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

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

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

TO THE HONORABLE JUDGE ROYAL FURGESON:

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

A. WHAT THIS EVIDENCE PROVES

EXHIBIT A - THE LYON EMAIL

This email:

(1) Completely discredits Mr. Lyon. Even after September 2010, Lyon is clearly charging $40.00 per hour, not the $300.00 he is now claiming. In this evidence Mr. Lyon, in his own words, states that his rate is $40 per hour. He notes that allows ‘more bang for the buck’. There is no ambiguity.

(2) Evidences that multiple claimants have personal knowledge exonerating Jeff with respect to the claims, but they have sat in silence. For example:

a. Mr. Broome and Mr. Cox were fully aware that Lyon's fee was $40.00/hour– it is Broome who sent Cox the email from Lyon. Yet, Broome and Cox have been silent, allowing this Court to falsely believe that Jeff owed Lyon money and failed to pay it.

b. Broome, Lyon, and Cox were all personally aware that in this email chain, Mr. Taylor is 'proposing' a contingency fee of $42,000.[1] This is about half of what Mark Taylor now claims is the contingency fee. Even though each of these attorneys knew that Taylor was doubling the amount of the 'proposed' contingency fee, they have all sat and kept their silence. Not one claimant attorney has come forward to tell the Court the truth—even though they have personal knowledge of the facts.

[1] Notably, Taylor's original 'proposal' is inconsistent with his billing and his contract. Taylor's 'proposal', although half the amount of his 'receivership claim', is itself discredited by Exhibit B to this motion. Taylor's statements in August were that a subsequent "small bill" in September should be the last one. It should also be noted that, per Taylor's own 'claim affidavit', Taylor held $10,000.00 in retainer from Jeff. Thus, the $2,500.00 "60 day old" invoice mentioned in Exhibit B, was not outstanding as there was a $10,000.00 retainer balance. (Today, there is still a $7,500.00 retainer balance due Jeff and it should be returned to Jeff).

In other words, this email evidence establishes that **multiple** 'claimant' attorneys have **personal knowledge** that the 'claims' of other attorneys are false and fraudulent. However, each and every 'claimant' attorney has kept his mouth shut as to the false claims another attorney is making. Not a single 'claimant' attorney has stood up and come forward to the Court with the facts **within their personal knowledge** exonerating Jeff.

EXHIBIT B - THE TAYLOR EMAIL

This email:

(1) Discredits Taylor's claim for a right to a 'contingency' fee. Exhibit B proves that after the settlement had been entered and approved (in July 2010), Taylor made no claim to any additional 'contingency' fee due, and instead stated expressly **"We'll probably have a very small bill that will go out at the first of September, but that should be the last one."**[2] Notably, Powers Taylor's own billing 'evidence' supports this. **What happened between August 26, when this letter was sent, and October ? Pronske engaged in his 'scorched earth' policy against Jeff. Suddenly, multiple attorneys, all in contact with Pronske (as**

[2] Note that although the email asserts there is an outstanding balance, since Jeff had a $10,000.00 retainer still with Taylor, there was actually no balance due. The Powers Taylor 'claim' plainly admits that there is a $7,500.00 balance due to Jeff based on the hourly fees billed and paid.

seen from the attorneys' own billing records), started asserting new claims against Jeff for fees well beyond those they had agreed to, and those they had previously billed. Pronske, Lyon, Taylor, Broome, etc. All in communication with each other, and all with their hands out.

(2) This email evidence proves that **there was no claim alleged or asserted by Taylor for any 'contingency' amount due prior to Pronske's "scorched earth" campaign against Jeff.**

B. WHY THE EVIDENCE WAS NOT RAISED EARLIER

The undersigned counsel is a solo practitioner. As a physical matter of available time in the day, it is not possible for counsel to have reviewed all the materials relevant to each of the multiple claims.[3] The receiver was requested to provide key materials to make review of the 'claims' more efficient, but the receiver after first promising to produce, refused to produce. Accordingly, the undersigned counsel has not physically had the available hours to review all of the material at hand (let alone material in the possession of the receiver and claimant

[3] In addition to counsel's duties as appellate counsel (which were undertaken by the agreement of counsel), and counsel's duties as trial counsel (which was placed upon counsel by this Court, over objection, for which this Court has not paid for those services nor provided funding for expenses or support), counsel still has pre-existing duties to other clients. If counsel had no other work to perform, that would mean still that only approximately one work day was allowed to investigate, review all the material and search for relevant evidence, research, and respond to each of the 'claims'. Since the receiver and trustee have flooded counsel with an avalanche of paperwork, both in the trial court and in the court of appeals, the available time to review each claim has amounted to a fractional part of a day, per claim. In such circumstance, it is simply not possible as a matter of available time to review much of the available material for each case.

attorneys which has been withheld), and can only raise that evidence once counsel has, as a matter of physical time, been able to review and find the material.

C. RELIEF REQUESTED

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

Jointly and in the alternative Jeff Baron requests this Court to reconsider its ruling with respect to entering a stay pending appeal because such ruling was based in material part on the Court's belief that Mr. Baron had "abused" Mr. Lyon and not paid him his fee. The new evidence proves that Mr. Lyon's fee was $40 per hour and not the $300 per hour billing rate Mr. Lyon has constructed his unpaid fee claim upon. If this Court would have been aware that Mr. Lyon's claim was based on his claim for a $300 per hour fee, and that (as shown by this evidence) his fee was actually $40 per hour and that he had been paid in full at that rate (as shown by Mr. Lyon's statements), the decision on relief pending appeal may have been handled differently.[4]

[4] Notably, this is also true for other evidence now before the Court. For example, Mr. Broome, whose "withdrawal" in the bankruptcy court was offered to show good cause for the receivership, has now produced his contract. The contract proves that his fees were capped– he was not authorized under the contract terms [page 3 term "2"] (without a written modification authorizing such work) to work more than $10,000.00 in billing for any month. He withdrew in November, 2010 with a maximum (per Broome's accounting) 'claim' for $3,314. Accordingly his 'claim' for almost ten times that amount ($28,737.00) is not supported by his retainer agreement.

Similarly, with attorney after attorney producing contracts with monthly fee caps, Pronske's claim that he received $75,000.00 up front but Jeff actually told him to bill as much as he wanted lacks credibility. This is true especially where Pronske had sent no bills, no engagement letter, no receipt, no work statements, no statements of the status of any retainer, nothing to indicate that

Respectfully submitted,

/s/ Gary N. Schepps

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COURT ORDERED TRIAL
COUNSEL FOR JEFF BARON

CERTIFICATE OF SERVICE

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

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

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the $75,000.00 was anything other than an up-front flat fee payment. It is also especially true where Pronske averred in his bankruptcy court counterclaim that when Pronske was first hired, Jeff had stated he was not going to be paying Pronske any fee payments.