOVERNING TAXATION OF COSTS

Attorney for Jeffrey Baron, Novo Point LLC & Quantec I

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**ATTORNEYS FOR JEFFREY BARON,  
ALLEGED DEBTOR**

**COUNSEL FOR THE PETITIONING  
CREDITORS**

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

**NETSPHERE, INC., MANILA  
INDUSTRIES, INC., AND MUNISH  
KRISHAN,**

**Plaintiffs**

**v.**

**JEFFREY BARON AND ONDOVA  
LIMITED COMPANY,**

**Defendants.**

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§ **CIVIL ACTION NO. 3:09-cv-0988-F**  
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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**In re:**

**JEFFREY BARON,**

**Debtor.**

§  
§ **CASE NO. 12-37921-7**  
§  
§ **INVOLUNTARY CHAPTER 7**  
§ **PROCEEDING**

**JOINT MOTION TO APPROVE COMPROMISE  
AGREEMENT AND WIND-DOWN PLAN**

Pronske & Patel, P.C., Shurig Jetel Beckett Tackett, Dean Ferguson, Gary G. Lyon,  
Robert Garrey, Powers Taylor, LLP, Jeffrey Hall, and David Pacione (together, the

“Petitioning Creditors”) and Jeffrey Baron, the Alleged Debtor (“Baron” and, together with the Petitioning Creditors, the “Parties”) file this Joint Motion to Approve Compromise Agreement and Wind-Down Plan (the “Motion”) requesting orders approving the Compromise Agreement and Wind-Down Plan (the “Settlement Agreement”) among Baron, the Petitioning Creditor, and various other Receivership Parties identified below. In support of the Motion, the Parties respectfully state as follows:

### **I. BACKGROUND**

1. On December 18, 2012 (the “Petition Date”), the Petitioning Creditors filed an involuntary bankruptcy petition against Jeffrey Baron (“Baron” or the “Alleged Debtor”) under Chapter 7 of the Bankruptcy Code [Docket No. 1, later amended at Docket No. 45].

2. On January 17, 2013, the Bankruptcy Court entered the Gap Period Order, which excused the Receiver from the obligation to turn over Receivership assets to a gap trustee pending entry of an order for relief yet instructed the Receiver to “maintain all Receivership assets pending further order of the court.” (Gap Period Order, p.3) The Gap Period Order also recommended to the District Court that all matters regarding Mr. Baron, including all receivership matters and the Netsphere litigation, be stayed until after the Court determined whether an order for relief should be entered in the involuntary case. The District Court adopted the Bankruptcy Court’s recommendations. See Order Adopting Bankruptcy Court Recommendations [District Court Docket No. 1176].

3. On April 24, 2013, the United States Court of Appeals for the Fifth Circuit entered the judgment and mandate finalizing its opinion holding that the appointment of the Receiver by the District Court was in error. The opinion and mandate remanded the matter to the District Court for further proceedings to “vacate the receivership and



discharge the receiver, his attorneys and employees, and to charge against the cash in the receivership fund the remaining fees in accordance with this opinion.” (Fifth Circuit Opinion, p. 30) The opinion additionally charged the Receiver to expeditiously release the assets subject to the receivership, and any remaining receivership cash on hand after payment of professional claims, to Baron under a receivership wind-down schedule to be determined by the District Court. (Fifth Circuit Opinion, p. 27)

4. The District Court reviewed the professional fees incurred by the Receivership, and on May 29, 2013, entered its Order on Receivership Professional Fees [District Court Docket No. 1287].

## **II. RELIEF REQUESTED**

5. The Parties have reached a compromise resolving their claims in the involuntary case and an agreed wind-down of the Receivership. The Settlement Agreement is being submitted to the Bankruptcy Court and District Court under seal so as to avoid public disclosure of its terms, but has been circulated via email to parties and counsel in the Receivership case and the involuntary case.

6. The Parties desire to avoid the expense, inconvenience, delay and uncertainty of litigation by compromising and settling their claims and disputes and agreeing to an expeditious wind-down of the Receivership. The Parties seek authority to settle the outstanding claims pursuant to the terms and conditions set forth in the proposed Settlement Agreement, which include the following key terms:

- a. Liquidation of the Quantec, LLC portfolio by agreed sale and distribution of sale proceeds first to receivership professional and administrative claims, second to the Petitioning Creditors’ and other former lawyers’ claims at an agreed-upon discount, and third to equity, either Baron or the appropriate Receivership party. The Settlement Agreement includes an approved form of exclusive brokerage agreement and sale agreement for the sale of the Quantec,

LLC portfolio. The Parties estimate that the sale may take place as soon as within 10 days from the effective date of the agreement, once it is approved by both Courts.

- b. Payment of Receivership professional claims, as allowed by District Court order entered on May 29, 2013, and other administrative claims in full.
- c. Resolution and payment of the Petitioning Creditors' and other former attorney claims from the Quantec, LLC sale proceeds by private agreement between the claimants and Baron, subject to an opt-in/opt-out provision allowing any individual attorney claimant to reject the settlement agreement and reserve all rights to pursue Baron for the full amount, subject to all applicable claims and defenses Baron may have against the specific claim.
- d. An allocation for partial payment to Baron's current counsel.
- e. Discharge of the Receiver upon the payments described herein and general releases of the Receiver of any claims associated with or related to the receivership.
- f. Global mutual releases among and between all parties to the Settlement Agreement, including Baron, The Village Trust, Quantec, LLC, Novo Point, LLC, the Receiver, Gardere, Dykema, Pronske & Patel, the Petitioning Creditors and any other former lawyers, if opting in to the agreement, Netsphere, if opting in to the agreement, and the Ondova Trustee, if opting in to the agreement.
- g. Resolution of the remaining Netsphere dispute by an opt-in provision giving Netsphere the choice to either: (i) release all claims among and between the Netsphere and Baron parties, release The Village Trust's security interest in certain domain names owned by Netsphere, and dismissal of the remaining District Court litigation, or (ii) reject the Settlement Agreement and continue the District Court litigation unaffected by the settlement. Netsphere will be deemed to have opted-out of the Settlement Agreement if it has not opted-in by the Effective Date.
- h. Dismissal of the involuntary case and the receivership matter.
- i. Ondova opt-in provision giving the Ondova Trustee the choice to either: (i) return the \$331,000 deposit to Baron and receive quitclaim interest to nine disputed domain names, mutual releases between and among Ondova and Baron, and dismissal of all appeals, or (ii) reject the Settlement Agreement, reserving all rights and claims against Baron subject to any and all of Baron's claims and defenses. Ondova will be deemed to have opted-out of the Settlement

Agreement if it has not opted-in by the Effective Date. Under the opt-out option, the Settlement Agreement shall have no effect on any rights or claims as between Baron and Ondova, and Ondova shall not be a signatory or a party to the Settlement Agreement.

7. The terms of the Settlement Agreement are fair and the product of arm's-length negotiations between counsel for the Petitioning Creditors and counsel for Baron, as well as the Parties' negotiations with the other Receivership parties. The Settlement Agreement provides for the payment in full of the Receivership professional claims allowed by the District Court, payment of the claims of the Petitioning Creditors' and other attorney claimants at an agreed discount, return of Baron's remaining assets to Baron or the appropriate Receivership party, and dismissal of the receivership and involuntary cases. Significantly, the Settlement Agreement provides for the mutual, global releases of all the signatory parties, the dismissal of the involuntary case and the receivership matter, and potentially the dismissal of the remainder of the District Court litigation and all remaining Fifth Circuit appeals. In short, the Settlement Agreement proposes to bring closure to the four-year long saga for all parties and the affected federal courts.

8. The terms of the Settlement Agreement are favorable compared to the possible rewards of continued litigation. Regardless of whether the Bankruptcy Court may choose to enter an order for relief in the involuntary matter, much uncertainty exists as to the wind-down of the receivership and payment of the receivership professionals' and Petitioning Creditors' claims. Furthermore, there is no guarantee that the various claims against Baron, including the Receivership professionals' claims, would be paid in the same percentages as under the Settlement Agreement – or in any amount at all – outside approval of the Settlement Agreement.

WHEREFORE PREMISES CONSIDERED, the Parties request entry of orders approving the Compromise Agreement and Wind-Down Plan, authorizing Baron and the Receiver to enter into the Compromise Agreement and Wind-Down Plan with the Petitioning Creditors and other settling parties, and granting the Parties such other and further relief to which they may be justly entitled.

Dated: June 24, 2013.

Respectfully submitted,

/s/ Melanie P. Goolsby

Gerrit M. Pronske

State Bar No. 16351640

Melanie P. Goolsby

State Bar No. 24059841

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**COUNSEL FOR THE PETITIONING  
CREDITORS**

And

/s/ Mark Stromberg\*

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Telephone 972/458-5335

Facsimile 972/770-2156

Email: [mark@strombergstock.com](mailto:mark@strombergstock.com)

\*with permission /s/ Melanie P. Goolsby

**ATTORNEYS FOR JEFFREY BARON,  
ALLEGED DEBTOR**

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that, on June 24, 2013, a true and correct copy of the above and foregoing pleading was served upon the counsel and parties listed below via email and also via ECF email upon all parties accepting such service.

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*/s/ Melanie P. Goolsby*  
Melanie P. Goolsby

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
Dallas Division**

NETSPHERE, INC., et. al.	§	
<i>Plaintiffs,</i>	§	
v.	§	CIVIL ACTION NO. 3:09-cv-0988-L
	§	
JEFFREY BARON, et. al.	§	
<i>Defendants.</i>	§	

**NOTICE OF APPEAL TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

Notice is hereby given that Jeffrey Baron, defendant in the above-captioned matter, Novo Point LLC and Quantec LLC, non-parties affected by orders on Civil Action No. 3:09-cv-0988-F (subsequently transferred to Civil Action No. 3-09-cv-0988-L), hereby appeal to the United States Court of Appeals for the Fifth Circuit from:

- a. [Dkt 1287] The District Court's Final Order on Receivership Professional Fees. (Ordered by Judge Royal Furgeson on 05/29/2013)(Entered: 05/29/2013).
- b. [Dkt 1282] The District Court's Order granting receiver's fee application regarding miscellaneous professionals. (Ordered by Judge Royal Furgeson on 05/23/13)(Entered: 05/23/2013).

This appeal is taken pursuant to 28 U.S.C. §1291.

The parties to the orders appealed from and the names, addresses, and

telephone numbers of their respective attorneys are as follows:

Appellant: Defendant Jeffrey Baron

Non-Party Appellants: Novo Point, LLC and Quantec, LLC

Represented on Appeal by:

Mpatanishi S. Tayari Garrett  
Tayari Law PLLC  
100 Crescent Court, Ste. 700  
Dallas, TX 75201  
Tel/Fax: 877.829.2740  
m.tayari@tayarilaw.com

Appellee: Peter S. Vogel, receiver

Represented by: David J. Schenck  
Dykema Gossett PLLC  
1717 Main Street, Ste. 4000  
Dallas, Texas 75201  
Telephone: 214.462.6400  
Facsimile: 214.462.6401  
dschenck@dykema.com

Dated: June 28, 2013

Respectfully submitted,

**Tayari Law PLLC**

By: /s/ Mpatanishi Tayari Garrett  
Mpatanishi Tayari Garrett  
State Bar No. 24073090  
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Dallas, Texas 75201  
Tel/Fax: 877.829.2740  
m.tayari@tayarilaw.com

***COUNSEL FOR APPELLANTS***

**CERTIFICATE OF SERVICE**

This is to certify that this was served on all parties who receive notification through the Court's electronic filing system, including:

David J. Schenck  
Dykema Gossett PLLC  
1717 Main Street, Ste. 4000  
Dallas, Texas 75201  
dschenck@dykema.com

/s/ Mpatanishi Tayari Garrett  
Mpatanishi Tayari Garrett



**United States District Court  
Northern District of Texas  
Office of the Clerk**

Dallas Division

Jul 9, 2013

Clerk  
U.S. Court of Appeals - Fifth Circuit  
600 Maestri Place  
New Orleans, LA 70130

SUBJECT: 13-10119 / 3:09-CV-988      Netsphere, Inc., et al v. Jeffrey Baron

Dear Clerk:

In connection with the appeal cited above, the following record is transmitted:

Record on appeal or       Supplemental record on appeal  
consisting of   8   volumes of the record and/or any of the items indicated below:

  5   Volume(s) of the transcript             Volume(s) of depositions  
       Container(s) of exhibits             Folder(s) of State Court Papers  
       Sealed documents             Audio Visual Tapes  
       PSI and SOR page Sealed

Other: \_\_\_\_\_

**ATTENTION:** Some of the documents noted above are ORIGINAL DOCUMENTS and must be returned to the district court.

UPS Tracking #: \_\_\_\_\_

Sincerely,  
KAREN MITCHELL  
Clerk of Court

By: s/ S VanCamp  
Deputy Clerk

**United States District Court  
Northern District of Texas  
Office of the Clerk**

Dallas Division

Jul 18, 2013

Clerk  
U.S. Court of Appeals - Fifth Circuit  
600 Maestri Place  
New Orleans, LA 70130

SUBJECT: 13-10119/3:09-CV-988 Netsphere, Inc., et al v. Jeffrey Baron

Dear Clerk:

In connection with the appeal cited above, the following record is transmitted:

Record on appeal or  Supplemental record on appeal  
consisting of 4 volumes of the record and/or any of the items indicated below:

1 Volume(s) of the transcript          Volume(s) of depositions  
         Container(s) of exhibits          Folder(s) of State Court Papers  
X Sealed documents          Audio Visual Tapes  
         PSI and SOR page Sealed

Other: \_\_\_\_\_

**ATTENTION:** Some of the documents noted above are ORIGINAL DOCUMENTS and must be returned to the district court.

UPS Tracking #: \_\_\_\_\_

Sincerely,  
KAREN MITCHELL  
Clerk of Court

By: s/ S VanCamp  
Deputy Clerk

BTXN 049 (rev. 12/11)

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

In Re:  
Jeffrey Baron  
  
Netsphere, Inc., et al  
  
vs.  
Jeffrey Baron, et al

Debtor(s)  
  
Appellant(s)  
  
Appellee(s)

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Case No.: 12-37921-sgj7  
Chapter No.: 7

**NOTICE OF TRANSMITTAL**

I am transmitting:

- Two copies of the Motion for leave to Appeal 28 U.S.C. § (USDC Civil Action No. DNC Case).
- Two copies of the Motion for Stay Pending Appeal (USDC Action No. – DNC Case).
- Two copies of the Proposed Findings of Fact and Conclusions of Law.
- Two copies of Motion to Extend Time To File Designation (USDC Civil Action No DNC Case).
- On , the Record on Appeal was transmitted. The designation of record or item(s) designated by were not filed when the record was transmitted. The item(s) were filed on awaiting instructions from the assigned district judge.
- Other Sua Sponte Report and Recommendation to the District Court Proposing Disposition of Assets held in the Overruled Receivership of Jeffrey Baron, in accordance with Sections 541–543 of the Bankruptcy Code
- Two copies of:

**TO ALL ATTORNEYS:** File all subsequent papers captioned and numbered with the appropriate division of the United States District Clerk's Office. Any questions concerning this proceeding should be directed to the U.S. District Clerk's Office at (214) 753–2200.

DATED: 7/29/13

**FOR THE COURT:**  
Tawana C. Marshall, Clerk of Court

by: /s/Sheniqua Whitaker, Deputy Clerk