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

NETSPHERE, INC.,	§	
MANILA INDUSTRY, INC.,	§	
AND MUNISH KRISHAN	§	
	§	
PLAINTIFFS,	§	
	§	
v.	§	
	§	
JEFFREY BARON AND	§	**CIVIL ACTION NO. 3:09-cv-0988-L**
ONDOVA LIMITED COMPANY,	§	
	§	
DEFENDANTS	§	
	§	
	§	
	§	
	§	

JEFFREY BARON'S OBJECTION TO
THE RECEIVER'S REQUEST, AS SUPPLEMENTED,
FOR APPROVAL OF FINAL ACCOUNTING, APPLICATION
FOR PAYMENT AND REQUEST FOR ORDER OF FINAL DISCHARGE
[Relates to ECF Docs 1397 and 1398]

TO THE HONORABLE SAM A. LINDSAY, UNITED STATES DISTRICT JUDGE:

Jeffrey Baron ("Baron") hereby files his Objection to the Receiver's Request, as Supplemented, for Approval of Final Accounting, Application for Payment and Request for Order of Final Discharge, and for cause, would respectfully represent:

I.

INTRODUCTION

1. In Section III of the Receiver's Supplemental Application For Payment and Notice of Filing of Petition for Certiorari, the Receiver makes his final claim for fees and expenses for himself and for of a host of professionals for a failed and vacated receivership (the "Supplement"). ECF Doc 1398. The Supplement supplements the Receiver's Request for Approval of

Final Accounting, Application for Payment and Request for Order of Final Discharge filed on April 14, 2014 (the "Receiver's Request for Payment"). ECF Doc 1397. This final blow to Baron, who has been practically bludgeoned to death by the fees charged by the Receiver and his professionals in this vacated receivership, is incredible in its duplicity, in the excessiveness of the hourly rates charged, the total number of hours allegedly logged by these lawyers and the Receiver for doing little more than reviewing pleadings and sending and responding to interoffice emails among numerous lawyers. The fees and expenses are simply outrageous, unjustified and barred by the Mandate of the Fifth Circuit..

II.

THE RECEIVER'S REQUEST THAT THE FIFTH CIRCUIT'S FEE LIMITATION BE DISREGARDED

2. The period covered by the Receiver's Request for Payment is May 1, 2013 through Receivership Closing, which the Receiver anticipates will occur on May 15, 2014. In the Fifth Circuit's December 18, 2012, opinion and decision in *Netsphere v. Baron,*[1] the Fifth Circuit directed the District Court to reconsider "the amount of all fees and expenses" of the Receiver, and that in such reconsideration, "equity may well require the fees to be discounted meaningfully from what would have been reasonable under a proper receivership." *Id*. at 313. The Fifth Circuit also concluded "that everything subject to the receivership other than cash currently in the receivership, which Baron asserts in a November 25, 2012 motion amounts to $1.6 million, should be expeditiously returned to Baron under a schedule to be determined by the district

[1] 703 F3d 296 (5th Cir. 2012)

court for winding up the receivership." *Id.* at 313-314. The Fifth Circuit instructed that "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," and "[t]o the extent the cash on hand is insufficient to satisfy fully what has been determined to be the reasonable charges by the receiver and his attorneys, those charges will go unpaid." *Id.* at 314.[2]

3. In its opinion and decision issued hours before the involuntary bankruptcy filing, the Fifth Circuit clearly and unequivocally instructed the district court to limit the payment of any future fees and expenses to the receiver and his attorneys to "cash on hand" as of December 18, 2012: "everything subject to the receivership other than cash currently in the receivership" was to be returned to Baron.[3] By the time the Fifth Circuit had overruled all petitions for rehearing and rehearing en banc, and had issued its mandates on April 19, 2013, the Receiver had advised Fifth Circuit of the existence of the Baron involuntary bankruptcy proceeding, but the Fifth Circuit did not alter or amend its December 18, 2012 opinion or decision at all.

4. "Cash" is defined in Black's Law Dictionary (8th Edition) as 'money or the equivalent; usually ready money. Currency and coins, negotiable checks, and balances in bank accounts.' *Also See Hardy v. State*, 102 S.W3d 123, 131 (Tex. 2003) (citing Webster's Third

[2] In the Receiver's Application for Immediate Payment of Liquidated and Allowed Pre-Petition Fees of the Receiver and Those He is obligated to Pursuant to 11 U.S.C. § 543 filed with the Bankruptcy Court on November 7, 2013, ECF Doc 380, in Bankruptcy Case 12-37921-sgj7, at pp 5-6, the Receiver asked the Bankruptcy Court to adopt this view.

[3] In truth, the amount of "cash on hand" in the receivership on December 18, 2012, as admitted by the Receiver, was $1,196,744.313. **Everything collected or claimed by the receiver since this date, must be returned to Baron**. Any other result would be in contradiction to the Fifth Circuit's Opinion and Mandates.

New Int'l Dictionary 346 (1961); *A.W. Cullum & Co. v. Calvert*, 450 S.W.2d 419, 423 (Tex.Civ.App.1970) ("Cash has been defined as that which circulates as money ...," but trading stamps are not cash for purposes of sales tax laws.)

5. Now, for the first time the Receiver is taking a different position in the Receiver's Request for Payment, as Supplemented. The Receiver now claims that the cash on hand on December 18, 2012, was really $4,106,015.08, while in the next breath admitting that the cash balance was $1,196,744.31.[4] The Receiver obviously wishes this Court to disregard the Fifth Circuit's fee limitation set out in the December 18, 2012, decision and opinion and the mandates issued on April 19, 2013,[5] as to which limitation the Receiver has never raised an objection, either in its petitions for rehearing before the Fifth Circuit, before this Court or before the Bankruptcy Court, at least until now.

6. **The Receiver's Attempt at Redefining "Cash" is Misplaced.** Despite the receiver's erroneous assertions about his definition of "cash", 1) claims against Netsphere are not cash; 2) Novo Point and Quantec's receivables are not cash; 3) Baron's custodial IRA accounts including stocks are not cash. These items must all be returned to Baron.

[4] The Receiver cleverly explains this in footnote 4 of his Supplement, as follows:

> "As set forth below, this amount appropriately includes the cash in Receivership accounts ($1,196,744.31); Accounts Receivable (totaling $1,147,761.18 including the 2012 Netsphere Settlement Payment ($600,000.00), the estimated amount due from the Ondova Bankruptcy Trustee for the disgorgement of a prior payment ($379,761.18), and withholdings from Domain Holdings Group of monthly monetizer payments of approximately $150,000.00 for the month of December 2012); and the value of Mr. Baron's IRAs and brokerage accounts that were subject to and under the control of the Receivership ($1,761,509.59)."

[5] ECF Docs 1255-1263, 09-cv-988.

7. Moreover, this Court has already recognized the limitation set by the Fifth Circuit. In the Amended Memorandum Opinion issued by this Court on January 2, 2014, in Case 3:13-cv-03461-L, this Court stated:

> In reversing the Receivership Order, the Fifth Circuit directed the district court to vacate the receivership and discharge the receiver, his attorneys and employees." *Id.* at 315. No fees or expenses other than those incurred by the Receiver were authorized by the Fifth Circuit, and the payment of the Receiver's fees expenses was to be limited to the $1.6 million in cash remaining in the receivership. Any fees or expenses exceeding that amount would go unpaid. The Fifth Circuit instructed that all other assets in the receivership were to be "expeditiously released to Baron under a schedule to be determined by the district court for winding up the receivership." *Id.* at 313-14. The Fifth Circuit also made clear that "[n]o further sales of domain names or other assets [were] authorized," and that the stay imposed as to the closing on sales resulting from an auction of domain names was "permanent." *Id.* at 314 n.2.

Id. at p 7.

8. The receiver made at least $1,579,953.88 in fee and expense disbursements since December 18, 2014.[6] Therefore, under the Fifth Circuit's fee cap of "cash on hand", which was at most $1,600,000.00, the Receiver can only recover an additional $20,046.12 in the Receiver's best case scenario.[7]

III.

THE RECEIVER'S FEES SHOULD BE DISCOUNTED MEANINGFULLY FROM WHAT WOULD

[6]

Docket	Court	Date	Order	Amount
1288	District Court	2/20/2013	Order Approving Fees -Doc 1190	$ 17,575.88
1227	District Court	4/16/2013	Order Approving Pmt of Mediator's Fees	$ 12,000.00
1233	District Court	5/23/2013	Order granting Fees for Receiver Professionals	$ 118,126.05
433	Bk Court[6]	12/31/2013	Order Granting Fees	$1,414,676.05
1388	District Court	5/9/2013	Order granting Receiver's Expenses	$ 17,575.90
Total				**$1,579,953.88**

[7] In truth, the amount of "cash on hand" in the receivership on December 18, 2012, as admitted by the Receiver, was $1,196,744.317.

ORDINARILY BE REASONABLE UNDER A PROPER RECEIVERSHIP

9. The Fifth Circuit in *Netsphere v Baron* held as follows:

> "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."

703 F.3d at 303.

10. After the Fifth Circuit opinion and decision was issued on December 18, 2012, and the mandates issued on April 19, 2013, Judge Ferguson reconsidered the fees awarded to the Receiver and his counsel. On May 29, 2013, Judge Ferguson issued an Order on Receivership Professional Fees. ECF Doc 1287, Case 09-0988. Judge Ferguson found that "equity requires that the Receiver's fees [should] be allowed at 70%." *Id.* at 37. Judge Ferguson also found that the fees and expenses of the Dykema firm should be reduced to 90% for the period from December 18, 2012 and April 4, 2013, and 95% for the month of April 2013. *Id.* at 42-3.

11. Finally, Judge Ferguson ruled that"

> "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."

Id. at 45.

12. Thus, this Court must take into consideration the limitation imposed by the Fifth Circuit to "cash on hand" at the time of the December 18, 2012 Opinion, which was certainly no greater than the $1,600,000 mentioned in the Opinion.[8] Additionally, before even applying such limitation, the Court must discount the fees and expenses being requested by the Receiver and his professionals meaningfully from what would have been reasonable under a proper receivership. As noted, assuming that the cash on hand was $1,600,000, the unused portion of the cap, at this time, is no greater than $20,046.12; that is, the maximum amount this Court may award at this time is no greater than $20,046.12.[9]

IV.

THE RECEIVER AND HIS ATTORNEYS SHOULD NOT BE COMPENSATED FOR FILING PLEADINGS IN THE BANKRUPTCY COURT AND ATTENDING HEARINGS THAT DID NOT BENEFIT THE RECEIVERSHIP ESTATE

13. The Fifth Circuit has ruled in *Speakman v. Bryan*, 61 F.2d 430, 431 (5th Cir. 1932), that receivership fees in a reversed and vacated receivership may be charged against a receivership estate only "to the extent that they have inured to its benefit". Thus, the authority to take funds from an estate in a reversed receivership is limited to "reimbursement out of the property for his expenditures which have actually benefited the estate". *Id*. at 432. Other circuits have concurred. *Franklin v. City of New York*, 144 F. 2d 571 (2nd Cir. 1944 ("allowances, if any, which may be made by the district court;" and that such allowances must be made in accordance

[8] As noted, the Fifth Circuit limit to "cash on hand" at the time of the Opinion was actually $1,196,744.318

[9] The receiver made at least $1,579,953.88 in fee and expense disbursements since December 18, 2014. Therefore, under the Fifth Circuit's fee cap of "cash on hand", which was at most $1,600,000.00, the Receiver can only recover an additional $20,046.12 in the Receiver's best case scenario.

with the principle which controls the allowance of counsel fees in receivership cases, namely, benefit to the receivership estate"). Here, despite the receiver's assertions to this court that he was an unwilling participant in the involuntary bankruptcy, the facts demonstrate that the receiver actively advocated for the involuntary bankruptcy and then billed massively for the failed effort.

A. The Fifth Circuit Clarifies its December 18, 2012 Decision.

14. On December 27, 2012, the Receiver filed an Emergency Motion to Clarify Status of Mandate and Stay Pending Remand and Discharge of Receiver, in the Fifth Circuit. ECF Doc 00512095875, at p. 5-6, in Fifth Circuit Case No. 12-10489, also attached as Exhibit A to ECF Doc 95, Bankruptcy Case No. 12-37921. Therein, the Receiver advised the Fifth Circuit that an involuntary bankruptcy case had been filed nine days earlier, and asked the Fifth Circuit to clarify its December 18, 2012, decision and opinion.

15. On December 31, 2012, aware of the bankruptcy petition, the Fifth Circuit panel ruled on the Receiver's Emergency Motion and held:

> "No assets that were brought under 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."

See December 31, 2012 Fifth Circuit Order. ECF Doc 00512097486 in Fifth Circuit Case No. 10-11202; also ECF Doc 1130-1, District Case Case No. 09-988.

B. The Fifth Circuit Issues Mandates Enforcing its December 18, 2012 Decision and Opinion.,

16. With full knowledge of the Involuntary Bankruptcy Case, and having considered and denied cross motions for rehearing and rehearing en banc, the Fifth Circuit did not alter its December 18, 2012, decision and opinion, and on April 19, 2013, issued numerous mandates,

commanding the District Court to enforce the directives in its December 18, 2012, decision and opinion, to wind down the receivership expeditiously and return the assets to Jeffrey Baron, NOVO and QUANTEC. ECF Docs 1255-1263, District Case Case No. 09-988.

17. Notwithstanding the April 19, 2013 Mandates issued by the Fifth Circuit, and without a trial on the merits, on June 26, 2013, Bankruptcy Judge Jernigan issued findings of fact and conclusions of law in support of order for relief, and then issued an order for relief placing Jeffrey Baron in bankruptcy, thereby freezing Mr. Baron's assets and the assets of NOVO and QUANTEC yet again. ECF Docs 239 & 240 in Bankruptcy Case 12-37921. The Bankruptcy Court concluded that Baron's former attorneys, the Petitioners, had standing under 11 U.S.C. §303(b) to file and proceed with the Involuntary Bankruptcy Case.

18. On July 8, 2013, Jeffrey Baron perfected his appeal of the Order for Relief. ECF Doc 257 in Bankruptcy Case 12-37921.

C. Judge Jernigan Issues Sua Sponte Report and Recommendation

19. At the urging of the Reciver, On July 29, 2013, Bankruptcy Judge Jernigan issued a *Sua Sponte* Report and Recommendation to the District Court Proposing Disposition of Assets Held in the Overruled Receivership of Jeffrey Baron, in Accordance with Section 541-543 of the Bankruptcy Code [ECF Doc 1304-1 in District Case No. 09-0988] ("*Sua Sponte* Report and Recommendation"). In the *Sua Sponte* Report and Recommendation, Judge Jernigan opined that the involuntary bankruptcy proceeding created an "intervening circumstance" that required the turnover of the receivership assets, including all of NOVO and QUANTEC's assets, to the bankruptcy trustee in accordance with 11 U.S.C. §543, notwithstanding the Fifth Circuit's decision and mandate. The receiver aggressively attempted to convince the Bankruptcy court to expedite transferring the receivership assets to the bankruptcy court, in circumvention of this Court's ju-

risdiction. *See Receiver's Motion to Sho*w Cause *Why Receiver Should Not Turnover Novo Point and Quantec Assets to Bankruptcy Trustee in View of Recent Testimony and Filings* (bankruptcy dkt 372), billing over $_____ dollars to the estate to effectuate . Despite the fact that **This Court never adopted Judge Jernigan's *Sua Sponte* Report and Recommendation, the receiver** receiver billed massively preparing for the hearing on his motion to transfer the assets, conducting discovery, deposing witnesses, including traveling outside of the Northern District to do so**.. This work was completely unnecessary and contrary to the best interests of the receivership estate.**

D. This Court Reverses Bankruptcy Judge Jernigan's Order for Relief.

20. This Court granted Baron's appeal, and reversed the Order for Relief in an Amended Memorandum Opinion and Judgment entered on January 2, 2014. ECF Docs 52 & 53 in District Case No. 13-3461. The effect of this Court's order was that the assets of Baron, NOVO and QUANTEC were never transferred to the involuntary bankruptcy estate, but remained subject to the Receivership.

E. The Receiver and His Counsel Have Churned the Bankruptcy File Relentlessly for a Year, and the Receivership Estate Has Received No Value for Such Work.

21. From December 18, 2012, forward, the Receiver and his counsel were pounding the bankruptcy file as hard as they could. In at least one instance, the Receiver and two senior partner level lawyers of the Dykema law firm attended a status conference at a combined hourly rate of at least $1,900, which hearing could have been attended by one senior level bankruptcy associate. In numerous days of mediation, three partner level lawyers of the Dykema law firm plus the Receiver attended for several days, another case of blatent over-staffing. In several other instances, the Receiver and a senior level lawyer from the Dykema law firm attended several hearings, charging at least $1,300 per hour, when a senior level bankruptcy associate could have

handled the hearing. Partners were drafting pleadings that could have been drafted by senior bankruptcy associates. All of the hearings were attended by at least one senior level Dykema partner, but could have been attended by a senior bankruptcy associate or not attended at all. A great majority of the filings and appearances involved the Receiver attempting to get his professionals paid.

22. The truth of the matter is that the Receiver had "no dog in the fight" insofar as the bankruptcy proceeding was concerned. His job was to wait and see what the Bankruptcy Court did in regards to entering an order for relief, make interim requests for payment from the bankruptcy court, and follow the instructions of the bankruptcy court.[10] If an order for relief was entered, the receivership was over and the receiver would be required to turnover the receivership assets to the Bankruptcy Court.[11] If no order for relief was entered, the receivership continued. But having one, two and sometimes three partner level lawyers attending every single bankruptcy hearing during the year the involuntary bankruptcy proceeding was pending was an abuse.

23. Instead of simply "treading water", which would have been the sensible thing to do, the Receiver attended every bankruptcy hearing during the pendency of the bankruptcy with one, two and sometimes three senior partner level attorneys "in tow". The following is a sample list of hearings and pleadings that were a waste of time and of no benefit to the Receivership Estate.

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[10] Section 543(a) of the Bankruptcy Code provides that upon the commencement of a bankruptcy case, a custodian, including a Receiver, is to turn over the debtor's property to the trustee and provide an accounting. On January 17, 2013, the Bankruptcy Court entered an Order, which was later approved by Judge Ferguson, directing the Receiver to "maintain all receivership assets pending further order," waiving the requirement of 11 U.S.C. § 543(a) that the Receiver, as a custodian, turn over same to the then-interim bankruptcy trustee, pending the determination of whether Baron was a debtor and the scope of his estate.

[11] *See Jordan v. Independent Energy Corp.*, 446 F.Supp. 516 (N.D. Tex. 1978) ("[Clreditors would be irreparably harmed by their inability to secure access to the rights afforded creditors under the [Bankruptcy 1 Act. An order [by a federal district court in a federal receivership 1 restricting access to the bankruptcy court, other than as specifically provided by Congress in the Bankruptcy Act, would not be in the public interest").

a. On December 21, 2012, the Receiver's counsel, Jeffrey Fine, attended a hearing before the Bankruptcy Court that was totally unnecessary.

b. On January 16, 2013, the Receiver's counsel, Jeffrey Fine, attended a scheduling conference before the Bankruptcy Court where the scheduling for the trial of the involuntary petition was addressed. The Receiver attended by telephone. The Receiver had "no dog in this fight" and there was no benefit to the Receivership Estate from such attendance. The hourly rate for the attendance at this hearing was over $1,300.

c. On February 12, 2013, Jeffrey Fine filed a Notice of Fifth Circuit Directive and Request to Preserve Status Quo of Receivership Pending Fifth Circuit Action that was totally unnecessary. ECF Doc 60 in Bankruptcy Case 12-37921.

d. On February 12, 2013, Jeffrey Fine filed a Motion to pay Receiver's Expedited Application for Payment of Receivership Expenses Pursuant to the Interim Order that was simply an effort to get the Receiver's fees and his counsel's fees approved. This did not benefit the Receivership Estate. ECF Doc 61 in Bankruptcy Case 12-37921.

e. On February 12, 2013, Jeffrey Fine filed a Motion to pay Request to Clarify Receiver's Authority to Pay Counsel that was simply an effort to get the Receiver's fees and his counsel's fees approved. This had no discernable benefit the Receivership Estate. ECF Doc 63 in Bankruptcy Case 12-37921.

f. On February 13, 2013, the Receiver and the Receiver's counsel, Jeffrey Fine attended a hearing before the Bankruptcy Court that was totally unnecessary. There was no benefit to the Receivership Estate from such attendance. The hourly rate for the attendance at this hearing was over $1,300.

g. On February 20, 2013, Jeffrey Fine filed a Motion to pay Receiver's Expedited Application for Payment of Receivership Expenses that was totally unnecessary. ECF Doc 70 in Bankruptcy Case 12-37921.

h. On February 20, 2013, the Receiver's counsel, Jeffrey Fine, attended a hearing before the Bankruptcy Court that was totally unnecessary. There was no benefit to the Receivership Estate from such attendance.

i. On March 18, 2013, the Receiver and the Receiver's counsel, Jeffrey Fine attended a hearing before the Bankruptcy Court that was totally unnecessary. There was no benefit to the Receivership Estate from such attendance. The hourly rate for the attendance at this hearing was over $1,300.

j. On April 4, 2013, the Receiver and two of the Receiver's partner level counsel, Jeffrey Fine and David Schenck, attended a hearing before the Bankruptcy Court that was totally unnecessary. There was no benefit to the Receivership Estate from such attendance. The hourly rate for the attendance at this hearing was over $1,900.

k. On April 12, 2013, Jeffrey Fine, the Receiver's counsel, filed a Motion for order to show cause Why WIPO and ICANN Should not Be Held in Contempt that was totally unnecessary. ECF Doc 122 in Bankruptcy Case 12-37921.

l. On April 17, 2013, Jeffrey Fine, the Receiver's counsel, filed an Application for compensation for Dykema Gossett PLLC. ECF Doc 128 in Bankruptcy Case 12-37921.

m. On June 24, 2013, the Receiver's counsel, Jeffrey Fine, attended a hearing before the Bankruptcy Court that was totally unnecessary.

n. On July 15, 2013, the Receiver and the Receiver's counsel, Jeffrey Fine, attended a hearing before the Bankruptcy Court that was totally unnecessary. The hourly rate for the attendance at this hearing was over $1,300.

o. On July 26, 2013, the Receiver's counsel, Jeffrey Fine, attended a hearing before the Bankruptcy Court that was totally unnecessary.

p. On October 3, 2013, the Receiver filed with the Bankruptcy Court the Receiver's Motion for Authority to Immediately Comply with Mandate, for Wind Down Plan and Discharge, and for Payment Consistent with the May 29, 2013 Order of this Court. ECF Doc 352 in Bankruptcy Case 12-37921.

q. On October 28, 2013, the Receiver's counsel, Jeffrey Fine, attended a hearing before the Bankruptcy Court that was totally unnecessary.

r. On October 31, 2913, the Receiver filed in the Bankruptcy Court a nineteen page Expedited Motion for order to show cause Why Receiver Should Not Turnover Novo Point and Quantec Assets to Bankruptcy Trustee in View of Recent Testimony and Filings. ECF Doc 372 in Bankruptcy Case 12-37921.

s. On October 31, 2013, the Receiver's counsel, Jeffrey Fine, attended a hearing before the Bankruptcy Court that was totally unnecessary.

t. On November 7, 2013, the Receiver filed with the Bankruptcy Court a fourteen page Application for (1) Immediate Payment of Liquidated and Allowed Pre-Petition Fees and Expenses of the Receiver and Those He Is Obligated to, Pursuant to 11 U.S.C. §§ 503(b)(3)(E), 503(b)(4) and 543(c), and (2) Approval of Ongoing Compensation, Reimbursement of Expenses and Payment of Legal Fees From the Estate, seeking approval from the Bankruptcy Court to be paid fees and expenses. ECF Doc 380 in Bankruptcy Case 12-37921.

u. On November 14, 2013, the Receiver's counsel, Jeffrey Fine, attended a hearing before the Bankruptcy Court that was totally unnecessary.

v. On November 22, 2013, the Receiver and the Receiver's counsel, Jeffrey Fine, attended a hearing before the Bankruptcy Court that was totally unnecessary. The hourly rate for the attendance at this hearing was over $1,200.

w. On December 4, 2013, the Receiver's counsel, Jeffrey Fine, attended a hearing before the Bankruptcy Court that was totally unnecessary.

x. On December 17, 2013, the Receiver and the Receiver's counsel, Jeffrey Fine, attended a hearing before the Bankruptcy Court that was totally unnecessary. The hourly rate for the attendance at this hearing was over $1,300.

V.

AFTER SPENDING $5,200,000 ON RECEIVERSHIP FEES, THE RECEIVER HAS FAILED TO DETERMINE WHO THE RIGHTFUL OWNER AND MANAGERS ARE OF NOVO POINT, LLC AND QUANTEC, LLC

24. In the Supplement, at ¶ 4, p 4, the Receiver laments about having "been served, today, April 15, 2014, with the attached Petition for Writ of Certiorari to the United States Supreme Court filed by Novo Point and Quantec by Mr. Schepps and Mr. Payne." The Receiver is apparently distraught over being dragged into more litigation with Mr. Payne, who alleges that he is the duly appointed attorney (by Ms. Katz") for Novo Point and Quantec.

25. This is quite incredible. Mr. Schepps is an attorney known to the Receiver to be a creditor who has alleged a three million dollar claim against Novo Point and Quantec. How do we know this? Christopher Payne has appeared before Judge Ferguson and testified, incredibly, that he represents Mr. Schepps in connection with Schepps claim against Novo Point and Quantec. Of Course, the Receiver is also well aware of the fact that Christopher Payne has filed numerous pleadings before this Court in which he purports to represent Novo Point and Quantec. This is an obvious conflict of interest that the Receiver and his counsel, the Dykema firm, have done nothing to resolve for over a year.

26. This is all the more distressing when considering that Receiver has claimed Novo Point and Quantec as assets of the Receivership.[12] In fact, there are orders entered by Judge Ferguson to such effect. Yet, the Receiver and his counsel, the Dykema firm, have done nothing stop these shenanigans. Instead, they spend Jeffrey Baron's money in a ludicrous effort to respond to the pleadings filed by Christopher Payne. This is an issue that could have and should have been resolved by the Receiver filing with this Court at any time within the last year or more a Motion to Show Authority. The Receiver's failure to have such matters cleared up and adjudicated constitutes either "gross negligence" or a breach of the Receiver's fiduciary duties owed to the Receivership Estate.

27. Moreover, the Receiver has done nothing to determine who the rightful manager of Novo Point and Quantec might be. After paying $5,200,000 in receivership fees and expenses to himself and his legal counsel, the Receiver and his attorneys, the Dykema firm, have done nothing to determine this issue.

28. Granted this Court has expressed its view of late that the Court in the Netsphere Acton, captioned above, does not have jurisdiction to make such a determination. However, the Receiver and his counsel could have and should have instituted a separate declaratory judgment action to make such determination. This failure cannot be laid at the feet of Baron and the Vil-

[12] *See* ¶ 15 of the Motion for Order to Show Cause filed in the Bankruptcy Court on October 31, 2013, ECF Doc 372, in Bankruptcy Case 12-37921sgj7, at p 6, where the Receiver stated:

> "In support of this request, the Receiver notes, as the Court is and will be aware from taking judicial notice of its file in this and related matters, that the Receiver has been in possession of Novo Pint, LLC and Quantec, LLC and the Domain Assets by virtue of an Order of the District Court, continues to hold same and from time to time to make certain renewal payments as necessary to maintain the Domain Assets within them under the Orders of the Fifth Circuit, this Court and the District Court pending a wind-down of the receivership."

lage Trust, who have been in such a severe financial lockdown that they could not fund the pursuit of such declaratory relief.

29. The Receiver's attorneys have taken the deposition of Lisa Katz, a true and correct copy of which is attached hereto as **Exhibit "1"**. Lisa Katz was promoted into this position by Schepps, an alleged creditor of Novo Point and Quantec and a disbarred Texas lawyer working with Schepps, as the putative manager of Novo Point and Quantec, and if this Court would read Katz' deposition, it is believed that the Court would be astonished at the degree of ignorance and lack of professional qualifications exhibited by Ms. Katz in her deposition. In the face of this deposition, the Receiver has sat silent for months if not years, allowing Katz to engage Payne -- an attorney with a huge conflict of interest fully known to the Receiver and his counsel -- to file flagrantly disruptive pleadings with this and other Courts. When asked by the undersigned counsel, the Receiver's counsel, Jeff Fine, could not produce one document that substantiated the fact that Katz was the manager of Novo Point and Quantec, notwithstanding that such documents had been requested at her deposition. *See* **Exhibit "2"** attached hereto.

30. However, the Receiver's counsel, Mr. Fine, says it best in a Motion for Order to Show Cause he filed in the Bankruptcy Court on October 31, 2013, ECF Doc 372, in Bankruptcy Case 12-37921sgj7.

> "16. Accordingly, the Receiver respectfully suggests that the trusts' objections as represented by Mr. Payne can and should be resolved without delay by directing all interested in the Domain Assets, including and especially Mr. Payne on behalf of the Entities, to appear and show both his authority to file pleadings and cause why the Domain Assets should not be turned over to Mr. Baron's bankruptcy trustee. Such a hearing would permit the termination of the receivership and conclusion of the bankruptcy without delay. Notice of this motion will be served on Mr. Payne and Ms. Garrett by email to the address used in their filings in the District Court and by certified mail, return receipt requested."

Id. at 7. Before this Motion could be heard, this Court dismissed the Baron bankruptcy, but there is no excuse for the Receiver's failure to file a new declaratory judgment action to determine the rightful owner of these valuable assets that have been under the control of the Receiver for over two years, entities that the Receiver has sucked $5,200,000 from to pay the Receiver and his counsel's bloated fee requests. Instead, the Receiver sat silent while the Court turned the remnants of these valuable assets over to Lisa Katz, contrary to the wishes of Jeffrey Baron, who the Receiver well knows is vitally interested in the survival of these entities.[13]

31. This Court should consider the above facts when considering whether to grant the Receiver and his attorneys any further fees and expenses. Professionals get rewarded for success, not for simply churning the file, administering assets, and doing so poorly.

VI.

THE RECEIVER AND HIS COUNSEL HAVE FOR THE MOST PART ENGAGED IN CHURNING THE FILE AND OVERSTAFFING MATTERS WITH MULTIPLE LAYERS OF PARTNERS AND ASSOCIATES.

32. Several instances of gross overstaffing have been addressed above, in Section IV. In this section, Baron will point to evidence of gross churning and overstaffing by the Receiver and his attorneys, principally the Dykema firm. It is impossible for Baron, with limited resources and a limited response time (one week), to respond to all of the excessiveness exhibited

[13] In lobbying for a turnover of the Receivership assets to the Bankruptcy Estate of Jeffrey Baron, the Receiver argued in paragraph 11 of his Motion for Order to Show Cause filed in the Bankruptcy Court on October 31, 2013, ECF Doc 372, in Bankruptcy Case 12-37921sgj7, at p 5, that:

> "This Court has already found that: (a) Mr. Baron is ultimately the beneficiary of the Village Trust (the Cook Islands trust, that owns the entities that own the Quantec/Novo Point Domain Names); (b) Mr. Baron contributed assets that he controlled to the Village Trust and likely should be considered a settlor of it; and (c) Mr. Baron has at all times (through an elaborate web of entities) controlled the quite amorphous Quantec/Novo Point Domain Assets."

Instead of doing the right thing, the Receiver and his counsel have done the expedient thing, taking the path of least resistance, by allowing this Court to turnover the Novo Point and Quantec assets to Baron's enemies.

by the Receiver and his attorneys, but Baron will ask this Court to reflect on just one typical month, July 2013, as an examples which will prove the point.

A. The Receiver's Invoice for July 2013.

33. The Receiver's Invoice for July 2013 is excerpted and attached hereto as **Exhibit "3"**. In July 2013, the Receiver had 16 entries on his invoice. Each entry had the exact same description: "Review pleadings, files, emails, send emails, and related conversations with Receiver's counsel." The total hours spent by the Receiver for the month of July amounted to 33.70. The hourly rate charged by the Receiver was $800.00. This invoice is an embarrassment, abusive, and an obvious example of overbilling - "pounding the file" unmercifully - even to a casual observer.[14] The description does not alert the public to the actual pleadings reviewed, why there was a need to review such pleadings by such a senior level lawyer charging an hourly rate of $800.00 who had a team of lawyers appointed to represent him (the Dykema firm), how such review benefited the receivership estate, why this review could not have been accomplished by an associate or a capable paralegal. This Honorable Court should not countenance such a shoddy billing practice. This will not withstand the scrutiny of an appellate court. This is one example of one month's billing practice that has been repeated month after month from October 2010 forward. Poor Jeffrey Baron's fortune has been depleted to zero by these pernicious practices. This billing practice would not be appropriate where the receivership was upheld by the Fifth Circuit: it is certainly not appropriate in a failed receivership, where the Fifth Circuit has instructed this Court to exercise heightened scrutiny.

[14] It is so abusive as to constitute a breach of fiduciary duty.

B. Dykema's Invoice for July 2013.

34. Dykema's invoice for July 2013, is excerpted and attached hereto as **Exhibit "4"**. Dykema spent 49.30 hours during the month of July 2013, on Receivership matters, charging a total of $27,748.00. **Not one minute of the time billed was attributable to paralegal or associate time.** All of this time was spent by two senior partners, Jeffrey Fine, whose hourly rate was $560.00 and David J. Schenck, whose hourly rate was $570.00.

35.

C. Conclusion for July 2013.

36. Between the Receiver and the Dykema firm, Vogel, Fine and Schenck, three senior level partners, spent a total of 81.2 hours on Receivership matters. Not one minute of associate or paralegal time was spent. The docket sheets for the Netsphere Action, Case No. 3:09-cv-00988-L, for the month of July 2013, are attached hereto as **Exhibit "5"**. Not one pleading was filed by Fine or Schenck or anyone else at the Dykema firm. Not one pleading was filed by any other party. One wonders what the pleadings were that Vogel reports in his billing records that he reviewed day after day during the month of July. The docket sheets for the Baron Bankruptcy, Case No. 12-37921-sgj7, for the month of July 2013, are attached hereto as **Exhibit "6"**. These docket sheets reflect the following events occurred:

a. A five page Notice of Appeal of Order for Relief and an amendment thereto were filed by Baron on July 8, 2013;

b. A one page motion was filed by Baron on July 8, 2013, requesting an extension of time to find new counsel;

c. The bankruptcy trustee attempted to subpoena Gerrit Pronske for a deposition and Pronske and the trustee fought about the issue on July 0-10, 2013;

d. An order was entered appointing an attorney for the Chapter 7 Trustee was entered on July 12;

e. The Receiver filed an Accounting Report on July 12, 2013;

f. The Receiver filed on July 14, 2013, his Notice of Receiver's Inventory Report of April 19, 2013;

g. Baron filed a two-page Motion for approval to release a portion of money to retain bankruptcy counsel on July 15, 2013;

h. Baron filed a Motion for Stay Pending Appeal on July 15, 2013;

i. Pronske filed Statement of Financial Affairs on July 15, 2013;

j. Fine attended a status conference on July 15, 2013, along with the Receiver, charging collectively an hourly rate of more than $1,300;

k. Several orders were entered on ministerial matters from July 15, 2013, to July 26, 2013;

l. The Court filed its Sua Sponte Report and Recommendation to the District Court on July 26, 2013; and

m. Fine attended a hearing on July 26, 2013.

37. Under the circumstances, it is hard not to reach the conclusion that Vogel's time records are inaccurate and probably fabricated. They bear no resemblance to the events that occurred during the Month of July 2013.

38. The stewardship by Vogel of the Baron Estate's assets, as exemplified by the billings for the month of July 2013, is deplorable and unacceptable. One can only conclude that the Receiver and his attorneys have engaged in a wholesale effort to milk Baron's Receivership Estate in favor of lining their own pockets, charging astronomical hourly rates attributable to three senior level lawyers, Vogel, charging $800.00 per hour; Fine, charging an hourly rate was $560.00 and Schenck, charging an hourly rate was $570.00, for a total of $1,930.00 per hour. Vogel, as receiver, owes fiduciary duties to the Receivership Estate. Vogel has failed to oversee and manage his attorneys as a good steward of the Receivership Estate, and, instead, allowed

senior partners at the Dykema firm to perform all of the work, to the exclusion of the employment of associates and paralegals. Vogel's time records are totally deficient, and do not contain entries that are contemporaneous with the events that occurred. Such records are non-descriptive, and unhelpful to this Court in discharging its duties to review the Receiver's fee requests and approve only those fees and expenses that benefited the Receivership Estate. The fee requests of the Receiver should, in equity and under the doctrine of fairness, be denied in their entirety.

39. The Dykema firm failed in its duty to manage the representation in the best interests of the client, the Receivership Estate Dykema failed to utilize associates and paralegals, and, instead, charged for two senior partner level lawyers. Dykema attended bankruptcy court hearings that were not necessary for the Receiver or its attorneys to attend. Pending the conclusion of the involuntary trial, the Receiver did not need to participate in the Baron Bankruptcy with the exception, perhaps, of requesting authority for distribution and payment of fees and complying with requests for information by the Bankruptcy Court. Otherwise, there was nothing for the Receiver to do: he had no "dog in the fight". If the order for relief was entered, it is clear that the Receivership assets would have to be turned over to the Chapter 7 Trustee, If the order for relief was not entered, the Receivership would continue on to conclusion. Participation at the level described above in section IV, supra, and in this section was totally unwarranted and unnecessary. If Dykema argues that attendance was prudent, associate level attorneys could and should have been utilized.

40. Any Court reviewing the billing practices of Vogel and his counsel, Dykema, should be concerned. Any client, in this case, Baron, as the ultimate beneficiary of the Receiver-

ship Estate, would have every right to be upset over what has transpired in this case. This Court should not add insult to injury by awarding the Receiver's requested fees and expenses.

41. As indicated above, neither the time allotted for this response nor the availability of funding for legal and accounting personnel to review the invoices submitted by the Receiver permits a full or adequate review of the billing practices of the Receiver and his attorneys, principally the Dykema firm. However, a cursory review of the remaining months suggests that these practices prevailed throughout the tenure of the Receiver and his attorneys, to the detriment of the Receivership Estate and its ultimate beneficiary, Jeffrey Baron.

VII.

IF THE COURT IS INCLINED TO GRANT ADDITIONAL FEES, BARON REQUESTS LEAVE

42. In the event that this Court is inclined to award additional fees for the receiver and his counsel, Baron requests that this Court allow him time to hire an expert to review the fee bills and opine on the reasonableness and necessity of such fees. As this Court is aware, all of Baron's assets have been sequestered by this receivership until recently and thus Baron has been prevented from hiring an expert. Furthermore, Baron has had approximately one week to prepare a response to the Receiver's Fee Request, as Supplemented.

VIII.

WHERE THERE IS NO JURISDICTION OVER THE PROPERTY, FEES CANNOT BE PAID.

43. For more than a century the Supreme Court has recognized that the exercise of federal court power must be limited to the particular matters placed at issue before a court. E.g.,

Reynolds u. Stockton, 140 U.S. 254, 268 (1891). The Supreme Court has rigorously limited federal court power to the finite bounds of the court's authority. Any order issued beyond a court's jurisdiction has, here-to-fore, been void. See *U.S. Catholic Conference v. Abortion Rights Mobilization, Inc*., 487 U.S. 72, 76-77 (1988) (a court's power to issue any order "cannot be more extensive than its jurisdiction").

44. For two centuries the rulings of the Supreme Court have been clear: "If there was no jurisdiction, there was no power to do anything but to strike the case from the docket. In that view of the subject the matter was as much *coram non judice* as anything else could be, and the award of costs and execution was consequently void." *Mayor v. Cooper*, 73 U.S. 24 7, 250-251 (1868). Likewise, a court "not having jurisdiction of the res, cannot affect it by its decree". *Fall u. Eastin*, 215 U.S. 1,11 (1909). Since the ruling in the seminal case of *Lion Bonding & Surety Co. u. Karatz,* 262 U.S. 640, 642 (1923), the law has been that when a federal court lacks jurisdiction to impose a receivership, it is "necessarily without power to make any charge upon, or disposition of, the assets". *Id.*

45. The Fifth Circuit found that the receivership imposed by the district court below, seized "property that was not the subject of the underlying dispute". The Fifth Circuit correctly held that "A court lacks jurisdiction to impose a receivership over property that is not the subject of an underlying claim or controversy."

IX.

THIS COURT DOES NOT HAVE JURISDICTION
TO GRANT THE RECEIVER AND HIS COUNSEL A RELEASE

46. Clams as to whether acts of the receiver constituted gross negligence or breaches of fiduciary duty are not the subject of this action and cannot, as a matter of law, be determined

at this time. The orders issued by Judge Furgeson, state what they state, and this Court should not be providing carte blanche releases for matters that are not the subject of this suit. This Court lacked the subject matter jurisdiction to grant the receivership in the first instance. The Fifth Circuit vacated the receivership order, and this Court has ruled that this means that every order entered by the Court is of no force or effect because such orders derive "their existence from the creation of the receivership and the Receivership Order and therefore cannot exist separate and apart from them." *See* this Court's Amended Memorandum Opinion, at p 25, ECF Doc 52 in District Court Case 3:13-cv-03461-L.

47. The receiver diverted millions of dollars of the estate's cash to vigorously defend its own receivership in a meritless defense in the Fifth Circuit.[15] From the inception of the receivership, Baron repeatedly demanded that his cash in the entire amount of all claims against him—claims largely solicited by the receiver, be held in the registry court so that the receivership could be terminated. The receiver repeatedly objected to these efforts and to repeated attempts to close down the receivership. The receiver appeared to be intent on burning through every asset that he could lay his hands on

48. Not only did the receiver spend all of the cash in the receivership that existed in December 2012, it failed to pay one dime of income taxes on the money that the Receiver took in throughout the entire tenure of the receivership. Instead of paying taxes on receivership income as required by law, the receiver skimmed the money generated by the receivership, using pre-tax

[15] Defending a Receivership or in defense of fees sought are not properly chargeable against the receivership estate. *US. v. Larchwood Gardens, Inc.,* 420 F.2d 531, 535 (3rd Cir. 970); *In re Marcuse & Co.,* 11 F.2d 513, 516 (7th Cir. 1926) (denying fees where receiver acted as litigant and not neutral party).

dollars to pay himself and his counsel, and defrauding the government of its share. (further explained in Document: 00511604732, COA5 10-11202).

49. The receiver hired the "best" lawyers that (Baron's) money could buy and aggressively opposed all efforts of Baron to obtain use of his funds to hire counsel. The receiver was thus successful in preventing Baron from having virtually any representation in this Court and woefully inadequate representation in the Fifth Circuit and bankruptcy court. The fact that Baron won the appeals with his "rag tag" volunteer team lawyers should speak volumes as to the merits of the receiver's position. The Fifth Circuit overturned over 60 orders of the District Court that were advocated and defended by the Receiver.

X.

THE FIFTH CIRCUIT MANDATED THAT BARON'S NON-CASH PROPETY BE RETURNED

50. In his proposed order, the receiver requests this Court to authorize him to "store, maintain or abandon **or destroy**" Baron's property (his books and records). All of Baron's property, including his books and records must be returned to him per the mandate of the Fifth Circuit. None should be destroyed or maintained by the receiver.

Respectfully submitted this 22nd day of April 2014.

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

Leonard H. Simon, Esq.
PENDERGRAFT & SIMON, LLP
TBN: 18387400; SDOT No. 8200
Admitted to Practice in NDOT
THE RIVIANA BUILDING
2777 Allen Parkway, Suite 800
Houston, Texas 77019
Telephone: (713) 528-8555
Facsimile: (832) 202-2810
lsimon@pendergraftsimon.com
Co-Counsel for Jeffrey Baron

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served via ECF on all parties receiving ECF Notices in the above-captioned case on April 22, 2014.

/s/ Leonard H. Simon