



3. The Trustee filed his Motion for Appointment of a Receiver over Jeffrey Baron ("Receivership Motion") on November 24, 2010. On November 24, 2010, this Court approved the Receivership Motion thereby creating the receivership ("Receivership") and further appointed Peter Vogel (previously Special Master in this case) as Receiver.

4. In this Motion, the Trustee is requesting reimbursement from the Receivership for the Trustee's legal fees and expenses related to the creation of the Receivership as well as legal work related to the Receivership, including all appellate work related to the Receivership since its inception through March 31, 2011.<sup>1</sup> Certain of the professional fees and expenses noted herein (November, 2010 through January, 2011) are included in an interim fee application currently scheduled for hearing before the Bankruptcy Court, however, other fees and expenses noted herein are not yet the subject of an interim fee application. All professional fees in bankruptcy cases must be approved on a final basis at the time a bankruptcy case is closed.

5. Attached to this Motion are invoices from counsel for the Trustee, Munsch Hardt Kopf & Harr, P.C. ("Munsch Hardt"), describing the services performed from the inception of the Receivership on November 24, 2010 to March 31, 2011. By overview, the work included filing the pleadings necessary to commence the Receivership, preparing for and attending hearings on a motion to vacate and stay the Receivership, attendance at other Receivership hearings, receiving and responding to motions of various parties, legal research, settlement conferences, handling matters related to Baron's health insurance and appellate work. In total, the Trustee is requesting reimbursement for the sum of \$363,315.00 in legal fees and \$16,446.18 in expenses, for a total of \$379,761.18.

#### **PURPOSE OF THE RECEIVERSHIP**

6. As parties involved in this case are well aware, the Trustee sought the

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<sup>1</sup> The Trustee recently became aware that the Receiver is attempting to wind down the Receivership and suggested the Trustee file this Motion in order that this matter could be promptly set for hearing. The Trustee is currently assisting the Receivership on five (5) appeals and additional motions for reimbursement are anticipated.

establishment of the Receivership for the primary purpose of allowing him to finalize matters related to, and wind down, the Bankruptcy Case. In the fall of 2010, the Trustee was handling matters to consummate the settlement of complex litigation between Baron, Ondova and numerous other parties which had just been resolved through the Trustee's efforts, and was beginning the process of winding down the Bankruptcy Case. It was at this time that Baron had begun a disturbing pattern of hiring and firing lawyers that was disrupting the Bankruptcy Case. New lawyers were appearing for Baron at various hearings and certain other lawyers began filing motions in the Bankruptcy Case to be paid fees owed to them by Baron. As explained in more detail herein, in order to effectuate the settlement and wind down other matters related to Ondova, and to avoid the chaos being caused by Baron, the Trustee after consultation with the then Special Master, Peter Vogel, sought the creation of the Receivership in order to allow him to complete matters in the Bankruptcy Case and re-vest remaining assets, if any, with Baron. The Trustee has since been involved in every material aspect of the Receivership since inception in order to allow him to achieve the primary purpose, that being to effectuate the winding down of Ondova's bankruptcy estate (the "Ondova Estate"). This Motion seeks the reimbursement to Ondova of professional fees incurred by the Trustee for matters related to the Receivership. It is the Trustee's belief that the creditors of Ondova should not be forced to sacrifice payment of their claims because of Baron's failure to pay his attorneys and the resulting need to create and defend the Receivership.

#### **ONDOVA BANKRUPTCY CASE AND ONDOVA SETTLEMENT**

7. Baron and his related entities had been involved in contentious, long running and gridlocked litigation with former business partner, Munish Krishan and two of his related entities, Netsphere, Inc. and Manila Industries, Inc. (collectively, "Manila"), for many years. The litigation ensued as a result of Baron's and Manila's failed joint venture created to own and operate a

huge portfolio of internet domain names. The enormously complex and stalemated litigation was pending in seven (7) lawsuits throughout the United States: (a) this action initially commenced on May 28, 2009 by Manila; (b) two lawsuits in the United States Virgin Islands' District Court; (c) one lawsuit in the Federal District Court for the Central District of California, Los Angeles Division; (d) one lawsuit in the Superior Court of the State of California (Los Angeles); and (e) two lawsuits pending in the 68<sup>th</sup> Judicial District Court of Dallas County, Texas (all, collectively the "Joint Venture Litigation").

8. When Mr. Sherman became Trustee in October, 2009, he was urged strongly by both this Court and the Bankruptcy Court to attempt to resolve the Joint Venture Litigation. Through the Trustee's efforts, a global settlement was reached as documented in the Mutual Settlement and Release Agreement, agreed to by the parties in late June 2010 ("Global Settlement Agreement").<sup>2</sup> The Trustee's Motion for Approval of Settlement Agreement Pursuant to Rule 9019, Federal Rules of Bankruptcy Procedure ("Trustee's Settlement Motion") was filed in the Bankruptcy Case on July 2, 2010 and was approved by the Bankruptcy Court on July 29, 2009.<sup>3</sup> The Global Settlement Agreement provided Baron a fresh start and an ability to take control over his affairs. Baron's portion of the Settlement Agreement allowed him to retain over 230,000 income producing internet domain names and provide him additional revenue through other provisions of the Global Settlement Agreement. In one pleading recently filed by Baron in the Fifth Circuit Court of Appeals (the "Fifth Circuit"), Baron has estimated the value of his portion of the internet domain names as \$20 million.

9. At the time the Trustee negotiated the Global Settlement Agreement, the amount to be paid to the Ondova Estate was \$1,750,000.00 which would provide for payment of claims

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<sup>2</sup> The Global Settlement Agreement even resolved one Baron litigation matter not even connected to Ondova entitled Equity Trust company f/k/a Mid Ohio Securities, Custodian of Jeffrey Baron as Beneficiary of Equity Trust Company FBO IRA 19471 v. Rohit Krishan, Munish Krishan and Manoj Krishan, Case No. DC-08-19925-C, pending in the 68<sup>th</sup> Judicial District Court of Dallas County, Texas (the "Calling Cards.com Litigation").

<sup>3</sup> As this Court is aware, the settlement negotiations were enormously complex and, in fact, this Court ordered the parties to participate in mediation sessions with the United States Magistrate Judge, Paul. D. Stickney.

of Ondova's creditors at 100% and provide sufficient funds to pay all administrative claims. The Trustee did not anticipate, nor did anyone else, that Baron would fail to pay many of the law firms and other lawyers he hired for the Joint Venture Litigation and during the Bankruptcy Case and therefore necessitate the need for the Receivership.

10. Almost immediately after the Global Settlement Agreement was approved, certain attorneys representing Baron, including Baron's lead counsel, Gerrit M. Pronske of Pronske & Patel, P.C., resigned and new attorneys, including but not limited to Dean Ferguson, Martin Thomas, Stanley Broome, Sid Chesnin, Thomas Jackson and Robert Garrey, appeared for Baron. Subsequently, Mr. Pronske and five other law firms filed motions for payment of fees owed to them by Baron for substantial contribution in the Bankruptcy Case.<sup>4</sup> These attorneys alleged that the Bankruptcy Court should approve and pay their fees because their work for Baron provided a benefit for the Ondova Estate. Simultaneously, new lawsuits were being filed by prior attorneys for Baron in state court, including suits by attorneys David L. Paccione, Jeffrey Hall, Robert Garrey and the law firm of Friedman & Feiger, LLP.

11. Bankruptcy Court Judge Jernigan ordered Peter Vogel, then Special Master in this case, to act as mediator between Baron and all of the unpaid lawyers. As Mr. Vogel began this effort, it became apparent that Baron had failed to pay a larger number of lawyers and law firms for work performed either in the Joint Venture Litigation matters for Baron and Ondova or lawyers representing Baron in the Bankruptcy Case. The mediation efforts failed however because the lawyer Baron hired to represent Baron in the mediation, Stanley Broome, resigned from his representation of Baron shortly prior to the commencement of the mediations due to nonpayment of fees. The fact that Baron had not paid numerous attorneys and law firms was

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<sup>4</sup> The six law firms seeking substantial contribution in the Bankruptcy Case are Pronske & Patel, P.C., Powers Taylor, LLP, Hohmann Taube and Summers, LLP, Hitchcock Everrett, LLP, West and Associates, LLP and Schurig, Jetel, Beckett, Tackett.

not addressed with the Trustee by Baron during the settlement talks that occurred during the negotiations of the Global Settlement Agreement.

12. As a result of the hiring and firing of lawyers by Baron and after the resignation of Mr. Pronske, on October 13, 2010, the Bankruptcy Court entered its Report and Recommendation to District Court that Peter Vogel, Special Master, be Authorized and Directed to Mediate Attorney Fee Issues ("Report and Recommendation"). A copy of the Bankruptcy Court's Report and Recommendation is attached hereto as Exhibit "A". In her Report and Recommendation, Judge Jernigan stated:

Jeffrey Baron's habit of hiring and then firing lawyers, in many cases after they have incurred significant fees on his or Ondova's behalf (or on behalf of other entities he controls or is beneficiary of), has grown to a level that is more than a little disturbing. As the court noted in court on September 15, 2010, at the very least, it smacks of the possibility of violating Rule 11 (i.e., it suggests a pattern of perhaps being motivated by an improper purpose, such as to harass, cause delay, or needlessly increase the cost of litigation for other parties). Still more troubling is the possibility to the court that Jeffrey Baron may be engaging in the crime of theft of services. See Texas Penal Code §§ 31.01(6) & 31.04 ("A person commits theft of service if, with intent to avoid payment for service that he knows is provided only for compensation: (1) he intentionally or knowingly secures performance of the service by deception, threat, or false token"; "services" includes "professional services"). This crime can be a misdemeanor or a felony depending on the amount involved. If Jeffrey Baron is constantly engaging lawyers without ever intending to pay them the full amounts that they charge, and then terminating them when they demand payment, this court is troubled that there are possibly criminal implications for Jeffrey Baron.

The Bankruptcy Court has announced that it will not allow this pattern to occur any further in these proceedings, and Jeffrey Baron will not be allowed to hire any additional attorneys. Mr. Baron has been told that he can either retain Gary Lyon and Martin Thomas through the end of the bankruptcy case (which this court does not expect to last much longer) or he can proceed *pro se*. The bankruptcy court has further warned Mr. Baron that if he chooses to proceed *pro se* and does not cooperate in connection with final consummation of the Global Settlement Agreement, he can expect this court to recommend to His Honor that he appoint a receiver over Mr. Baron pursuant to 28 U.S.C. §§ 754 & 1692, to seize Mr. Baron's assets and perform the obligations of Jeffrey Baron under the Global Settlement Agreement.

13. The Report and Recommendation was adopted by this Court by order entered on October 19, 2010 [Docket No. 119]. As a result of the Report and Recommendation, and the fact that a number of attorneys were contacting the Trustee advising him that they were resigning, the Trustee filed his Emergency Motion of Trustee for Appointment of Receiver Over Jeffrey Baron on November 24, 2010 ("Receivership Motion"). The Receivership Motion was considered by this Court the same day it was filed and was granted. A true and correct copy of the Order approving the Receivership Motion ("Receivership Order") is attached hereto as Exhibit "B".

#### **BARON DECLARED WAR ON THE RECEIVERSHIP**

14. As stated previously in this Motion, the Receivership was sought by the Trustee to allow him to conclude the Bankruptcy Case and to provide some mechanism to: (a) pay all of the Baron attorneys who had not been paid; and (b) curtail the disruption caused by Baron in the Bankruptcy Case, including hiring and firing of lawyers, frivolous filings and other vexatious litigation conduct. Unfortunately however, Baron's opposition to the newly created the Receivership and his persistent tactics to cause delay and disruption to the Receivership have been beyond astonishing. The Receivership docket currently contains 341 docket entries since its commencement, most of them pleadings filed by Baron to end the Receivership or actions opposed to the Receiver or the Trustee. Baron also has filed five appeals to the Fifth Circuit. It appears Baron has declared war on the Receivership and will stop at nothing to delay and cause expense to legal proceedings. His litigation tactics and desire to enormously drive up litigation costs are unparalleled.

15. Following the approval of the Receivership Motion, Baron employed new counsel, Gary N. Schepps, who filed an appeal of the Receivership Order with the Fifth Circuit. Baron also filed, on November 27, 2010, a Motion to Vacate Order Appointing Receiver ("Motion

to Vacate") which was denied by this Court and later denied by the Fifth Circuit. This Court conducted two lengthy hearings on the Motion to Vacate on December 17, 2010 and January 4, 2011.<sup>5</sup> At the conclusion of those hearings, this Court entered its Order Denying Motion to Vacate Order appointing Receiver and In The Alternative Motion for Stay Pending Appeal on February 3, 2011 [Docket No. 268]. A copy of this Court's Order is attached hereto as Exhibit "C". In its Order, this Court chronicled in full detail the vexatious litigation conduct of Baron. The Order described Baron's litigation tactics and his propensity to cause the litigation costs of all matters to materially increase. In the Order, this Court found that, based on the evidence, there were six reasons for the appointment of a Receiver:

- It was necessary to stop Baron's frequent changes of counsel intended to interfere with the administration of justice.
- It was necessary to stop Baron's frequent changes of counsel that caused other parties to incur excessive costs.
- It was necessary to reduce the increased expense to the Ondova Estate cause by the frequent changes in counsel.
- It was necessary because Baron refused to obey previous orders to reduce his frequent changes of legal counsel, and less restrictive than the alternative of jailing him.
- It was necessary to stop Baron's continued fraudulent hiring of attorneys.
- It was necessary to stop Baron from transferring assets outside of the jurisdiction of the Court when those assets might be necessary to pay claims against him arising out of the Bankruptcy Case.

16. Unfortunately, neither this Order nor any other order has deterred Baron from his continuing vexatious litigation tactics which continue to this day unabated. Sadly, it has been all out war by Baron against the Receivership since this Court's Order Denying Motion to Stay Pending Appeal (which has also been appealed).

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<sup>5</sup> The Trustee filed his Response to Motion to Vacate on December 13, 2010 which contained voluminous briefing and exhibits. Substantial legal research was necessary and counsel for the Trustee was required to review transcripts and pleadings in dozens of prior litigation matters regarding Baron.



**WORK PERFORMED BY THE TRUSTEE**

17. The work performed by the Trustee since the Receivership has fallen into a number of categories as follows:

- a. Filing the Emergency Motion of Trustee for Appointment of a Receiver Over Jeffrey Baron and subsequently litigation on Baron's Emergency Motion to Vacate and numerous other motions filed by Baron in December and January;
- b. Attending meetings with the Receiver at the inception of the Receivership and coordinating various litigation matters as between the Trustee and the Receiver;
- c. Attending other Receivership hearings;
- d. Handling matters related to Baron's health insurance;
- e. Attending settlement conferences ordered by this Court in response to the filing of dozens of motions by Baron;
- f. Work related to handling five Fifth Circuit Appeals filed by Baron;
- g. Review and analysis of all other pleadings filed by both Baron and the Receiver to determine whether they impact the Ondova Estate;
- h. Corporate work in order to provide information to the Receiver regarding various Baron entities;
- i. Providing updates to creditors, the Bankruptcy Court and various attorneys who contacted the Trustee regarding their attorney fee claims; and
- j. Communications with Trustee and the Receiver and dealing with other Receivership matters.

18. By far, most work performed by the Trustee's counsel related to the defense of the Receivership by preparing for and attending the hearings on the Motion to Vacate. The Trustee was required to research legal issues, gather documentation, review prior transcripts, interview counsel and attend the hearings on the Motion to Vacate. Due to the emergency nature of these matters, all of the work was handled on an expedited basis (utilizing more attorneys to meet deadlines which would not normally be required), because this Court

scheduled the hearing on the Motion to Vacate on December 17, 2010. The Trustee's response [Docket No. 159], filed on December 13, 2010, contained 35 pages of briefing and 815 pages of exhibits. These matters were resolved by the Court's Order Denying the Motion to Vacate entered on February 3, 2011. The vast majority of the work was in December 2010 when Baron's new attorney, Mr. Schepps, filed a blizzard of pleadings in order to derail the Receivership that added to the work of the Trustee in preparing for the hearings on the Motion to Vacate. A copy of this Court's docket from November 24, 2010 to December 31, 2010 listing all of these motions, objections and other pleadings is attached hereto as Exhibit "D". This work was by far the most time consuming work performed by the Trustee. Second in time spent to the work related to the Motion to Vacate is the Trustee's work in handling Fifth Circuit Appeal matters. The work related to the appeals is described later in this Motion.

19. Other work performed by Trustee's counsel relates to attending meetings with the Receiver and his counsel at the beginning of the Receivership and then later at the settlement meetings ordered by this Court in response to the dozens of Baron motions. The Court-ordered settlement meetings were very time consuming and only recently ended.

20. There was also substantial work needed related to Baron's health insurance. The Trustee coordinated the continued health insurance for Baron including communications with Pinnacle PEO Corporation and other entities in order to keep Baron's health insurance in place. Finally, there has been significant work necessary by the Trustee in reviewing all of the various pleadings filed by Baron, as well as the Receiver, in order to determine whether the Trustee must take any steps to protect the Ondova Estate. The Trustee has also been required to file over 25 responsive pleadings to deal with matters related to the Receivership. Because the Trustee is the movant with respect to the Receivership, it is necessary for him to review all of the filings in this case. There have been literally hundreds of filings in this case, the majority

of them by Baron. To illustrate the extent of the legal work created by Baron, below is a list of filings of Baron, through counsel Gary Schepps, since the Receivership was established:

**DISTRICT COURT PLEADINGS**  
**FILED BY JEFFREY BARON FROM 11/24/2010 TO 3/31/2011**

<u>Date Filed</u>	<u>Docket No.</u>	<u>Title of Pleading</u>
12/2/2010	136	Notice of Interlocutory Appeal
12/3/2010	137	Emergency Motion to Vacate Order Appointing Receiver
12/3/2010	138	Emergency Motion to Expedite Motion to Stay Pending Appeal
12/6/2010	141	Second Motion to Expedite Consideration for Emergency Relief
12/10/2010	144	Waiver of Reply and Motion for Immediate Ruling on Motion to Vacate Receivership and Alternative Motion to Stay Pending Appeal
12/13/2010	157	Emergency Motion to Expedite Ruling on Emergency Motion to Vacate Order Appointing Receiver
12/15/2010	165	Emergency Motion for Clarification of Order Denying Motion for Emergency Ruling on Motion to Stay Pending Appeal
12/16/2010	171	Motion to Disqualify Counsel for Trustee
12/23/2010	182	Objection to The Receiver's Report Concerning Mr. Baron's Interference and Reply in Support of Motion to Clarify Receiver Order
12/24/2010	183	Motion to Strike Response filed by Daniel J. Sherman to Motion to Disqualify Counsel for Trustee
12/27/2010	187	Reply to Motion to Disqualify Counsel for Trustee
1/3/2011	198	Reply to Motion to Strike
1/4/2011	201	Motion to Strike Notice of Transmittal Regarding Withdrawal of Reference [Doc 118] to Clarify Record for Hearing on Stay Pending Appeal & Brief in Support
1/4/2011	202	Motion to Vacate Order Adopting United States Bankruptcy Judge Stacey G.C. Jernigan's Report and Recommendation [Doc 119] to Clarify Record for Hearing on Stay Pending Appeal 7 Brief in Support
1/4/2011	203	Trial Brief
1/5/2011	205	Response to The Receiver's Report Concerning Mr. Baron's Interference and Reply in Support of Motion to Clarify Receiver Order Report
1/6/2011	206	Trial Brief
1/7/2011	212	Post trial letter brief

DISTRICT COURT PLEADINGS  
FILED BY JEFFREY BARON FROM 11/24/2010 TO 3/31/2011

<u>Date Filed</u>	<u>Docket No.</u>	<u>Title of Pleading</u>
1/7/2011	214	Counsel for Jeffrey Baron's Report Regarding Movant's Participation in Psychotherapy
1/10/2011	218	Letter brief reply to Mr. Hunt's response letter brief
1/18/2011	227	Notice of Interlocutory Appeal to the Fifth Circuit
1/19/2011	231	Response and Objection to Motion for Reimbursement of Fees Incurred by Receivership Professional Joshua Cox
1/20/2011	232	Emergency Motion to Seal (regarding docket number 230)
1/20/2011	236	Response and Objection to First Application for Reimbursement of Fees and Expenses Incurred by the Receiver and Motion for Reimbursement of Fees and Expenses Incurred by Gardere Wynne Sewell
1/21/2011	237	Emergency Motion to Pay Server Fees
1/24/2011	244	Response and Objection to First Motion for Reimbursement of Fees Incurred by Receivership Professional James Eckels
1/24/2011	245	Joint Motion to Strike Motion for Order Confirming Propriety of Fund Management and Response
1/27/2011	252	Response and Objection to Motion for Leave to File Plaintiffs' Proposed Findings of Fact in Conjunction with Denial of Jeffrey Baron's Emergency Motion to Vacate Order Appointing Receiver
1/28/2011	253	Reply to Motion to Vacate Order Adopting Findings and Recommendations
2/2/2011	261	Response to Receiver's Motion for Reimbursement of Additional Personal Funds
2/4/2011	263	Motion for Leave to File Sur-reply regarding Motion for Reimbursement of Additional Funds filed by Receiver
2/4/2011	264	Emergency Motion to Clarify Order and for Further Emergency Relief regarding Order Withdrawing Gary Lyon as Counsel of Record for Defendant Jeffrey Baron
2/17/2011	320	Disclosures Regarding Document 291 (Notice per the Court's Order regarding Order on Motion for Gary Schepps to Show Authority to Represent the LLCs)
3/2/2011	337	Response and Objection to Motion for Order Permitting the Receiver to Cash Out Stocks and IRAs
3/3/2011	339	Notice filed by Jeffrey Baron (letter from Schepps requesting dissolution of receivership)

DISTRICT COURT PLEADINGS  
FILED BY JEFFREY BARON FROM 11/24/2010 TO 3/31/2011

<u>Date Filed</u>	<u>Docket No.</u>	<u>Title of Pleading</u>
3/3/2011	340	Notice of Interlocutory Appeal
3/3/2011	341	Notice of Interlocutory Appeal
3/7/2011	351	Response and Objection to 1000+ Page Document Dump by the Receiver
3/7/2011	352	Response to Second Application for Reimbursement of Fees Incurred by Receivership Professional James M. Eckels
3/11/2011	357	Notice filed by Jeffrey Baron (letter from Schepps regarding Cook Islands entities)
3/14/2011	364	Notice of letter brief filed by Jeffrey Baron
3/14/2011	373	Response and Objection to Motion for Attorney's Fees, Motion for Order Granting Receiver's Third Receiver Fee Application

21. In connection with Baron's appeals to the Fifth Circuit, Baron has filed the following:

FIFTH CIRCUIT COURT OF APPEALS CASES FILED BY BARON

**Docket # 10-11202**

<u>Date Filed</u>	<u>Title of Pleading</u>
12/3/2010	Notice of Appeal filed by Appellant Mr. Jeffrey Baron
12/7/2010	Emergency Motion to Stay Order Appointing Receiver Over Jeffrey Baron Pending Appeal, filed by Appellant Mr. Jeffrey Baron
12/20/2010	Emergency Motion to Stay Order Appointing Receiver Over Jeffrey Baron Pending Appeal, filed by Appellant Jeffrey Baron
2/20/2011	Motion to Stay Ex-Parte Order Appointing Receiver Over the Person and Property of Jeffrey Baron Pending Appeal, filed by Appellant Jeffrey Baron
2/22/2011	Emergency Motion to Protect Jurisdiction of Court of Appeals and for Injunction ending Appeal filed by Appellant Jeffrey Baron
2/22/2011	Motion to Protect Proceedings Before the Court of Appeals and Stay the District Court's Interference with Appellate Counsel for Injunction Pending Appeal filed by Appellant Jeffrey Baron

2/25/2011 Reply re: Motion to Stay Ex-Parte Order Appointing Receiver Over the Person and Property of Jeffrey Baron Pending, filed by Appellant Jeffrey Baron

2/25/2011 Reply Re: Emergency Motion to Protect the Court of Appeals' Jurisdiction Over the Receivership on Interlocutory Appeal filed by Appellant Jeffrey Baron in 10-11202.

2/25/2011 Reply Re: Motion to Protect Proceedings Before the Court of Appeals and Stay the District Court's Interference with Appellate Counsel for Mr. Baron filed by Appellant Jeffrey Baron

2/3/2011 Motion to Reconsider Stay of District Court Order Appointing Receiver Over the Person and Property of Jeff Baron filed by Jeffrey Baron

3/28/2011 Appellant's Brief, filed by Jeffrey Baron

4/6/2011 Novo Point and Quantec's Response to Ondova's Motion to Dismiss and for Sanctions

4/8/2011 Corrected Appellant's Brief filed by Appellant Jeffrey Baron

4/6/2011 Corrected Appellant's Brief filed by from Appellants Novo Point L.L.C. and Quantec L.L.C.

4/7/2011 Emergency Motion to Stay Order Permitting Disclosure of Attorney-Client Material, filed by Appellant Mr. Jeffrey Baron

**Docket # 11-10113**

<u>Date Filed</u>	<u>Title of Pleading</u>
2/1/2011	Notice of Appeal
3/21/2011	Motion to Stay Order Placing Novo Point, LLC and Quantec, LLC into Receivership
3/22/2011	Letter filed by Appellants Novo Point, L.L.C. and Quantec L.L.C advising the appellee in the appeal is Peter S. Vogel.
3/28/2011	Supplemental Letter filed by Appellants Novo Point, L.L.C. and Quantec, LLC
3/28/2011	Letter to Court filed by Appellants Novo Point, LLC and Quantec, LLC
3/29/2011	Response Opposing Consolidation of Appeal of December 17, 2010 Injunction Order Placing Novo Point, LLC and Quantec, LLC into

Receivership Into Jeff Baron's Appeal of November 24 Receivership Order

4/6/2011 Novo Point and Quantec's Response to Ondova's Motion to Dismiss and For Sanctions

4/7/2011 Emergency Motion to Stay Order Permitting Disclosure of Attorney-Client Material

**Docket # 11-10289**

Date Filed Title of Pleading

3/21/2011 Notice of Appeal filed by Appellant Mr. Jeffrey Baron

**Docket # 11-10290**

Date Filed Title of Pleading

3/22/2011 Notice of Appeal filed by Appellants Novo Point L.L.C. and Quantec L.L.C.

22. Needless to say, Baron's litigation efforts to oppose the Receivership and to cause delay and expense have been the primary reason the Trustee's legal fees and expenses have increased to the extent that they are today. The work of both the Receiver and the Trustee has been tenfold more than what it should have been in a typical receivership case. This Court, justifiably frustrated by Baron's outrageous conduct, recently issued an Order that Baron cannot file any more pleadings unless previewed by this Court through a letter in advance. A copy of that Order [Docket No. 359] is attached hereto as Exhibit "E".

23. One of the principal purposes for the creation of the Receivership was the fact that Baron was hiring and firing attorneys without paying the attorneys. Since the Receiver's appointment, he has agreed to pay the professional fees of twenty-two (22) law firms or lawyers who were not paid by Baron.<sup>6</sup>

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<sup>6</sup> Specifically, on March 17, 2011, the Receiver filed his Motion to Approve Assessment and Disbursement of Former Attorney Claims [Docket No. 396] (the "First Assessment Motion"). On March 18, 2011, the Receiver filed his Second Motion to Approve Assessment and Disbursement of Former Attorney Claims [Docket No. 400] (the "Second Assessment Motion"). On March 24, 2011, the Receiver filed his Third Motion to Approve Assessment and

**CURRENT AND ONGOING WORK OF THE TRUSTEE AT THE FIFTH CIRCUIT**

24. Between the date the Receivership was created and the date of this Motion, Baron and his attorneys filed five separately docketed interlocutory appeals. In the original appeal, Fifth Circuit Docket No. 10-11202 ("First Appeal"), Baron filed six separate emergency motions in addition to his First Appeal. In the second appeal, Fifth Circuit Docket No. 11-10113 ("Second Appeal") Baron filed a preliminary Motion to Stay, and also filed papers attempting to separate the First and Second Appeals and to exclude the Trustee from participation in the appeal. The third and fourth Appeals (Docket Nos. 11-11289 and 11-11290, respectively the "Fourth Appeal" and the "Fifth Appeal") have been docketed without any other action. The fifth appeal was initiated by a Notice of Appeal filed in this Court on April 11, 2011 (the "Fifth Appeal") but has not yet been docketed in the Fifth Circuit.

25. Baron's frenetic activity in the Fifth Circuit required the Trustee's counsel to do more research, file more briefs, and spend more on purely administrative matters than would ordinarily be the case in appeals of this kind. Taking up the appeals in the order filed, this work is described below.

**A. Docket No. 10-11202**

26. Baron filed the Notice of Appeal in this case on December 3, 2010. On December 7, 2010, he filed an Emergency Motion for a Stay Pending Appeal. The relief sought amounted to a dissolution of the Receivership. This first emergency motion included 23 pages of briefing citing 28 cases, with 259 pages of exhibits. Under applicable Fifth Circuit rules the

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Disbursement of Former Attorney Claims [Docket No. 411] (the "Third Assessment Motion" and together with the First Assessment Motion and the Second Assessment Motion, the "Assessment Motions"). In the Assessment Motions, the Receiver assesses the unpaid fees claims of 26 attorneys and law firms that formerly represented Baron and/or the other Receivership Parties. Through the Assessment Motions, the Receiver proposes to make disbursements totaling \$993,253.77 to 22 of those unpaid (or only partially paid) attorneys and law firms. On April 8, 2011, Baron filed his Amended Response, Objection, Motion for Leave to File, and Motion for Relief with Respect to Receiver Assessment of Former Attorney Claims [Docket No. 445].



Fifth Circuit may require a responsive brief on very short notice, so, after discussing the possible briefing schedule with the Fifth Circuit clerk, work began immediately on that response. The Fifth Circuit denied the motion on December 8, 2010.

27. Baron filed a second Emergency Motion to Stay on December 20, 2010. This second emergency motion included 27 pages of briefing citing 31 cases with 300 pages of exhibits. The Fifth Circuit denied this motion the same day it was filed, and so it required relatively little work by the Trustee's counsel.

28. Between December 20, 2010 and February 20, 2011, the work in the Fifth Circuit was primarily administrative in character. Then, on February 20, 2010, Baron filed his third Emergency Motion to Stay in the Fifth Circuit. On February 22, 2010 he filed two additional motions: a Motion to Protect Jurisdiction of Court of Appeals and a Motion to Protect Proceedings before the Court of Appeals and Stay the District Court's Interference with Appellate Counsel. These three motions were collectively 856 pages in length with 43 pages of briefing and 813 pages of exhibits. The third Emergency Motion to Stay cited 47 different federal cases, the Motion to Protect Jurisdiction cited 14 different federal cases, and the Motion to Protect Proceedings cited a single case.

29. Faced with this massive amount of material, the Trustee's counsel began working on responses immediately. The Fifth Circuit issued a briefing order requiring that the Trustee respond to all three motions by 5:00 p.m. on February 24, 2011. The Trustee's three comprehensive responses were filed at the 5:00 p.m. deadline. They included 39 pages of legal argument citing 17 cases with 790 pages of Exhibits. The day following the Trustee's replies, Fifth Circuit denied all of Baron's motions.

30. On March 2, 2011, Baron filed a Motion for Reconsideration of the Court's order denying his previous motions. The Motion included 19 pages of briefing, 40 pages of exhibits

and 3 case citations. Trustee's counsel began preparing a response, but it was not filed because, on March 3, 2011, the Fifth Circuit denied Baron's Motion for Reconsideration sua sponte.

31. Between March 3, 2011 and March 28, 2011, the Trustee's work on the First Appeal was limited to administrative matters as Baron sought two extensions of the deadline to file his Brief on Appeal, both of which were granted. On March 28 Baron filed his Brief on Appeal, which contains 72 pages of legal argument, cites 52 federal case authorities, and includes 62 pages of record excerpts. Under the applicable Federal Rules of Appellate Procedure, the Trustee's Brief in Response is due April 28, 2010, and work of that response is ongoing.

**B. Docket No. 11-11303**

32. The Second Appeal was filed (improperly by Baron's attorney, Gary Schepps) on behalf of Novo Point, LLC and Quantec LLC (collectively, "Novo Point") on January 18, 2011. It was originally docketed in the Fifth Circuit on February 1, 2011 as a related case to the First Appeal with the same briefing schedule. The Trustee's counsel dealt only with administrative matters, including an extension of the briefing deadlines, between February 1, 2011 and March 9, 2011.

33. On March 21, 2011, Novo Point filed a Motion to Stay in the Second Appeal. The motion included 29 pages of briefing citing 25 cases with 240 pages of Exhibits. The next day, March 22, 2011, Baron's counsel attempted to escape the Trustee's expertise in dealing with such motions by excluding the Trustee from participation in the Second Appeal. This was done by "notifying" the Clerk of the Fifth Circuit that only the Receiver, not the Trustee, was an appellant, which resulted in an administrative order that un-consolidated the First and Second Appeals. It was clear that the effect of a stay would be to simply dissolve the Receivership and

defeat its original purpose, and that the Receiver's counsel preferred not to appear or contest the Motion to Stay. Therefore, on March 28, 2011, the Trustee's counsel filed a Motion to Re-consolidate the two appeals. That motion included ten pages of briefing and 141 pages of exhibits.

34. The same day, March 28, 2011, Novo Point filed their Brief on Appeal in the Second Appeal. That brief included 54 pages of briefing and 71 pages of record excerpts. Under the applicable Federal Rules of Appellate Procedure the Trustee's Brief in Response is due April 28, 2010, and work on this appeal is ongoing.

35. On March 29, 2011, the Fifth Circuit denied Novo Point's motion to stay and granted the Trustee's motion to re-consolidate the First and Second Appeals. The next day, the Trustee, in order to avoid future misconduct by Baron's counsel, filed the Trustee's Motion for Sanctions and to Dismiss the Second Appeal. The motion included 11 pages of briefing and 107 pages of exhibits. The Fifth Circuit entered a briefing order the same day that required a response by April 11, 2011. Baron's counsel filed a response April 6, 2011 that included 17 pages of briefing resting on 18 federal case authorities. In order to expedite resolution of his Motion for Sanctions, the Trustee filed a reply in support of the his Motion for Sanctions on April 11, 2011. That reply included 11 pages of briefing and 34 pages of exhibits.

36. While the Trustee's Motion for Sanctions was being briefed, Baron's counsel filed yet another emergency motion in the Second Appeal. The Motion for Emergency Stay to Protect the Privilege was filed on April 7, 2011, asking the Fifth Circuit to stop the disclosure of allegedly privileged material. The Trustee began a response, but such work was halted when the Fifth Circuit denied the Motion later the same day it was filed.

**C. Docket Nos. 11-10289 and 11-10290 along with the undocketed Fifth Appeal.**

37. The Third, Fourth and Fifth Appeals have required less work by Trustee's

counsel than the First and Second Appeals; however, the propensity of Baron's counsel to file emergency motions has required that Trustee's counsel do a preliminary evaluation of each appeal. The Third, Fourth and Fifth Appeals are interlocutory appeals from every Order entered by the trial court in matters related to the Receivership. The Third Appeal, by Baron, covers 18 separate orders. The Fourth Appeal, by Novo Point, covers 13 separate orders with some overlap. The Fifth Appeal, filed by Baron and Novo Point collectively, challenges an additional 17 orders. Simply tracking the docketing of these matters requires unusual amounts of administrative time for the Trustee's counsel. The Fifth Appeal has not yet been docketed by the Fifth Circuit.

38. In conclusion, Baron and his counsel, sometimes purportedly acting for Novo Point, have filed five separate appeals from 37 different orders of this Court. In connection with these appeals, Baron and his counsel have filed six emergency motions in the First Appeal that contain some 110 pages of briefing and more than 1400 pages of exhibits. In the Second Appeal, they have filed two emergency motions with more than 30 pages of briefing and 250 pages of exhibits. They have filed principal Briefs on Appeal including 150 pages of briefing and 130 pages of record excerpts. The Trustee has had to respond with its own research and briefing totaling 71 pages of briefing and around 1055 pages of exhibits. The Trustee's principal briefs as Appellee in both cases are still in progress and of course this work is ongoing.

#### **SUMMARY OF AMOUNTS SOUGHT**

39. The Trustee is requesting reimbursement to Ondova of \$379,761.18. This relates to professional fees of \$363,315.00 representing 950 hours of work needed by the Trustee related to the Receivership. A summary of the services provided by month is attached hereto as Exhibit "F" and copies of Munsch Hardt's invoices for the months of November 2010 through March 2011 are attached hereto as Exhibit "G".

40. Expenses sought by the Trustee total \$12,167.90. These expenses primarily relate to Westlaw research charges, court reporter fees and transcripts. A summary of these charges is shown on Exhibit "F".

41. The Trustee's work related to the Receivership is necessary and obviously continuing and furthermore all fees and expenses described herein are subject to final Bankruptcy Court approval. Therefore, interim approval by this Court or some other payment mechanism or protocol as this Court sees fit may be appropriate.

### **CONCLUSION**

42. The Receivership has in many ways benefitted the Trustee's efforts in winding down the Bankruptcy Case. There has been less work needed in the Bankruptcy Case since the Receivership. Baron has not continued to hire and fire lawyers and the Trustee has been able to continue his efforts to effectuate a wind down of the Bankruptcy Case. Conversely however, the work required by the Trustee to commence the Receivership, represent the Trustee in the Receivership and handle the appeal matters has been expensive and time consuming. Unless this Court approves the reimbursement of the Trustee's costs and expenses, the creditors of Ondvoa will receive a materially reduced distribution. None of this was anticipated when the Trustee fulfilled his duties of completing the Global Settlement Agreement. Further complicating these facts is the possibility that certain of the law firms to be paid in the Bankruptcy Case may have residual claims against the Receivership should they not receive payment in full from the Trustee in the Bankruptcy Case. The Trustee will continue to handle whatever matters are necessary with respect to the Receivership, however the creditors of Ondova should not be forced to shoulder all of these costs. For all of these reasons, the Trustee believes that the requested reimbursement should be approved.

WHEREFORE, PREMISES CONSIDERED, the Trustee requests that the Court: (1)

approve reimbursement to the Trustee of \$379,761.18 from the Receivership; (2) approve such other payment mechanism as this Court may see fit; and (3) grant the Trustee such other and further relief as he may be justly entitled.

Respectfully submitted this 19<sup>th</sup> day of April, 2011.

**MUNSCH HARDT KOPF & HARR, P.C.**

By: /s/ Raymond J. Urbanik

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**ATTORNEYS FOR DANIEL J. SHERMAN,  
CHAPTER 11 TRUSTEE**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 19<sup>th</sup> day of April, 2011, I caused a true and correct copy of the foregoing document to be served electronically on all parties receiving notice through the Court's ECF system.

/s/ Raymond J. Urbanik

Raymond J. Urbanik